

STATE OF RHODE ISLAND

WASHINGTON, SC.

SUPERIOR COURT

(FILED: March 12, 2026)

DONNA K. DONAGHY,	:	
<i>Appellant,</i>	:	
	:	
v.	:	C.A. No. WC-2024-0649
	:	
ZONING BOARD OF REVIEW OF	:	
THE TOWN OF NORTH	:	
KINGSTOWN; FRANK PALETTA;	:	
and STACI PALETTA	:	
<i>Appellees.</i>	:	

DECISION

LANPHEAR, J. Before this Court is Donna K. Donaghy’s appeal from a decision of the Zoning Board of Review of the Town of North Kingstown granting Frank and Staci Palettas’ application for a special use permit to construct a solar energy array. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth herein, Ms. Donaghy’s appeal is granted, and the matter is remanded to the Board for further proceedings.

I

Facts and Travel

On July 23, 2024, the Palettas applied for a special use permit to construct a solar energy array on their property located at 4 Pojac Point Road in North Kingstown. The permit was requested as the proposed array was to be located between a principal structure and a street right-of-way. The Board held two hearings, and on October 7, 2024, it issued a written decision granting the special use permit.

The Board held the first public hearing on the Application on August 27, 2024. The Palettas put forward Mr. Charles Tyce, Vice President of Hillview Environmental, LLC, who designed the array and drafted a project narrative. Mr. Tyce opined that the proposed system satisfied all zoning requirements. Mr. Paletta also testified and explained that the chosen location for the solar array was necessitated by preexisting conditions on the lot.

Ms. Donaghy, an owner of abutting property, testified in opposition to the Application. She presented multiple photographs showing the area in which the solar array would be installed. Although the Palettas planned to install a privacy fence and landscaping, Ms. Donaghy's principal concern was that the array is "going to look like a commercial installation." Hr'g Tr. 24:18, Aug. 27, 2024.

The Board permitted counsel for Ms. Donaghy to ask Mr. Tyce questions by first posing them to the Board, which would then instruct Mr. Tyce whether he should answer the question. After presenting a few questions in this manner, counsel for Ms. Donaghy concluded his examination. Other members of the public in attendance at the meeting shared their opinions on the Application, then the Board voted to close public comment. Members of the Board asked Mr. Paletta to explain the proposed landscaping and the visibility of the array. Several members of the Board expressed concern that they did not have enough information about the proposed landscaping to grant the special use permit. Accordingly, the Board invited the Palettas to request a continuance and return with a landscape architect to testify.

The Board held a second public hearing on September 24, 2024. The Palettas introduced Ms. Sophath Toun, a landscape designer from Soto Designs, whom the Board accepted as an expert in landscape architecture. Ms. Toun presented a landscaping map and testified in detail about the landscape design and potential visibility of the array with the planned visual screening. She

concluded: “it’s hard to see.” Hr’g Tr. 12:13-27:15, Sep. 24, 2024. Mr. Paletta testified again at this hearing and explained his rationale for choosing the location to install the array. Counsel for the Palettas then gave a summary argument for why the Board should grant the special use permit.

The Board Chair engaged in the following colloquy with counsel for the Board:

“[Chair]: Typically what we do next is we discuss amongst ourselves. Public comment had been closed at the last meeting. Should we be opening comment for the limited purpose of discussing these plans?

“[Board Counsel]: For your discussion purposes, [counsel for Ms. Donaghy] is here again tonight on behalf of one of the abutters. He is an attorney. I want to give you that information just in case you want to consider that as part of your public comment discussion.

“[Chair]: But we closed comments.

“[Board Counsel]: In case you chose to reopen, whatever you would like to do.

“[Chair]: I think we will continue our discussion as to whether or not, how we feel about this application.” *Id.* at 33:12-34:4.

The members of the Board discussed the Application and found, among other things, that the array would not alter the general character of the surrounding area and that the special use permit was reasonably necessary to serve the public welfare. The Board also found that the Palettas met the standards in the zoning ordinance for solar energy systems.

The Board unanimously approved the Application, and Ms. Donaghy appealed.

II

Standard of Review

Under § 45-24-69(a), as enacted by P.L. 1999, ch. 296, § 1, “[a]n aggrieved party may appeal a decision of the zoning board of review” for review by this Court. On review,

“[t]he 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).

III

Analysis

Ms. Donaghy levies several arguments against the Board’s administration of the proceedings below. She argues that the Board prematurely ended her counsel’s cross-examination of Mr. Tyce during the August 27, 2024 hearing, thereby violating her due process rights. Ms. Donaghy also challenges the Board’s decision to close public comment at the end of the first hearing and then not reopen it after the introduction of additional testimony at the second hearing. Because the Court agrees that the Board erred by not reopening public comment after the introduction of new evidence, the matter is remanded.

A

Whether Procedural Due Process Rights were Violated at First Hearing

Ms. Donaghy contends she was denied her constitutional due process rights at the August 27, 2024 hearing because the Board “refus[ed] to allow” her attorney to “fully [cross-]examine” Mr. Tyce and to present concluding arguments. (Appellant’s Br. 6.) Appellees reply Ms. Donaghy’s opportunity to present evidence at the first hearing supplied her due process.

“Procedural due process guards against the modalities of state action, addressing itself to the task of rectifying perceived procedural deficiencies.” *East Bay Community Development Corp. v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1153 (R.I. 2006). “[P]rocedural due[]process requires certain minimal standards of notice, hearing, and opportunity to respond adequately before a governmental agency may effectively deprive an individual of life, liberty, or property.” *Id.* (quoting *State v. Manocchio*, 448 A.2d 761, 764 n.3 (R.I. 1982)). “Due process is a flexible concept and the degree of protection afforded to an individual may vary with the particular situation.” *Barber v. Exeter-West Greenwich School Committee*, 418 A.2d 13, 20 (R.I. 1980) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). “It is well established that due process within administrative procedures requires the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Millett v. Hoisting Engineers’ Licensing Division of Department of Labor*, 119 R.I. 285, 296, 377 A.2d 229, 235-36 (1977) (quoting *Raper v. Lucey*, 488 F.2d 748, 753 (1st Cir. 1973)).

Refusal to allow cross-examination of opposing witnesses violates a party’s constitutional due process if it “deprive[s] a party of a complete and impartial hearing in that it prevent[s] him from introducing competent, relevant evidence on the issues raised.” *Westminster Corp. v. Zoning Board of Review of City of Providence*, 103 R.I. 381, 393-94, 238 A.2d 353, 360 (1968) (citing *Colagiovanni v. Zoning Board of Review*, 90 R.I. 329, 335, 158 A.2d 158, 162 (1960)) (further citing *Zimarino v. Zoning Board of Review*, 95 R.I. 383, 388, 187 A.2d 259, 262 (1963)). The Court finds that Ms. Donaghy’s procedural due process rights were not infringed during the first hearing. Her attorney cross-examined Mr. Tyce by asking questions through the Board. The Board, in turn, directed Mr. Tyce to either answer or not answer each question. Ms. Donaghy avers that the Board “prematurely end[ed] the cross-examination.” (Appellant’s Br. 5.) It was Ms. Donaghy’s

counsel who terminated his examination of Mr. Tyce. *See* Hr’g Tr. 48:21-25, Aug. 27, 2024 (“At this time in the interest of moving things along . . . I have no further questions for Mr. Tyce through the board.”). Moreover, counsel was not precluded from presenting his own witnesses to refute Mr. Tyce’s testimony. *See Zunda v. Town of Westerly*, No. WC-2023-0081, 2024 WL 3164966, at *6-7 (R.I. Super. June 17, 2024).

This Court also finds unavailing Ms. Donaghy’s argument that she was denied due process at the first hearing because her attorney was not permitted to present a concluding argument. Before Ms. Donaghy’s attorney began his cross-examination of Mr. Tyce, he asked the Board: “at the end of everything, I would like just one last chance to summarize.” (Hr’g Tr. 45:25-46:2, Aug. 27, 2024.) The Chair responded: “We’ll see about that. Ask your questions, then we’ll see where we are.” *Id.* at 46:3-4. The attorney asked his questions but never again asked to make a summary argument. In this Court’s judgment, although the Board did not invite closing argument, neither did it squarely refuse to hear one. In any event, the Board continued the August 27, 2024 hearing and did not vote on the Application that day. Because no vote was taken which could deprive Ms. Donaghy of her property rights, this Court cannot conclude Ms. Donaghy was denied the opportunity to be heard at a meaningful time and in a meaningful manner on August 27, 2024.

B

Whether Procedural Due Process Rights were Violated at Second Hearing

Ms. Donaghy then suggests the Board deprived her of Constitutional due process rights at the September 24, 2024 hearing by refusing to reopen public comment after hearing testimony from Ms. Toun and additional testimony from Mr. Paletta. In her view, “[t]his asymmetry—allowing the Applicants to expand their record while foreclosing participation from opponents—constitutes a fundamental deprivation of fairness.” (Appellant’s Br. 7.) The Court agrees.

The North Kingstown Zoning Ordinances mandate public hearings:

“Public hearing and notice requirements. The zoning board of review shall hold a public hearing on any application for a variance, special use permit and special permit, in an expeditious manner, after receipt, in proper form, of the application and all required submission items and data.” North Kingstown Revised Zoning Ordinances § 21-13(c).

Due process requires that zoning boards of review allow individuals with property rights to contest evidence presented in a public hearing. *Bluff Head, Block Island, LLC v. Bush*, No. WC-2022-0335, 2024 WL 5065374, at *3-4 (R.I. Super. Dec. 4, 2024); *Zevon v. Rossi*, No. PC-2019-6129, 2022 WL 2238238, at *9-10 (R.I. Super. May 27, 2022). In *Zevon*, the Superior Court held that a Plan Commission was required to reopen public comment after supplementing the record with additional evidence. There, the board held three public informational meetings on an application to install a solar field. At the end of the second public meeting, the board closed public comment. In between the second and third hearings, the board supplemented the record with an updated site map from the applicant, an updated staff report, and other materials representing “over 100 pages of ‘data, information, and evidence.’” *Id.* at *4. Over abutters’ objections, the board granted the application. On appeal, the Superior Court reversed and explained that receiving the additional evidence was tantamount to *ex parte* communication (citing *Champlin’s Realty Associates v. Tikoian*, 989 A.2d 427, 440 (R.I. 2010). Justice Vogel noted “[t]he applicable ordinance guarantees the Appellants the right to review and comment on that evidence, and that right cannot be denied by dismissing the submissions as insignificant.” *Id.* at *10.

The case at bar is very similar to *Zevon* and *Bluff Head*. The Board received evidence from the applicant at the first hearing and afforded objectors the meaningful opportunity to be heard through public comment, including cross-examination of the applicant’s witnesses by Ms.

Donaghy's counsel. The hearing was continued for the applicant to present critical, additional evidence. In *Zevon*, the Superior Court did not remand because of the failure to hold a subsequent public hearing as it considered that error nonprejudicial. *Zevon*, 2022 WL 2238238, at *9. In the case at bar, the Board specifically requested and continued the hearing for the landscaping issue. Counsel for the Board instructed Mr. Paletta, "You need to have the landscape architect here to testify." (Hr'g Tr. 62:16-17, Aug. 27, 2024.) Mr. Paletta followed instructions and presented Ms. Toun as an expert witness during the second hearing. He also offered new testimony himself. Counsel for the Board informed the Board Chair that Ms. Donaghy's attorney was present. The Board Chair replied that public comment was closed. The Board attorney advised, "[i]n case you chose to reopen, whatever you would like to do." Hr'g Tr. 33:25-34:1, Sep. 24, 2024. This advice was not a complete description of the Board's obligation to Ms. Donaghy and other members of the public; rather, "it was incumbent on the . . . Board to reopen the session for additional comment before voting[.]" *Zevon*, 2022 WL 2238238, at *9. Both the ordinance and principles of procedural due process require more. Oddly, in the case at bar, abutters' counsel did not press to be heard or object to the ongoing proceedings, he chose to watch passively. He did not ask to cross-examine and he did not ask to present a rebuttal witness. This was not a time for counsel to be passive, and frankly, it makes this case a much closer call.

As in *Zevon*, the Board here closed public comment then received additional evidence relevant to the Application, and then refused to reopen public comment. Thus, the Board deprived the public of the fair and impartial hearing to which it is entitled. Here, the Board closed the public hearing and then took additional evidence. The Board never reopened the hearing again – at a meaningful time. Like the town ordinance at issue in *Bluff Head*, the Town of North

Kingstown’s zoning ordinance requires that the Board hold a public hearing on any application for a special use permit, and the Town of North Kingstown should enforce its own rules.

Accordingly, the Court finds that Ms. Donaghy was denied her due process rights at the September 24, 2024 hearing.¹ Therefore, the Court remands the case to the Board for continuation of the prior public hearing.

C

Other Issues Raised on Appeal

Ms. Donaghy raises several other issues on appeal. She argues that the Board committed legal error by treating the Application as one for a “freestanding accessory solar energy system” instead of a “freestanding solar energy system.” (Appellant’s Br. 12-14.) She also argues the Board failed to make required findings of fact and that the Board’s decisions were not supported by substantial evidence. The Court does not address these arguments in its Decision to remand the case to the Board for continued hearing.²

¹ This Court again notes the tireless dedication which volunteer commissioners dedicate to their municipalities throughout our state. Most are not attorneys, and all are committed to the issues inherent in community growth. Confronted with full agendas, late night meetings, concerned neighbors, and complex statutes they should be complimented for their labor. Here, however, counsel should have made clear that public comment should have been allowed, at least on the new evidence.

² Although the Court does not address these arguments, it observes with great concern that Appellant’s briefing on the definition of an “accessory” includes quotations of nonexistent law. Appellant cites two Rhode Island Supreme Court cases in support of her argument: *Town of Smithfield v. Fanning*, 602 A.2d 939 (R.I. 1992) and *Duffy v. Milder*, 896 A.2d 27 (R.I. 2006). These cases exist, but have nothing to do with the question presented. In *Smithfield*, our high court did not discuss accessory uses or the need for such uses to be consistent with the principle use. Even more disturbing – the sentence quoted from page 942 of *Smithfield* does not appear anywhere else in the case. Likewise, the *Duffy* case does not address a photography business in a residential area, it concerns a horse stable and equestrian center. The citations are inaccurate and misleading.

Whether it is a short deadline, the rise of artificial intelligence, or a simple error, this leaves the Court doubting all that is said by counsel. Courts depend on memoranda from counsel to guide them through the issues raised in our adversary system. An attorney’s work, in the noble profession of the practice of law, is his or her bond. The Court reserves its right to take further

IV

Conclusion

Ms. Donaghy's appeal is granted. The prior decision of the Zoning Board approving the Application is vacated. This matter is remanded to the Board for continued hearing. The record, including all prior testimony, is preserved. The public hearing shall be reopened and concluded at the completion of the presentation of all evidence. The Board is afforded discretion as to whether to reopen the proceeding for introduction of other evidence or testimony on subjects other than the landscaping expert's testimony.

action but goes no further today other than to express its dissatisfaction at the presentation of an argument which appears to be the product of, at best, recklessness.

“Justice is built on language, and language draws its power from the hearts and minds that create it. Words alone are empty until filled with human conviction. The same is true of every pleading filed before this Court. Generative technology can produce words, but it cannot give them belief. It cannot attach courage, sincerity, truth, or responsibility to what it writes. That remains the sacred duty of the lawyer who signs the page.” *Mattox v. Product Innovations Research, LLC*, No. 6:24-cv-235-JAR, 2025 WL 3012828, at *1 (E.D. Okla. Oct. 22, 2025).



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Donaghy v. Zoning Board of Review of the Town of North Kingstown, et al.**

CASE NO: **WC-2024-0649**

COURT: **Washington County Superior Court**

DATE DECISION FILED: **March 12, 2026**

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

ATTORNEYS:

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