STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: February 2, 2026)

GDM ESS, LLC, *Appellant,*	:	
v.	:	**C.A. No. PC-2024-06280**
S. JAMES BUSAM, ***in his capacity as Chairman of the Town of Smithfield Zoning Board of Review*****; LINDA MARCELLO,** ***in her capacity as Vice Chair of the Town of Smithfield Zoning Board of Review*****; EDWARD CIVITO,** ***in his capacity as a Member of the Town of Smithfield Zoning Board of Review*****; JOHN HUNT,** ***in his capacity as a Member of the Town of Smithfield Zoning Board of Review;*** **RICHARD LEVEILLE,** ***in his capacity as a Member of the Town of Smithfield Zoning Board of Review*****; CAITLYN CHOINIERE,** ***in her capacity as Finance Director for the Town of Smithfield,*** *Appellees.*	:	

DECISION

LANPHEAR, J. Before the Court is an appeal brought by GDM ESS, LLC (GDM) challenging the decision of the Town of Smithfield Zoning Board of Review (Board) denying GDM's appeal of the Board's rejection of an application for special use permit. Jurisdiction is pursuant to G.L. 1956 § 45-24-69(d). For the reasons set forth herein, the Board's decision is vacated and the matter remanded for further proceedings consistent with this Decision.

I

Facts and Travel

GDM seeks to construct a battery energy storage facility (BESF) in a forested area off Mountaindale Road in the Town of Smithfield. The BESF is an unmanned facility which stores

energy in large batteries and then sells that energy to the electrical grid when conditions are favorable.

On September 25, 2023, GDM applied for a zoning certificate with the Town. On October 4, 2023, the Town issued a zoning certificate providing that the project site was zoned as single-family R-80 residential, and that the proposed use—a private utility—would be permitted only by a special use permit obtained from the Board.

On November 22, 2023, GDM filed a Master Plan Application. Accompanying the application was a master plan checklist, including an abutters list and radius map; a wetlands report; an endangered species survey; site plans; and a master plan narrative. No application for special use permit was filed at this time.

The Board was required to certify the application as complete or incomplete within twenty-five days of its submission pursuant to G.L. 1956 § 45-23-39(c)(2). The Town failed to act, so the application became "deemed" certified complete pursuant to § 45-23-36(b) after the twenty-five-day period ran out. *See* § 45-23-39(c)(2); *see also* § 45-23-36(b). Although no distinct "certificate of completeness" is in the record, that the application was certified substantially complete is memorialized in an e-mail exchange between the Board and GDM's counsel, and the parties do not dispute that the application became certified complete on December 17, 2023.

The Smithfield Town Council then held an appropriately-noticed public meeting on January 9, 2024, at which the Town's Zoning Ordinances were amended such to prohibit energy storage systems in all districts. The amended ordinances became effective thirty days later, on February 9, 2024.

On April 9, 2024, GDM applied for a Special Use Permit seeking a special use permit for construction of the BESF.[1] This Special Use Permit Application was neither approved nor denied, but instead *rejected* as improperly filed by the Deputy Zoning Official. The filing fee was refunded and the cited reason for the rejection was that Smithfield's Zoning Ordinances had been amended to prohibit energy storage systems in all districts so no special use permit could be issued, and instead the proper avenue for relief was to file for a use variance or zoning amendment.

The rejection was appealed to the Board on April 26, 2024.[2] On October 2, 2024, the Board issued a resolution denying the appeal. The resolution affirmed that the Special Use Permit Application was properly rejected, finding GDM acquired no vested rights in a special use permit application due to its failure to file that application permit prior to the February 9, 2024 effective date of the ordinance amendment.

GDM filed the Complaint initiating this present appeal on November 21, 2024. GDM contends it was not required to submit the Special Use Permit Application on the same date as the Master Plan Application, and it is entitled to have its Special Use Permit considered under the zoning ordinance in effect on the date that the Master Plan Application was certified complete. In turn, the Board argues that the Special Use Permit Application is a *separate* application to be filed before a different body and subject to different requirements, and as such it must be considered under the zoning laws in effect when it, the Special Use Permit Application, was filed.

[1] The first page of GDM's Special Use Permit Application is incorrectly dated April 9, 2023. *See* Certified R. at 2. The following pages are dated April 9, 2024, and the substance of this document—which discusses the zoning amendment adopted on January 9, 2024—makes clear that the 2023 date is impossible.

[2] The first page of GDM's appeal to the Board is *also* incorrectly dated as having been drafted in 2023. *See* Certified R. at 160–61. The remaining pages are dated April 26, 2024, and the body of this document also discusses the zoning amendment of January 9, 2024.

The parties also argue whether the Board was, or is now, required to consider the Master Plan Application under unified development review; GDM contends the Board was required to consider the two applications through the auspices of unified development review, while the Board asserts that the Town's zoning ordinances did not provide for unified development review on the date the Master Plan Application was certified complete.

II

Standard of Review

Section 45-24-69 governs the Superior Court's review of a zoning board decision. Subsection (d) 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).

"[W]hile the Court affords an agency's factual findings great deference, 'questions of law—including statutory interpretation—are reviewed *de novo*.'" *Grasso v. Raimondo*, 177 A.3d 482, 487 (R.I. 2018) (quoting *Iselin v. Retirement Board of Employees' Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008)). "If the language of a statute or ordinance is clear and

unambiguous, it is given its plain and ordinary meaning." *Freepoint Solar LLC v. Richmond Zoning Board of Review*, 274 A.3d 1, 6 (R.I. 2022) (internal quotations omitted).

III

Analysis

A

The Vesting Statute

GDM contends it applied for a Special Use Permit in the November 2023 application and its rights to have the application are protected. At the heart of this dispute lies the proper application of § 45-24-44. The statute provides:

> "(a) A zoning ordinance provides protection for the consideration of applications for development that are substantially complete and have been submitted for approval to the appropriate review agency in the city or town prior to enactment of the new zoning ordinance or amendment.
>
> "(b) Zoning ordinances or other land development ordinances or regulations specify the minimum requirements for a development application to be substantially complete for the purposes of this section.
>
> "(c) Any application considered by a city or town under the protection of this section shall be reviewed according to the regulations applicable in the zoning ordinance in force at the time the application was submitted.
>
> "(d) If an application for development under the provisions of this section is approved, reasonable time limits shall be set within which development of the property must begin and within which development must be substantially completed." Section 45-24-44.

Here, GDM submitted its Master Plan Application—an "application for development," as contemplated by § 45-24-44(a)—on November 22, 2023, and it was certified complete by the Smithfield Planning Department on December 17, 2023. Although it appears from the record that the Planning Department did not issue an explicit certificate of completeness, § 45-23-36 provides

that where an administrative officer fails to act on certification of an application within the specified time, "the application is deemed complete . . . unless the application lacks information required . . . and the administrative officer has notified [GDM], in writing, of the deficiencies in the application." Section 45-23-36(c). The administrative officer has twenty-five days to certify the application as complete or incomplete, so long as a completed checklist of requirements is provided with the submission. Section 45-23-39(c)(2). The Master Plan Application was accompanied by the statutorily required checklist, was "deemed complete" by operation of law, and that certain rights became vested pursuant to the statute.

What *is* disputed is the matter of *which* rights became vested on that date. GDM maintains that its rights in the project as a whole became vested when the Master Plan Application was certified complete, and that, except where changes to the law would benefit the project, all proceedings regarding the project must be considered under the laws in effect as of December 17, 2023. *See* Plaintiff's Mem. in Supp. of Appeal at 5; *see also id.* at 12 (quoting *Wasserman v. Town of Glocester*, No. PC 02-2259, 2002 WL 32334823, at * 6 (R.I. Super. Dec. 17, 2002)) ("'Thus, when a change to a zoning regulation occurs after the submission of an application which does not adversely impact the application, the provisions of § 45-24-44 do not apply.'") The Board concedes that certain rights in the Master Plan Application vested on the date it was certified complete, but that the vesting does not extend to the Special Use Permit Application filed on April 10, 2024.

The Board's position is without merit. Section 45-24-44(a) provides "protection for the consideration of *applications for development* that are substantially complete and have been submitted for approval to the appropriate review agency in the city or town prior to enactment of the new zoning ordinance or amendment." Section 45-24-44(a) (emphasis added). The Master

Plan Application is unmistakably an application for development, was submitted to the appropriate review agency, and was deemed certifiably complete.

This entitled the *project* to the protections of § 45-24-44, not merely the Master Plan Application. Although the Board's position argues the statute vests rights in *applications,* such an interpretation effectively neuters the statute.[3] Here, GDM filed its Master Plan Application with full knowledge that a special use permit application would at some point be needed. The Master Plan Application explicitly referenced the Special Use Permit request. The Town then amended its zoning ordinance before GDM filed its Special Use Permit Application. Although a separate Special Use Permit Application was later filed, the request was inextricably bound with the nature of the project as a whole. GDM needed a Special Use Permit *because* it was seeking to develop an energy storage system in a residential district. The permit itself is fundamental to the development. If GDM had instead desired to develop, say, a housing project in a residential district, no special use permit would necessarily be required. The Special Use Permit Application was a *subsequent* application—and perhaps even a *subordinate* application—that was already protected by the vesting statute.

[3] To illustrate, G.L. 1956 § 45-23-39 governs the sequential stages of review for major land developments and expressly requires several different applications to be filed at different times for the same project: to wit, a master plan, a preliminary plan, and a final plan. *See* § 45-23-39. If this Court were to adopt the Board's interpretation of the Vesting Statute, a developer that filed a complete master plan application would acquire "vested" rights as of that date, but as soon as the developer filed for preliminary plan review, the "vested" rights would reset to the date that the preliminary plan was filed. Each application would thus be considered under whatever laws were in effect on the date that it was filed, and a developer's rights would be "protected" only so long as the *prior* application was under consideration. If, however, the Vesting Statute is interpreted to mean that an applicant's rights in a development *project* become vested on the date the application is deemed complete, the Vesting Statute does what it says on the tin—it protects an applicant against changes to zoning ordinances enacted *after* the application is deemed complete.

This reasoning is further supported by § 45-23-61(a)(2) as it was in effect at the time the Master Plan Application was certified complete.

> "Where an applicant requires both a special-use permit under the local zoning ordinance and planning board approval, and the application is not undergoing unified development review pursuant to § 45–23–50.1 and the local zoning ordinance, [GDM] shall *first* obtain an advisory recommendation from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, *then* obtain a conditional special-use permit from the zoning board, and *then* return to the planning board for subsequent required approval(s)." Section 45-23-61(a)(2) (effective until June 24, 2024) (emphasis added).[4]

The plain language of this section directs a sequential application process—first, an applicant must obtain an advisory recommendation and conditional approval, *then* obtain a conditional special-use permit, and *then* return to the planning board. GDM convincingly argues that when an applicant is not under unified development review, that applicant is required to move through these steps sequentially. GDM was not required to submit its Special Use Permit Application at the same time it submitted its Master Plan Application.

To rule otherwise would permit, as happened here, a municipality to amend its zoning ordinances to prevent a developer from completing an unpopular project even though the project was a permitted use when the developer submitted its initial application. The Court is sympathetic that the Town's Legislature indicated its disapproval of the project, but both Rhode Island law and precedent require the local Board and this Court to determine GDM's rights by considering the law in effect at the time the Master Plan Application was certified complete. *See* § 45-24-44; *see*

[4] On June 24, 2024, an amended version of this statute took effect. The current language of § 45-23-61(a)(2) now directs that "[w]here an applicant requires both a special-use permit under the local zoning ordinance and planning board approval, the application shall be reviewed under unified development review pursuant to §§ 45-23-50.1 and 45-24-46.4" Section 45-23-61(a)(2) (eff. June 24, 2024).

also, e.g., East Bay Community Development Corp. v. Zoning Board of Review of the Town of Barrington, 901 A.2d 1136, 1144 (R.I. 2006).

The Board directs the Court's attention to *Granite Asphalt Corp. v. Zoning Board of Review of Town of Johnston*, No. 99-6130, 2001 WL 345821 (R.I. Super. Mar. 21, 2001) in support of its proposition that GDM acquired no vested rights in the Special Use Permit by the Master Plan Application, as it needed to be submitted to a separate review agency. *Granite Asphalt Corp*. is distinguishable. There, the applicant sought to construct an asphalt plant and was told by the Town's building official that the site was zoned for industrial use and approval of the plans would need to be obtained from the fire chief and Rhode Island Department of Environmental Management. When such approval was obtained, a building permit was issued, and construction began. During construction, several inquiries were made as to the lawfulness of the plant, a new building official began an investigation, and the official revoked the permit. The official concluded no proper site plan had been submitted to the Planning Board for approval. On appeal, our Supreme Court held that *Granite Asphalt* failed to comply with Johnston's zoning ordinances by failing to submit its application to the Planning Board for approval; the revocation of the building permit was affirmed and the case was remanded. *Town of Johnston v. Pezza*, 723 A.2d 278 (R.I. 1999).

Several years later *Granite Asphalt* refiled its application to the Planning Board but by then the zoning ordinances had been amended to prevent the construction of an asphalt plant. When the Planning Board denied the application, *Granite Asphalt* applied to the Superior Court. *Granite Asphalt* claimed its rights had previously vested with the filing of its earlier application, under the prior ordinance. The Superior Court concluded:

> "It is unmistakably clear that under 796 § 9 the appropriate review agency was the Planning Board and not the town building official. It is uncontroverted that the Pezzas filed their application with the building official. In recognition of these facts, it is apparent that no rights vested in and with the Pezzas because they failed

> to submit their application to the Planning Board. Therefore, the Pezzas failed to satisfy the second prong of § 45-44-24 because they failed to submit their application to the appropriate review agency. Thus, their rights did not vest under the ordinance in effect in 1994." *Granite Asphalt*, 2001 WL 345821, *4.

Here, the situation is quite distinguishable. GDM *did* file its Master Plan Application with the appropriate review agency, and the application was deemed substantially complete. The BESF project then became vested, and the Special Use Permit Application was filed as *part* of that project. In *Granite Asphalt*, however, the *initial* application was filed with wrong review agency and was adjudicated to have been ineffective. Put simply, because *Granite Asphalt* initially filed a defective application, no rights vested. When it filed its second application, that application was, for all effects and purposes, a new application and was considered pursuant to the ordinances in effect at the time it was filed.

The intervenor relied on *Delbonis Sand & Gravel Co. v. Town of Richmond*, 909 A.2d 922 (R.I. 2006), in which our Supreme Court held "when a municipality amends a zoning ordinance in a manner such that a once permitted use becomes illegal, the amendment can result in the revocation of permits that were issued under the previous ordinance." *Delbonis*, 909 A.2d at 926 (internal citation omitted). In *Delbonis*, a developer sought to develop a subdivision containing eleven two-acre lots at a time when the Town zoning ordinances required a minimum lot size of two acres and a portion of each subdivision was to be conveyed to the Town for public use. The subdivision was approved through final approval, but no construction had begun by the time the Town amended its zoning ordinances to require a minimum lot size of three acres. The tax assessor redrew the lot lines in the proposed development to reflect this change, merging several lots. The developer brought an action seeking a declaration that the tax assessor's actions were illegal.

Our Supreme Court affirmed the Superior Court decision upholding the tax assessor's replatting. The high court held "donation of land under the town ordinance in effect at the time of

the subdivision application was a condition of approval" and reasoned "[t]o secure an equitable right to preserve an approved plan in the face of a later zoning amendment, it was necessary for plaintiffs to demonstrate that they incurred substantial obligations or expenditures in reliance on the approval." *Id.* at 928. Because the developer had not begun development, no such equitable rights were acquired. *Delbonis* was decided entirely based on the developer's arguments regarding its "equitable rights" to consideration under a prior zoning ordinance—nowhere in that decision does our Supreme Court mention the statutory vesting or even the vesting of rights.

Finally, the intervenor referenced *A. Ferland & Sons, Inc. v. Zoning Board of Review of City of East Providence*, 105 R.I. 275, 251 A.2d 536 (1969), to assert that an amendment to a zoning ordinance might validly negate a once-permitted use that had been specifically approved by a special exception. *Ferland*, like *Delbonis*, was decided based on our Supreme Court's determination that the developer had failed to establish that "any equities had accrued . . . that would suffice to immunize the special exception granted in 1965 against nullification by the amendment of the [zoning] ordinance in 1966." *Id.* at 279, 251 A.2d at 538. *Ferland* was decided decades before the vesting statute was enacted.

Accordingly, when the zoning official rejected GDM's Special Use Permit Application and the Board affirmed because GDM had not acquired any vested rights, those determinations were made upon an incorrect interpretation of law. Accordingly, the resolution is vacated, and the Board must consider the Special Use Permit Application under the ordinances in effect on December 17, 2023, when the Master Plan Application was deemed complete.

B

Unified Development Review

While GDM's rights vested on the date the Master Plan Application was certified complete, the parties also dispute whether the Board is required to provide unified development review of the project. GDM seems to take both positions, first arguing for the sequential process of § 45-23-61(a)(2) in the prior statute[5] and then arguing the Board is obligated to provide unified development pursuant to an amendment to § 45-23-50.1(a), effective January 1, 2024. Notably this statute took effect after GDM's application was complete and had vested on December 17, 2023.

The Board, for its part, consistently maintains the Town did not provide unified development review at the time the Master Plan Application was deemed complete, and even if it had, § 45-23-50.1(b)(3) requires that a special use permit application be filed *simultaneously* with a master plan application. Because GDM's Special Use Permit Application was filed months after its Master Plan Application, the Board argues that under unified development review the Master Plan Application would have been considered incomplete.

Having already found that the application vested GDM's rights, this Court need not address the issue.[6] However, it must address the shrewd advocacy of GDM's counsel.

1. The November 2023 application does not indicate it is an application submitted for unified development review. Applicants should not expect the municipalities to

[5] Four amendments to § 45-23-50.1 took effect between January 1, 2024 and June 25, 2024. *See* P.L. 2023, ch. 308, § 1 (eff. Jan. 1, 2024); P.L. 2023, ch. 309, § 1 (eff. Jan. 1, 2024); P.L. 2024, ch. 292, § 1 (eff. June 25, 2024); and P.L. 2024, ch. 293, § 1 (eff. June 25, 2024).

[6] Frankly, given the turbulent waters which surround the numerous legislative changes to a perplexing area of law, this Court welcomes the opportunity to limit its further analysis of the issue.

recognize or to infer which statutorily modified type of application they are submitting, to be recognized without proper designation.

2. By filing the November 2023 application, GDM received certain vested rights. However, it had no right to unified development review. While the statute for unified development review was amended effective January 1, 2024, municipalities were *not* required to provide such review in December 2023. *See* changes to §§ 45-23-50.1 and 45-24-46.4 effective January 1, 2024 per P.L. 2023, ch. 309. Alternate arguments may be made to a court, but here GDM's writing was misleading to the Court. It inferred the Town violated these statutes when it did not. Such advocacy is not appropriate.
3. P.L. 2023, ch. 309 was enacted in June 2023, but effective six months later, on January 1, 2024. GDM had significant time to consider applying under the old law or the new.[7] It applied under the old and received benefits by having its 2023 rights vested. It is deceptive and unfair to then assert it had more rights, and the Town was compelled to provide unified development pursuant to statutes *not yet in effect,* particularly while benefitting from laws in effect in 2023, which expire in 2024.

IV

Conclusion

The Board's rejection of GDM's Special Use Permit Application was founded on an incorrect interpretation of the Vesting Statute, and is accordingly REVERSED AND VACATED. This matter is remanded to the Town of Smithfield for proceedings consistent with this Decision.

[7] It is appropriate to infer that GDM rushed to meet the 2023 deadline, applying for the Master Plan Application on November 22, 2023 and sending correspondence on the last business day of 2023 asserting the application was complete. Plaintiff's Mem. in Supp. of Appeal, Ex. B.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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DATE DECISION FILED:	**February 2, 2026**
JUSTICE/MAGISTRATE:	**Lanphear, J.**

ATTORNEYS:

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For Intervenor:	**David A. Ursillo, Esq.** **Joseph R. Wasilewski, Esq.**