**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**WASHINGTON, SC.** **SUPERIOR COURT**

**(FILED: August 26, 2014)**

| | | |
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| **WAWALOAM RESERVATION, INC.** | : | |
| | : | |
| **V.** | : | **C.A. No. WC-2009-0556** |
| | : | |
| **RICHMOND ZONING BOARD OF REVIEW, VINCENT RINALDI, JR., HENRY GRAHAM, JR., NOEL NUTINI, ROBERT ORNSTEIN, AND LARRY VALENCIA, in Their Capacities as Members of the RICHMOND ZONING BOARD OF REVIEW** | : | |

**DECISION**

**K. RODGERS, J.** Wawaloam Reservation, Inc. (Wawaloam or Appellant) appeals from a decision of the Richmond Zoning Board of Review (Zoning Board) conditioning the approval of a special use permit for the construction of 130 additional campsites upon maintaining a 100-foot buffer, or setback, along Appellant's northern property line.

Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth herein, the Zoning Board's decision is affirmed.

**I**

**Facts and Travel**

Wawaloam owns a 100-acre parcel of property in Richmond, Rhode Island upon which it operates a seasonal campground containing 300 recreational vehicle campsites (the Campground). Wawaloam has been operating the Campground since the late 1960s. In 1990, the property became a nonconforming use when the Town of Richmond (Richmond) rezoned the area in which the Campground is situated to residential use,

designated as R-2. Presently, the Richmond Zoning Ordinance (the Zoning Ordinance) permits campgrounds in an R-2 zone by special use permit. See Zoning Ordinance (Zoning Ord.) § 18.16.010. The Zoning Ordinance permits expansion of a nonconforming use also by way of a special use permit. See Zoning Ord. § 18.48.040.

On June 3, 2005, Wawaloam applied for several special use permits to make various improvements to the Campground,[1] including the addition of 130 new campsites.[2] On June 27, 2005, the Zoning Board referred the application to the Richmond Planning Board (the Planning Board) for advisory development plan review and recommendation. After numerous meetings, a site visit and revisions to Wawaloam's application, the Planning Board issued a written memorandum to the Zoning Board dated June 25, 2008. See R., at Ex. 20. The Planning Board recommended the special use permits be approved provided Wawaloam met a number of conditions, one of which recommended that Wawaloam be required to maintain a fifty-foot vegetated buffer between its new campsites and the Campground's northern property line for a distance of 300 feet, and within that fifty-foot buffer would be included plantings, a berm and a stockade fence. Id. at 3-4. The purpose of the fifty-foot vegetated buffer in this area was to reestablish privacy for the abutting landowners which had been all but lost when trees and bushes on the northern part of the Campground had been removed.

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[1] Other improvements identified in Appellant's 2005 application included the modernization and/or replacement of the existing restaurant/pavilion, two restroom facilities, recreation hall and water tank; relocating the entrance and exit to the Campground; and installing utility poles, an indoor pool area with bathroom facilities and a fitness center, a fenced-in pet run and entrance and exit signs. See generally R., at Ex. 1.

[2] One hundred twenty of the proposed campsites would be newly constructed; the additional ten were already constructed overflow sites.

The Zoning Board conducted public hearings on Wawaloam's special permit application on March 23, April 27, and May 20, 2009. During these three hearings, the Zoning Board received testimony from numerous witnesses both for and against the proposed alterations to the Campground.

Charles Vernon (Vernon), the President of Vernon Project Management and Wawaloam's planning expert, testified regarding the planning report he prepared for Wawaloam. See R., at Ex. 35. Vernon opined that the proposed alterations would be consistent with various objectives of Richmond's Comprehensive Plan by providing recreation for residents, conserving open space, and fostering economic development. Tr. 61:12-24; 63:12-64:1-8, Mar. 23, 2009. Vernon also discussed the fifty-foot vegetated and bermed buffer, noting,

> "[the Campground] is an existing use, and as such, to provide for a [fifty]-foot vegetated bermed buffer on the northern side is, from a design point of view and a planning point of view, absolutely consistent with your Zoning Ordinance in an effort to mitigate against light, noise, and other elements of the development that may be distasteful to abutters." Tr. 68:14-22, Mar. 23, 2009.

Although Vernon maintained that the fifty-foot buffer would be sufficient to shield neighboring landowners, he also pointed out that the Zoning Board's determination in that regard is discretionary, stating "you can make that buffer as wide as you want and high as you want and vegetate it any way you want [.]" Tr. 68:8-69:1-2, Mar. 23, 2009.

Halle Beckman (Beckman), a landscape architect who developed Appellant's landscape plan and the vegetated and bermed buffer zone, also testified. Beckman described the buffer zone's design as a fifty-foot wide buffer with a six-foot high cedar stockade fence and an earthen berm about five-feet high and about forty-feet wide. Tr.

79:6-17, Mar. 23, 2009. Coverage for the benefit of neighboring landowners would be provided by evergreen trees and bushes planted on and near the berm, which would begin at the northwest corner of the Campground and extend east for 300 feet. Tr. 79:6-24, Mar. 23, 2009. Like Vernon, Beckman opined that the five-foot berm and six-foot trees planted thereon would "certainly block[] any . . . kind of disturbance going back and forth whatsoever." Tr. 83:15-17, Mar. 23, 2009. In response to one Zoning Board member's concern over the adequacy of the buffer, noting that "on any given summer afternoon there are probably . . . six campers running their engines and air conditioners," Beckman stated, "I think, hopefully, we have pretty much taken care of that with the plantings that we have." Tr. 84:19-85:1-2, Mar. 23, 2009.

Several nearby residents also testified in favor of Appellant's special use permit application, including two residents of Hillsdale Mobile Home Park (Hillsdale Park), which is located on property partly adjacent to the Campground. Hillsdale Park resident Bob Vierra serves as the president of Hillsdale Park and stated that he routinely receives complaints from the 105 residents in Hillsdale Park, but that he has not received, nor did he himself offer, complaints about the Campground. Tr. 139:14-23, Apr. 27, 2009. Kathleen Tucker, also a resident of Hillsdale Park whose home is a block away from the Campground, testified that they "hear noise but it's not out of control for us." Tr. 140:3-13, Apr. 27, 2009.

Three residents of Bridgeview Drive, located to the north of the Campground, also offered testimony in favor of Wawaloam's proposed alterations. Christy Dultra testified that she believed that noise was not "a big concern." Tr. 142:8-21, Apr. 27, 2009. Francis Glawson, III and Timothy M. and Susan E. Griffin offered written

statements in favor of Appellant's application, largely based on the portion of the plan which alleviates traffic congestion. See R., at Exs. 40-41. Those written statements did not address noise or privacy issues. Id.

Not all area residents offered comments favorable to Appellant, with those in closer proximity to the Campground expressing concerns over privacy and noise.[3] Diane and David Haley, of 5 Bell Schoolhouse Road, live on Lot 2-5, adjacent to the Campground's northern boundary. The lot is approximately 1,600-feet deep and abuts the Campground for its entire depth. Tr. 147:1-4, Apr. 27, 2009. Of the seventy-three additional campsites that are proposed for the northwest corner of the Campground, twenty-two sites would be within fifty feet of the Haley property line. Tr. 147:11-14, Apr. 27, 2009. Diane Haley testified that, even without the proposed additional campsites, she and her husband already experience a lack of privacy. She testified that in 1995, when the Haleys bought their property, there was a thick vegetative buffer on the Campground's northern boundary that effectively shielded their property from light and noise. Starting in 1996, however, Wawaloam began clearing trees along the property line, thereby diminishing any buffer.[4] The Haleys testified that they "find it very difficult

[3] In addition to privacy and/or noise concerns, additional testimony by objectors addressed drainage, traffic and sewage concerns, as well as work already being performed by Appellant in the absence of Zoning Board approval. See Tr. 159:17-167:20, 168:3-173:7, 175:14-176:13, 176:16-177:20, Apr. 27, 2009.

[4] In further support of their objection, the Haleys submitted a written objection and provided photographs illustrating the diminishing vegetation from 2003 through 2009. See R., at Ex. 43. Russell Brown (Brown), the Richmond Deputy Zoning Enforcement Officer and Alternate Building Official, also supported the Haleys' testimony in this regard. Brown has been employed by Richmond since June of 2000 and has visited the Campground more than 100 times. He noted that the northwest portion of the Campground was once heavily wooded by vegetation that has been removed over the years to allow for construction of a road that provides egress and ingress to the Campground from Hillsdale Road. Tr. 212-218, May 20, 2009.

and uncomfortable to spend time in [their] backyard." Tr. 148:6-22, Apr. 27, 2009. From their enclosed three-season room, the Haleys have a front-row view of a constant stream of campers and cars driving in and out of the Campground along a road that is approximately ninety feet from their property line. Tr. 148:24-149:1-5, Apr. 27, 2009. Additionally, when they are out in their yard or by their pool, the Haleys can hear the announcements from the Campground's loudspeaker. Tr. 149:6-20, Apr. 27, 2009. David Haley further testified that he had to install a privacy fence along a portion of his property to have some privacy at his pool because campers "don't realize that people live there. They come up and say whoa." Tr. 157:21-22, Apr. 27, 2009.

Carla Marcus (Marcus) is a neighbor of the Haleys who lives at 11 Bell Schoolhouse Road. Like the Haleys, Marcus currently experiences problems with the Campground. She testified that the noise from the batting cages has interfered with her ability to eat her meals quietly and entertain in her backyard. Tr. 174:17-24, Apr. 27, 2009. Concerned that the proposed expansion will only exacerbate the current problems, Marcus told the Zoning Board, "[f]rom my property, you can see straight through [the Haleys'] land into the [C]ampground . . . . If they don't increase that buffer we are going to be looking at campers and they are going to be looking at us[.]" Tr. 173:15-24, Apr. 27, 2009.

Marion Myre, of 1 Bell Schoolhouse Road, also testified, "[w]hen I moved there, it was a smaller campground . . . . Through the years, it's changed to where we are feeling that we have no privacy." Tr. 176:19-177:1-2, Apr. 27, 2009.

Other nearby property owners expressed concerns similar to those of the Bell Schoolhouse Road contingent. Raymond Rumowicz lives on Hillsdale Road, on the

western boundary of the Campground, and testified that, "[a]s of right now I have maybe twelve neighbors within 500 feet of me. If this goes through, I will have 112 neighbors, new neighbors in there." Tr. 169:11-15, Apr. 27, 2009. He added that, "[t]he real issue for me is going to be the noise that would be there. I can't imagine an additional 70 people in the summertime could not add to more noise that's there." Tr. 179:3-7, Apr. 27, 2009.

Nearby property owners were not the only concerned individuals. Town Council member Karen Ellsworth, representing the Richmond Town Council, testified that the Town Council was also interested in ensuring that there be sufficient buffering along the Campground's perimeter. Tr. 179:11-14, Apr. 27, 2009.

On June 17, 2009, the Zoning Board held a workshop at which the northern buffer zone was a frequently-discussed topic. Zoning Board member Robert Ornstein (Ornstein) raised concerns about the density of the proposed sites along the northern boundary of the Campground, pointing out that it would be 100% more dense than anywhere else in the Campground and could create a noise issue for abutting neighbors. Tr. 287:10-19, June 17, 2009. Ornstein proposed to expand the width of buffer along the northern boundary of the Campground from fifty feet to one-hundred feet. Tr. 288:11-289:1-3, June 17, 2009. Zoning Board member Vincent Rinaldi, Jr. (Rinaldi) noted that campsites along the northern border could still look into the Haleys' backyard and suggested there be an expanded buffer to provide more privacy. Tr. 318:1-10, June 17, 2009.

Members of the Zoning Board also discussed the length of the berm and whether it should be increased to cover the length of the northern property line. The following dialogue among Zoning Board members ensued:

> "MR. GRAHAM: How far do you want to extend the berm?
>
> "MR. RINALDI: That's what we are trying to determine.
>
> "MR. NUTINI: Throw a number out.
>
> "MR. RINALDI: Hundred feet. He told me to throw a number out.
>
> "MR. ORNSTEIN: Oh, I know. I was just wrinkling my nose.
>
> "MR. RINALDI: Now, it's out for discussion."
>
> "MR. NUTINI: Lengthwise what's that, another couple of truckloads of gravel?
>
> "MR. ORNSTEIN: That's a pretty expensive bit of business there.
>
> "MR. FANGUILLO: Looking at the map, that brings it up past the corner of the road.
>
> "MR. ORNSTEIN: Right. I'm thinking 50 feet is probably a more reasonable thing.
>
> "MR. GRAHAM: I would say 50.
>
> "MR. NUTINI: I go along with the consensus. Go 50.
>
> "MR. RINALDI: I'm already outvoted, so –
>
> "MR. RINALDI: So that will be 350 on that, right?
>
> "MR. VALENCIA: Sounds good." Tr. 323:7-324:13, June 17, 2009.

On July 27, 2009, the Zoning Board voted to approve the special use permit with conditions. In its written decision dated July 28, 2009 and recorded in the Town's Land Evidence Records on July 29, 2009, the Zoning Board approved Appellant's plan with the condition that the buffer be widened from the proposed fifty feet to one-hundred feet and that the proposed berm be extended from 300 feet to 350 feet. R., at Ex. 56, at ¶¶ D(2)(a),(b) (Decision).[5]

On August 13, 2009, Wawaloam appealed the Zoning Board's Decision to this Court,[6] arguing that the expanded buffer zone is not supported by substantial evidence in the record and/or is arbitrary and capricious.

**II**

**Standard of Review**

The Superior Court's review of a zoning board decision 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;

[5] Numerous other conditions were imposed by the Zoning Board that are not germane to the issues on appeal to this Court.

[6] Wawaloam's Appeal before this Court identifies four conditions with which it takes issue : the 100-foot buffer; approval of administrative subdivisions to relocate two boundary lines; and using one existing road for emergency access only. See Appeal, ¶ 11; cf. Decision, at 7-8, ¶¶ 1-3, 12.

> "(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." Sec. 45-24-69(d).

When reviewing a decision of a zoning board, this Court "must examine the entire record to determine whether 'substantial' evidence exists to support the board's findings.'" Salve Regina Coll. v. Zoning Bd. of Review of Newport, 594 A.2d 878, 880 (R.I. 1991) (quoting DeStefano v. Zoning Bd. of Review of Warwick, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979)). Rhode Island law defines "substantial evidence" as "'such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means [an] amount more than a scintilla but less than a preponderance.'" Lischio v. Zoning Bd. of Review of North Kingstown, 818 A.2d 685, 690 n.5 (R.I. 2003) (quoting Caswell v. George Sherman Sand & Gravel Co., 424 A.2d 646, 647 (R.I. 1981)).

## III

## Analysis

Wawaloam alleges that the complaining neighbors provided no evidence upon which the Zoning Board could base its decision, that the Zoning Board cited no special knowledge of its own that the additional proposed campsites would generate noise disturbing the average homeowner, and that the 100-foot buffer measurement was arbitrary, resulting from an "off-the-cuff" remark by one Zoning Board member.

Appellant's Br., at 1. As a result, Wawaloam contends that the Zoning Board's Decision was based on "speculative fears and generalized concerns of the remonstrants." Id. at 2. Moreover, Wawaloam argues that it provided substantial evidence that the fifty-foot buffer and berm would sufficiently dampen noise and visually screen the neighboring properties from the Campground.

This Court begins by emphasizing that Appellant's Campground is a nonconforming use. The use of the property as a campground was lawful before the effective date of the enactment of the zoning restrictions, although its use would otherwise not be permitted under the current zoning restrictions applicable to the property. See RICO Corp. v. Town of Exeter, 787 A.2d 1136, 1144 (R.I. 2001); see also Zoning Ordinance § 18.48.010(A) ("[a] lawfully created or lawfully established use . . . that is nonconforming by use . . . because of subsequent adoption or amendment of this Title shall be permitted to continue"). Zoning Ordinance § 18.48.010 permits the existence of a nonconforming use, and § 18.48.040(A) allows for expansion or intensification of a nonconforming use via a special use permit.

When granting a special use permit, the Zoning Board is required to ensure that evidence satisfying the following standards has been entered into the record:

> "1. That the granting of the special use permit will not be harmful to the public health, safety or welfare or alter the general character of the surrounding area or impair the intent or purpose of this section or the comprehensive community plan;
>
> "2. That the site can accommodate the proposed level of use.
>
> "3. That satisfactory provisions have been or will be made concerning:

> "a. Ingress and egress to the property and to existing or proposed structures with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access to the property in case of fire or other emergency.
>
> "b. The adequacy and location of off-street parking and loading areas, trash or garbage storage areas, sanitary facilities, and utilities, with particular attention to the impact of noise, glare, or odor on surrounding property.
>
> "c. The adequacy and location of buffer areas and natural, vegetative or structural screening to minimize the impacts of the nonconforming use, building or structure on surrounding property." Sec. 18.48.040(C).[7]

The Zoning Ordinance also allows the Zoning Board to place conditions on a special use permit to:

> "1. Minimiz[e] the adverse impacts of the use or development on surrounding property or uses by limiting the size or intensity of the use or structure or limiting the density or intensity of development or activities;
>
> "2. Minimiz[e] adverse impacts on town services and facilities;
>
> "3. Minimiz[e] adverse effects on the environment; and
>
> "4. Designat[e] the exact location and nature of development." Sec. 18.48.040(D)(1)-(4).

In this case, after reviewing all the evidence, the Zoning Board specifically concluded that the buffer area proposed by Appellant was not adequate. The Zoning Board's Decision reads in pertinent part:

[7] Appellant cites § 18.52.010(C) as the applicable standard governing the Zoning Board's Decision. See Appellant's Br., at 12. This assertion, however, is incorrect. Section 18.52.010 applies to special use permits for uses which are permitted special uses within the Zoning Ordinance. See § 18.52.010(C). Wawaloam, however, is not a permitted special use, but rather a nonconforming use.

> "29. The buffer and landscaping plan proposed for the northwest property line is not adequate to minimize the impacts of the nonconforming campground use on surrounding residential uses or to make the campground environmentally compatible with neighboring parties.
>
> "30. The campsites proposed for the northern boundary of the Campground described in Paragraph 9(11)(a), would be built at more than twice the density of any existing campsites.
>
> "31. The Campground property abuts Lot 2-5 for approximately 1,600 feet. The applicant proposes to construct new campsites 50 feet away from the boundary along most of the boundary. Campground activity would be visible and audible to occupants of Lot 2-4 and Lot 2-5 even if the proposed 300-foot-long fence and berm were constructed." Decision, ¶¶ 29-31.

The record reveals that the Zoning Board's Decision was made after careful consideration of all the evidence introduced over three days of hearings. Of the 130 recreational vehicle campsites for which approval was sought, ninety-three—including twenty overflow sites—are located in the west and northwest part of the property. The seventy-three full time campsites are arranged at twice the density of the campsites in the existing parts of the Campground, each having an individual connection to water and electricity. Importantly, the Haleys and Marcus testified that they presently experience a lack of privacy on their respective properties, even before installation of more campsites. Thus, contrary to Appellant's assertion, the Zoning Board's Decision was not based on "speculative" fears of nearby property owners, but rather on evidence of the current conditions that neighbors experience on a daily basis.

Based on the density of the proposed campsites and the evidence that neighbors already experienced a lack of privacy, there was substantial evidence upon which the Zoning Board concluded that ninety-three additional recreational vehicles, located fifty-

feet from the closest abutters, would only increase the problem. Moreover, the Zoning Board's Decision is entirely consistent with its ability to determine the adequacy and location of buffer zones and place conditions to minimize any adverse impacts on surrounding properties. See Zoning Ord. §§ 18.48.040(C), (D).

Appellant's assertion that the Zoning Board was obligated to accept Appellant's evidence that a fifty-foot buffer would be sufficient is flawed. Appellant presented no expert testimony to support its position that the noise generated by up to ninety-three additional recreational vehicles with full hook-ups would be sufficiently buffered by the fifty-foot area. While Beckman opined the berm would be "quite a good solution," Tr. 245:23-24, May 20, 2009, she is neither an acoustical engineer nor qualified to predict how effective the landscaping will be at buffering noise. The same holds true for Vernon, Wawaloam's planning expert, who opined that the fifty-foot wide buffer would be "absolutely consistent with [Richmond's] zoning ordinance in an effort to mitigate against light, noise, and other elements of development that may be distasteful to abutters." Id. at 68:18-22. The Zoning Board was not required to accept the opinion of either witness and, indeed, chose not to.

Finally, this Court points out that Appellant's argument that the Zoning Board's Decision was "arbitrary" is factually flawed. Contrary to Appellant's assertion that the 100-foot buffer was a number that was "thrown out," a full reading of the transcript reveals that the "100 feet" discussed and "thrown out" by Zoning Board member Rinaldi referred to the additional length of the 300-foot berm then being considered. See Tr. 323:7-324:13, June 17, 2009. Moreover, the Zoning Board heard more than nine hours of testimony, examined fifty-seven separate documents, see R., at Exs. 1-57, and held a

separate open-work session to discuss the proposed findings of fact individually and in detail. Only after reaching a consensus on every issue was a written Decision issued. Such conduct is not indicative of an arbitrary decision.

## IV

## Conclusion

For all these reasons, this Court finds the Zoning Board's Decision to condition Wawaloam's special use permit upon the creation of a 100-foot buffer from its property line was supported by substantial evidence in the record and is neither arbitrary nor capricious. Accordingly, this Court affirms the Zoning Board's Decision.

Counsel for the Zoning Board shall prepare a judgment consistent with this Decision.

**RHODE ISLAND SUPERIOR COURT**
***Decision Addendum Sheet***

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| **TITLE OF CASE:** | Wawaloam Reservation, Inc. v. Richmond Zoning Board of Review, et al. |
| **CASE NO:** | C.A. No. WC-2009-0556 |
| **COURT:** | Washington County Superior Court |
| **DATE DECISION FILED:** | August 26, 2014 |
| **JUSTICE/MAGISTRATE:** | Kristin E. Rodgers |
| **ATTORNEYS:** | |
| For Plaintiff: | George A. Comolli, Esq. |
| For Defendant: | Michael L. Cozzolino, Esq. |