



**LANPHEAR, J.** These consolidated actions are before the Court on appeal of five separate decisions from the Town of Johnston Zoning Board of Review (Zoning Board), each denying an application for a special use permit that would allow for the construction of solar energy facilities (the Projects). The appellants contend that the evidence presented to the Zoning Board mandates their respective applications be approved.

This Court consolidates the five actions for purposes of this decision. These applications appear to have been consolidated by the Zoning Board for hearing. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth herein, these appeals are remanded to the Zoning Board with instructions.

## **I**

### **Facts and Travel**

Between October and November 2021, Johnston Winsor I, LLC, Johnston Winsor II, LLC, Johnston Winsor III, LLC, Johnston Harilla I, LLC, and Johnston Elmgrove II, LLC (collectively Appellants) submitted five applications for special use permits to allow them to construct solar energy facilities on each of their properties. The Johnston Planning Board subsequently approved the master plans for each of the five projects on March 28, 2022. (Appellants' App. Ex. B, Master Plan Approval Letters, 34-44.)

On April 28, 2022, the Zoning Board held a hearing where it considered all five of the Appellants' applications for the special use permits. Appellants presented testimony from five expert witnesses. Abutters to the properties presented two witnesses in opposition to the issuance of the special use permits. Neighbors also testified. The hearing lasted over eight hours, and, at its conclusion, the Zoning Board voted to deny all five applications. There was scant discussion among the board members.

On May 25, 2022, the Zoning Board issued five written decisions in five separate letters, each addressed to the respective applicant (Appellant). *See generally* Defs.’ Mem. Ex. D, Letters of Denial. Regarding the denial of Appellant Johnston Harilla I, LLC’s application in PC-2022-3678, the Zoning Board decision noted that the votes on the motion to approve its application were:

“Member Fascia:	Oppose
“Member Labello:	Oppose
“Vice Chairperson Pilozzi:	Aye
“Chairperson Lopardo:	Aye
“Alternate Cardillo:	Oppose”

(Defs.’ Mem. Ex. D.)

In the letter for denying the application of Appellant Johnston Elmgrove II, LLC, PC-2022-3676, the Zoning Board again provided the vote count of its members on a motion to approve its application:

“Member Fascia:	Oppose
“Member Labello:	Oppose
“Vice Chairperson Pilozzi:	Aye
“Chairperson Lopardo:	Aye
“Alternate Cardillo:	Oppose” <i>Id.</i> <sup>1</sup>

Regarding the denial of Appellant Johnston Winsor I, LLC,’s application, PC-2022-3675, in its letter the Zoning Board provided a brief colloquy between the members of the Zoning Board and the public audience at the hearing before again providing the vote count on a motion to approve the application:

“Member Fascia:	Oppose
“Member Labello:	Oppose
“Vice Chairperson Pilozzi:	Aye
“Chairperson Lopardo:	Aye
“Alternate Cardillo:	Aye” <i>Id.</i>

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<sup>1</sup> As all five of the decisions contain similar language and are all contained in Exhibit D to the Town of Johnston’s memorandum of May 8, 2023, the Court references that exhibit for each of the five cases.

Once again, in its letter denying Appellant Johnston Winsor II, LLC’s application, PC-2022-3672, the Zoning Board provided the vote count on a motion to approve it:

“Member Fascia:	Oppose
“Member Labello:	Oppose
“Vice Chairperson Pilozzi:	Aye
“Chairperson Lopardo:	Aye
“Alternate Cardillo:	Oppose” <i>Id.</i>

Finally, the Zoning Board again provided its vote on a motion to deny Appellant Johnston Winsor III, LLC’s application, PC-2022-3670, in its letter of denial:

“Member Fascia:	Aye
“Member Labello:	Aye
“Vice Chairperson Pilozzi:	Oppose
“Chairperson Lopardo:	Oppose
“Alternate Cardillo:	Aye” <i>Id.</i>

These votes are quoted in their entirety because they are the only substantive part of the Zoning Board’s fact finding, conclusions, application of law, and decision.

Apart from describing the vote, the Zoning Board made no other findings of fact or conclusions of law. It merely provided brief excerpts of the transcript that recorded the oral vote in addition to the final counts. The decisions generally reference who testified and declare the seven standards to be applied, but it is unclear if the Zoning Board applied them. There are no facts listed. As each of the standards are stated in the affirmative, as if the applicant met the standard, the Court presumes that the Zoning Board is simply identifying the standard, not applying it.<sup>2</sup>

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<sup>2</sup> For example, the first item stated is “1. That granting of the special use permit is compatible with neighboring uses and will not adversely affect the surrounding neighbors use and enjoyment of their property[.]” As each of the standards listed are worded in the affirmative, as if the standard may have been met, it would be irrational for the Zoning Board to deny the permits. Hence, the Court infers that this portion of the decisions simply states the standard to be applied.

Appellants now appeal the denial of their applications, arguing that the evidence they presented required the Zoning Board to approve those applications, and that the Zoning Board failed to make required findings of fact. The Zoning Board counters that its decisions should be affirmed because it made findings of fact on the record at the hearing which support its denials of the permit applications. For reasons not relevant to this Decision, this matter was appealed to the Rhode Island Supreme Court but thereafter returned to this Court following the entry of a Consent Decree. This matter is now ripe for adjudication.

## II

### Standard of Review

Section 45-24-69(a) grants the Superior Court jurisdiction to review decisions from local zoning boards. Such review is governed by § 45-24-69(d), which provides:

“The court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

“(1) In violation of constitutional, statutory, or ordinance provisions;

“(2) In excess of the authority granted to the zoning board of review by statute or ordinance;

“(3) Made upon unlawful procedure;

“(4) Affected by other error of law;

“(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Section 45-24-69(d).

The Court is “limited to a search of the record to determine if there is any competent evidence upon which the agency’s decision rests. If there is such evidence, the decision will stand.” *E. Grossman & Sons, Inc. v. Rocha*, 118 R.I. 276, 285-86, 373 A.2d 496, 501 (1977). The Court must

consider “the entire record to determine whether ‘substantial’ evidence exists to support the board’s findings.” *Salve Regina College v. Zoning Board of Review of City of Newport*, 594 A.2d 878, 880 (R.I. 1991) (quoting *DeStefano v. Zoning Board of Review of City of Warwick*, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979)).

### III

#### Analysis

As this Court has previously held, members of zoning boards, planning boards, historic district commissions, conservation commissions, and similar local state commissions serve an onerous task. They generously volunteer their time, committing themselves to the important but thankless tasks of making key decisions concerning development and preservation of our communities. Homeowners, neighbors, local business persons, and community-minded individuals—those who care about our neighborhoods—accept these unpaid appointments, which require attendance at several monthly meetings, often running late into the night as here, and involve complex arguments ranging from groundwater flow to special uses, from rules of evidence to consistency with thick comprehensive plans, to crowded and raucous public meetings. *Jester v. Zoning Board of Review of Coventry*, KC-2023-0705 (Decision of May 30, 2024, at 12-13) (Lanphear, J.).

However, it is the local board, not the courts, which are required to find the facts found at hearing. Our Legislature has directed that “[t]he zoning board of review shall include in its decision all findings of fact and conditions[.]” Section 45-24-61(a). It is the duty of the local boards to determine the credibility of witnesses, weigh the strengths of competing evidence, and ultimately find the facts. Armed with those facts, the zoning board then must apply the law to those facts and

make conclusions—very similar to the function of a trial jury. Then the board must render a decision in writing.

“‘[The court] must decide whether the board members resolved the evidentiary conflicts, made the prerequisite factual determinations, and applied the proper legal principles. *Those findings must, of course, be factual rather than conclusional, and the application of the legal principles must be something more than the recital of a litany. These are minimal requirements.* Unless they are satisfied, a judicial review of a board’s work is impossible.’” *Bernuth v. Zoning Board of Review of Town of New Shoreham*, 770 A.2d 396, 401 (R.I. 2001) (emphasis added) (quoting *Irish Partnership v. Rommel*, 518 A.2d 356, 358-59 (R.I. 1986)).

The high court continued:

“‘a zoning board of review is required to make findings of fact and conclusions of law in support of its decisions in order that such decisions may be susceptible of judicial review.’” *Bernuth*, 770 A.2d at 401 (quoting *Cranston Print Works Co. v. City of Cranston*, 684 A.2d 689, 691 (R.I. 1996)).

A zoning board then must adopt a detailed written decision. See § 45-24-61(a) which says in part:

“The zoning board of review shall include in its decision all findings of fact and conditions. . . The zoning board of review shall keep written minutes of its proceedings, showing the vote of each member upon each question. . . and shall keep records of its examinations, findings of fact, and other official actions, all of which shall be recorded and filed in the office of the zoning board of review....”

In rendering its decision, the court’s functions are limited:

“The court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact.” Section 45-24-69(d).

In these five decisions, the Zoning Board skirted its obligations. The Court is left with no understanding of which facts the Zoning Board found, or how statutes, case law, or local regulations were applied. Rather, the Court is left with 834 pages of a transcript and abundant documentary evidence to surmise a rationale. The Zoning Board’s counsel contends that this Court

can find a rationale because the Zoning Board “made findings of fact and conclusions of law throughout the hearing... [t]he transcript shows that board members believed the applicants were missing critical pieces of information to grant their application.” (Defs.’ Mem. 5.) Here, the Court is sitting in an appellate capacity. Speculating on a rationale or which facts are established is not the function of this Court on appeal. The Court determines errors of law and abuses of discretion—it does not speculate what the Zoning Board reasoned. Nor does it, or should it, sift through hundreds of pages to excavate support for the end result. “[W]hen the board fails to state findings of fact, the court will not search the record for supporting evidence or decide for itself what is proper in the circumstances.” *Bernuth*, 770 A.2d at 401 (quoting *Irish Partnership*, 518 A.2d at 359)); *see also*, *Sciacca v. Caruso*, 769 A.2d 578, 585 (R.I. 2001) (“[B]ecause its decision contained neither findings of fact nor conclusions of law, the zoning board completely disregarded its obligation to spell out its conclusions and reasoning...”); *Preservation Society of Newport County v. City Council of City of Newport*, 155 A.3d 688, 692 (R.I. 2017) (“However, in order for a decision of this nature to be in a proper posture for judicial review, we have consistently held ‘that municipal councils and boards acting in a quasi-judicial capacity must make findings of fact and conclusions of law to support their decisions.’”) (quoting *Cullen v. Town Council of Lincoln*, 850 A.2d 900, 904 (R.I. 2004)).

The Town of Johnston’s Responsive Brief of May 8, 2023 is well-written and well-intentioned. However, it suggests that the Zoning Board has made (or the Court should make) findings of fact and conclusions where the Zoning Board has failed to do so. Noise levels, above-ground wiring, and the scope of the project were all of concern to some board members during questioning. (Defs.’ Mem. 5-8.) It is unclear whether these were reasons for the Zoning Board’s decision. Counsel then goes to great lengths to explain why the applications may not have met the



standards outlined in the decision, reviewing some of the testimony and evidence in the record. *Id.* at 9-10. Unfortunately, the Zoning Board left its counsel without ammunition. The Zoning Board failed to make findings of fact or conclusions of law. Moreover, the Zoning Board and its members failed to articulate *any* reasons in its five decisions.

The transcript of the proceedings (attached to the Town of Johnston's responsive brief as Exhibit C) is just as scant. After experts testified, the public was heard and the audience members shouted simultaneously (Hearing Tr., 322-24, Apr. 28, 2022), the Zoning Board voted, without making findings or even holding a discussion. As laudable as counsel's efforts may have been, the Court is left with no basis to conclude what the Zoning Board's reasoning was.

Again, this Court recognizes that this is no easy task, but it is the Zoning Board that heard and listened to the proffered witnesses, weighed the evidence, and was charged with applying the standards. Zoning boards are entrusted with these most important functions. This Court is not doing this to shirk its own responsibility but to be sure it does not overstep its bounds.

#### **IV**

#### **Conclusion**

For the foregoing reasons, these five cases are each remanded to the Johnston Zoning Board of Review to draft findings of fact and conclusions of law and to issue detailed and appropriate written decisions. The Zoning Board is not required to hold additional evidentiary hearings and may render decisions on the existing record. These appeals are each dismissed without prejudice.

The Court reserves on the issue of attorneys' fees and requires any request for fees to be submitted to the Court within twenty days of the date of this Decision.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASES:**            **Johnston Winsor I, LLC, et al. v. Town of Johnston Zoning Board of Review, et al.**

**Johnston Winsor II, LLC, et al. v. Town of Johnston Zoning Board of Review, et al.**

**Johnston Winsor III, LLC, et al. v. Town of Johnston Zoning Board of Review, et al.**

**Johnston Harilla I, LLC, et al. v. Town of Johnston Zoning Board of Review, et al.**

**Johnston Elmgrove II, LLC, et al. v. Town of Johnston Zoning Board of Review, et al.**

**CASE NOS:**                    **PC-2022-03675, PC-2022-03672, PC-2022-03670,  
PC-2022-03678, PC-2022-03676**

**COURT:**                        **Providence County Superior Court**

**DATE DECISION FILED:**        **July 18, 2024**

**JUSTICE/MAGISTRATE:**       **Lanphear, J.**

**ATTORNEYS:**

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