

North Smithfield Zoning Board of Review
December 10, 2013 7:00pm
Kendall Dean School
83 Green St., Slatersville, RI

The Chair called the meeting to order at 7:00 pm.

1. Roll Call

Present: Chair William Juhr, Scott Martin, Mario DiNunzio, Paul Pasquariello. Absent: Vice Chair Steve Scarpelli, and Vincent Marcantonio. Susan Overfield was not re-appointed as the 2nd alternate so the Board is looking for a 2nd alternate. Scott Martin was reappointed. Also present was Building and Zoning Official Robert Benoit, Assistant Town Solicitor Stephen Archambault, Town Solicitor James Lombardi and Town Planner Robert Ericson.

2. Mr. Juhr made disclosure of no compensation or pension credits are received by the board members.

3. Approval of minutes, November 26, 2013.

Mr. Martin made a motion to approve the minutes of November 26, 2013. Mr. DiNunzio seconded the motion, with all in favor.

4. Continuation of the Application by Valley Alliance for Smart Growth, Inc., (VASG) appeal of the Zoning Official and Planning Director's decision to deny the complaint against Dowling Village, LLC. VASG alleged non-compliance of the Town of North Smithfield's Major Land Development approval. The allege non-compliance involves the Town approval's terms and conditions, the Zoning Ordinance/Soil Erosion and Sediment Control, and this subdivision Land Development and subdivision Regulation.

Mr. Juhr said at the last meeting the board approved Dowling Village and Mr. Kelly's right to intervene stipulated by VASG and their attorney.

Mr. Archambault stated the Zoning Board of Review (ZBR) is meeting as two boards. As a Board of Appeal from the decision of the Zoning Officer, Bob Benoit, and as the Board of Appeal from the appeal of the Administrative Officer and the Town as the application Valley Alliance has stated on February 4th. There is a motion by Mr. Kelly to dismiss the complaint. The board should first convene as Board of Appeals with respect to the Zoning Officers decision; the moving party makes argument, and then entertains argument by Mr. D'Ovidio. After hearing argument, the Zoning Board should make a decision whether to dismiss the complaint with respect to the appeal of the Zoning Official then the board should meet for the appeal on the Administrative Officer.

Mr. Nicholas Goodier, on behalf of Bucci Development and representing Mr. Kelly's Office stated there are a series of matters to address as outlined by the Assistant Solicitor. A proposal

was submitted as to why the appeal should be dismissed. The last meeting Mr. Archambault outlined that there were some deficiencies on the original notice filed in February 2013 with an abutters list of approximately six pages and no radius map. A number of abutters were left off the list and should have received notice. Zoning Ordinance 8.4 was discussed. Mr. Goodier stated in August 2013, VASG submitted an additional abutters list which added five abutters and a radius map.

Mr. D'Ovidio objected to the additional documents that were submitted last Friday that Mr. Goodier was presenting.

Mr. Juhr reviewed the Exhibits. VASG would be represented by P.

P1) Town of North Smithfield application for certificate of zoning compliance, right hand corner dated 8/28/2013, 2 pages, Application No: ZC-2013-33 dated February 4, 2013. First page is application and second page is Town of North Smithfield Planning Board Final Major Land Development Plan Decision of Approval stamped received for record dated Nov. 18, 2009 at 03:26:28P, Book 479 Page 190, Doc. # 00014342. No Exhibit attached.

P2) Town of North Smithfield application for hearing before Zoning Board of Review, same Application No: ZC-2013-33 dated February 4, 2013 has attachments. Town of North Smithfield Planning Board Final Major Land Development Plan Decision of Approval stamped received for record dated Nov. 18, 2009 at 03:26:28P, Book 479 Page 190, Doc. # 00014342, 5 pages. Page 3 and 4 identical, one is printed landscape and other printed portrait title RIDEM Submission, Erosion Control & Inspection Notes, Dowling Village – Phases II, III & IV, both sheet 50 of 89. Last page has no identification beginning with construction/Post Construction Monitoring and ending Construction Inspection Notes.

P3) Packet hand delivered by Mr. Benoit, title Hearing Date: December 10, 2013, Town of North Smithfield, VASG, Inc., Appellant vs. Town of North Smithfield Appellee vs. Bucci Development, Inc., Intervenor, 9 pages, hand stamped dated December 2, 2013. There are several Exhibits.

P4) - Exhibit 1, page one of one, dated February 21, 2013 title VASG vs. Town of North Smithfield, signed by Christopher D'Ovidio, sent via email to the Town Solicitor, James Lombardi.

P4) - Exhibit 2, same as P1 but has modifications. Mr. Benoit stated the application was filed on February 4, 2013 with the fee but was put on hold. They came back six months later on August 28, 2013 and filled in the information to proceed with the hearing. The attorneys were trying to discuss and settle the case. Mr. D'Ovidio wanted to resolve this before scheduling a hearing but negotiations broke down and they updated the abutters list in case any change in ownership from February 4th to August 28th. Mr. Goodier stated the appeal wasn't timely filed. Mr. Archambault stated there are two different exhibits. The application was filed on 2/4/2013 with supporting documents and later on 8/5/2013 a second application was filed reflecting the original application with remedial action. Mr. Archambault suggested the board mark the documents as two separate exhibits. P4- Exhibit 2 dated February 4, 2013, Application for certificate of zoning compliance does not look identical to P1- Exhibit 1 dated August 28, 2013, Application for certificate of zoning compliance, does not match.

P5) - Exhibit 1, VASG's version of the Application for hearing before Zoning Board of Review, Application No is blank but on the Town's version Application No: 2013-33. Copy is dated February 4, 2013, Use Variance doesn't match and states Notice of Appeal and Application for Appeal Hearing is complete – February 4, 2013 with REB initials (Robert Benoit) and on the Town's version it is blank. VASG and Town's documents are different.

P5) – Exhibit 3, dated May 31, 2013, 3 pages, copied to Christopher D'Ovidio, Esq., James Lombardi, III, Esq., and Michael Kelly, Esq. Subject matter M4S SWPPP Inquiry valley Alliance for Smart Growth, Inc./Town of North Smithfield, third page signed by Marisa A. Desautel, Esq., RIDEM – Office of Legal Services.

P6) – Exhibit 4, VASG Abutter's List, dated August 1, 2013, 7 pages.

P7) – Exhibit 5, two half page sheets printed portrait when put together makes 8" x 14". Final Submission, Overall Plan, Dowling Village – Phases II & III, Sheet 108 of 113.

P8) – Exhibit 6, 1 page, Application No blank, see attached is noted everywhere with nothing attached. On left side Application Date Rec'd is February 4, 2013. Mr. Benoit stated the application was submitted on February 4, 2013 but was not processed for the hearing until August. The application for the appeal was filed within the 20 days from the date of the decision.

A)1 Bucci Development, LLC and Mr. Kelly submitted a brief with a cover letter overview, 3 pages, dated December 6, 2013, subject VASG Appeal (the "Appeal") signed by Mr. Kelly. Mr. D'Ovidio objected to the document being submitted as not having enough time to respond. Mr. Archambault stated nothing prohibits the board from entertaining any Exhibit.

A)2 – Exhibit 1, VASG, Inc., Appellant, Bucci Development, Inc., Intervenor, 5 pages, Intervenor's Motion to Intervene and to Dismiss Appellant's appeal, last page dated July 30, 2013 and signed by Mr. Kelly.

A)3 – Exhibit 2, letterhead from Mr. D'Ovidio's firm to Mr. Lombardi, subject VASG vs. Town of North Smithfield, signed by Mr. D'Ovidio, last page has Enclosures 5 and copied to Mr. Archambault and Mr. Kelly.

A)4 – Exhibit 3, portrait print of landscaped document, 2 pages, Overall Plan, Dowling Village – Phases II & III by DiPrete Engineering, second page Sheet 108 of 113.

A)5 – Exhibit 4, Abutter's List, 6 pages, top right corner handwritten date of February 4, 2013.

A)6 – Exhibit 5, 1 page radius map, bottom left states Radius Map, Dowling Village, Phase II, III, IV, Bucci Development, Inc., and right hand corner DiPrete Engineering.

A)7 – Exhibit 6, Abutter's List, 7 pages, dated August 1, 2013.

A)8- Mr. Goodier submitted a larger scale radius map in color, same as A)6 – Exhibit 5, Dowling Village, Phase II, III, IV, Bucci Development, Inc., and right hand corner DiPrete Engineering.

Mr. Goodier stated the lots highlighted in A)8 were left off the Abutter's List in February and August 2013. Lot 18 in red owned by Condominium Association with multiple property owners not in submission in 2013 and deserve notice of the hearing. Two original notices with an appeal over their client's head have not been adjudicated as required by Zoning Ordinance and RI General Laws and decision has not been rendered in a reasonable time. From February to August is not reasonable time per Mr. Goodier. The Board has sufficient grounds to move and dismiss this appeal. It is not the Town's obligation to get the information; the appellant should produce an accurate Abutter's List and radius map and was not done until August when they submitted remedial information. They are trying to get tenants and this information needs to be disclosed. The radius map submitted in August identified as A)4 – Exhibit 3 is impossible to know if the right abutters received notice. The Abutter's List is imperfect to this date and not accurate. The radius map with necessary information is deficient and not done within 20 days.

Mr. Archambault referred to Section 8.5 and a reasonable period of time for an appeal from the Zoning Officer is silent with no specific time.

Mr. D'Ovidio stated in his Objection to Motion to Dismiss, there are three documents that are not right. He has two original documents.

Mr. Archambault cited "reasonable time" for a case in RI Supreme Court for the Town of Little Compton vs. Manchester, and second case MacGregor, RIGL 45-24-64 are bound by provisions of local ordinance, so underlined and highlighted if no clarification of the number of days set forth by Ordinance, no case shall exceed 30 days for reasonable time.

Mr. D'Ovidio discussed the Town of North Smithfield and the Zoning Board of Review having statutory authority according to RIGL 45-24-64, Appeals to Zoning Board of Review. Discussion on Zoning Ordinance 8.4 regarding reasonable time for filing an appeal is 20 days. Discussion about RIGL 45-24-66, Public Hearing by Zoning Board of Review fixing a reasonable time for the hearing of the appeal, and shall give public notice, at least 14 days prior to the date of the hearing in a newspaper of general circulation in the city or town. Mr. Juhr stated Section 8.4, filing for appeal, the applicant shall accompany the request with a list of abutters within 200 feet of the property in question within 20 days. Mr. D'Ovidio stated the Zoning Ordinance does not say a radius map needs to be provided.

Mr. Archambault stated the abutter's list was inadequate. Mr. D'Ovidio stated RI DOT was the only party missing on the abutter's list and RT 146A is not on the Tax Assessor's list. Discussion about subdivision regulations, Section 10, Appeals from the Board.

Mr. D'Ovidio stated VASG is a non-profit group trying to protect the resources. DEM clarification made a decision that this is not good use of Town resources.

Caroly Shumway was sworn in by the stenographer. She spoke as a resident of the town and a representative of VASG. Ms. Shumway discussed concerns about the water quality testing and monitoring plan. Mr. Juhr asked if there were problems at the site. Mr. Ericson and Mr. Benoit denied any problems at the site. The DEM found no violations and it has exclusive jurisdiction

over this SWPPP. Ms. Shumway stated Dowling Village did not provide ground water testing at base line and it failed on the silt fence.

Mr. Goodier discussed the water quality. Stated the project was in full compliance by DEM and had no issue by DEM.

Mr. Ericson was sworn in by the stenographer. Mr. Ericson discussed why he denied the complaint by VASG.

A motion was made by Mario DiNunzio, seconded by Mr. Martin to recess for five minutes.

Mr. Ericson said they received the appeal and responded both as a zoning issue and a planning issue integrating the two in the decision. The Zoning Board gives permission to extend the process. The Administrative Officer has a right to hear the appeal and respond within 45 days. The process left a cloud over the Planning Office and Dowling Village. Mr. Ericson said this is no longer valid on the Planning side. Both Mr. Juhr and Mr. DiNunzio stated they didn't know about the appeal until October 2013.

Mr. Lombardi stated he tried in good faith to get Bucci Development, VASG and the Town together. They all met once then met separately. The May 31, 2013 letter requested an opinion from DEM on whether a regulated MS4 (town/city/municipality) has the jurisdictional authority and obligation to enforce the provisions of a SWPPP and it took a long time. They were still trying to bring the decision to the Zoning Board of Review. The Town denies they have concurrent jurisdiction.

Mr. Archambault stated the Zoning Board wears two hats. As a Board of Appeal from the decision of the Zoning Officer, Bob Benoit, and as the Board of Appeal from the appeal of the Administrative Officer and the Town.

Mr. Goodier said the Town cannot cite DEM and the appeal wasn't perfected 20 days after the decision.

Mr. D'Ovidio said the Planning Board needs to act on the application of the subdivision plan.

Mr. Archambault discussed 10.5 (a) mirrors RIGL 45-23-69, Appeals – Public hearing. The board of appeal shall hold a public hearing on the appeal within forty-five (45) days of the receipt of the appeal. Mr. D'Ovidio said 10.5 (a) affected Mr. Ericson's first attempt with Mr. Kelly to draft an agreement. Mr. D'Ovidio said Mr. Ericson was part of the process all along.

Mr. Beniot provided an instruction list that is not in the Ordinance but explains the appeals process. Mr. D'Ovidio said he received an email from Mr. Ericson that everything was complete and Mr. Lombardi also said everything is complete.

Mr. Archambault said 10.5 (a) is very specific and the applicant should have an appeal in by October. Mr. DiNunzio said the board never heard about the appeal until October when they were in receipt of the documents. Mr. Juhr said he found out in August by email. Mr. Juhr said it

is the Building Official's job to notify the ZBR, advertise and post hearings. Mr. Benoit said the appeal was filed February 4th and VASG requested to hold off until they try to work out an agreement. Mr. D'Ovidio said 8.4 require Town staff submit the application to the Zoning Board of Review. Mr. D'Ovidio referred to P2 - Exhibit 1, letter sent via email to Mr. Lombardi. Mr. Archambault said clarification on the letter from Mr. Lombardi dated February 21 – he cannot bind either party and 10.5 have a 45-day requirement.

Mr. D'Ovidio said if they dismiss the appeal they will file a complaint again to the Town and DEM. Merits and jurisdiction exists.

Mr. Archambault said the record is sound and advised the Board that receipt means when an application is filed which was done on February 4th and does not know why the Zoning Board was not notified. Mr. Juhr stated the Building Official should have notified the Board before the 45 day period was up. Any negotiations between the Town, Solicitor, Planner, Building Official, and VASG - the Board should have been notified.

Mr. Benoit said he cannot submit an application to the Board until it is processed. VASG filed the application on February 4th and requested to hold off until they try to work out an agreement. Mr. D'Ovidio referred to Ordinance 8.4 which requires the Town staff to submit the application to the Zoning Board of Review. Mr. D'Ovidio read his letter dated February 21, 2013, identified in his objection as Exhibit 1. Mr. Juhr called it P2) – Exhibit 1. This letter was sent via email to the Town Solicitor, Mr. Lombardi, stating the Town was clearly on board to put off the hearing. Mr. D'Ovidio said Mr. Archambault is correct that their position the Town, as well as Mr. Ericson and Mr. Benoit do not have the legal authority or jurisdiction to enforce a SWPPP.

Mr. Archambault gave clarification on the letter dated February 21, 2013, that despite Mr. Lombardi's good faith effort to enter into a settlement negotiation, he cannot bind either party. If the board goes beyond the 45-day requirement of 10.5, land use sub-division regulations, their decision will have an unsound outcome.

Mr. D'Ovidio said if the board dismisses their appeal they will file another complaint again to the Town and DEM. Mr. Archambault summarized the Town's side: the Town has heard argument from the moving party to dismiss, Bucci Development and Mr. Kelly's Office, and from the applicant in the initial appeal, VASG represented by Mr. D'Ovidio. Heard extensive argument and the focus of the appeal on the Board of Review from the Zoning Official should be narrowly focused. Mr. Archambault stated the application of February 4th is not complete, not perfected because they were missing an entire page. The remedial application submitted on August 5th should tell the board the applicant knew they did not file the complete abutters list because they didn't notify DOT. Also the Condominium Association with over 70 units were not notified and all within 200 feet. Ordinance 8.4 governs this not state law - the application wasn't complete and not in compliance with the February 4th application. This fails because they provided an incomplete abutters list and 8.4 states "the applicant, in addition to filing any plans and specifications supporting the request, shall accompany the request with a list of property owners within 200 feet of the property in question and a filing fee payable to the Town." Mr. Archambault referred to the instructions that are provided to all applicants titled Hearing before Zoning Board of Review, before a hearing can be scheduled, the applicant must provide the

following: 1. Complete and signed application for hearing; 2. A. submit radius maps, indicating all properties within a 200 foot radius of the property in question; 2. B. include current listing of names and mailing addresses of all abutting properties within this 200 foot radius; 2. C. if property in question is located on a State road, the DOT must be notified; 3. Zoning Ordinance Sections 8.4, 8.5 and 8.6 are listed. Mr. Archambault stated they should dismiss the complaint based upon the incomplete abutters list and it was not perfected. Cannot piece meal an application of remedial action – it is not sound and should be dismissed.

Ms. Shumway stated the notice of appeal was complete as stated by the Zoning Official. The abutters list and fee were filed on February 4th within the timeliness required. Ms. Shumway said they only need to notify residents within 200 feet as obtained from the Tax Assessor's list. The Tax Assessor's list only has the Homeowner's Association not the owners.

Mr. Archambault said under the Charter, the Town is given power to create and render their own Ordinances not contrary to state law. Section 8.4 is very specific. The information provided by the Zoning Official titled Hearing before Zoning Board of Review adds to the Ordinance.

Mr. Juhr asked Mr. Benoit if the Hearing before Zoning Board of Review was given to the applicant. Mr. Benoit stated everyone going before the Zoning Board gets this information. Mr. Juhr asked Mr. Benoit to put a date on the document to track any revisions going forward.

Mr. Juhr closed the public hearing at 9:50 p.m.

Mr. Juhr stated the board has heard a multitude of information and need to decide and take a vote whether to dismiss VASG appeal of the decision for the Building Inspector and the Town Official's decision to not uphold the complaint at Dowling Village, and Bucci Development, LLC. A motion to dismiss the appeal was made by Mr. DiNunzio, seconded by Mr. Pasquariello. Mr. Archambault stated a yes vote means a vote to dismiss the appeal. Roll call vote was as follows: YES: Mr. Juhr, Mr. Martin, and Mr. Pasquariello; NO: Mr. DiNunzio. Motion passed, with a vote of 3-1.

Mr. Archambault suggested the board put on its other hat as a Board of Appeals. Mr. D'Ovidio objected as a public notice under the Zoning Ordinance was not put out on land development regulations. Mr. Archambault stated the public notice was properly advertised on October 31 and November 7, 2013. The board is now acting as a Board of Appeals for the Administrative Officer's decision to deny. The land development and subdivision 10.5 a) states, appeals should be held within 45 days from receipt when application was filed on February 4, 2013. The board has the authority to render a decision whether the ordinance was complied with. Section 10.5 a) land use regulation does not comply.

Mr. Archambault suggested the board close the meeting, recess as Board of Appeals for the Zoning Official and call back to order and render a decision on the Administrative Officer. A motion was made by Scott Martin, seconded by Paul Pasquariello, to extend the meeting for 15 minutes with all in favor.

Mr. Juhr closed the meeting of December 10, 2013 as the Zoning Board of Review at 10:00 p.m. with all in favor.

Mr. Archambault stated the board acts as the Board of Appeal for the Zoning Official decision and heard testimony on the Administrative Officials (Planning Board Officer) decision.

Mr. Juhr re-opened the meeting as the Zoning Board of Appeals for the decision of the Town Planner at 10:05 p.m.

Roll Call

Present: Chair William Juhr, Scott Martin, Mario DiNunzio, Paul Pasquariello. Absent: Vice Chair Steve Scarpelli, and Vincent Marcantonio.

Mr. D'Ovidio stated under the subdivision regulations the appeal was filed on February 4th. It is the staff's job to bring it to the Zoning Board of Review and have a hearing within 45 days – it is Mr. Ericson's responsibility to bring the appeal to the Board. They are getting punished because Mr. Ericson did not notify the board.

Mr. Archambault stated that Mr. D'Ovidio talked about notice and it was perfected in his brief. Public issue did not need to be reissued. The 45 days was not complied with and there was a procedural defect. Mr. Archambault said the board has the authority to dismiss. Mr. D'Ovidio has concerns with the notice not stating the board is meeting pursuant to subdivision and land development regulations. Mr. Archambault said the meeting notice of November 12th which was continued today and on the Secretary of State's website states: Pursuant to the provisions of the North Smithfield Zoning Ordinance, the North Smithfield Zoning Board of Review will hold a public hearing on Tuesday, November 12, 2013 at 7:00 PM at Kendall Dean School, 83 Green Street, Slatersville. The Board will consider the following:

Application by Valley Alliance for Smart Growth, Inc., (VASG) appeal of the Zoning Official and Planning Director's decision to deny the complaint against Dowling Village, LLC. VASG alleged non-compliance of the Town of North Smithfield's Major Land Development approval. The allege non-compliance involves the Town approval's terms and conditions, the Zoning Ordinance/Soil Erosion and Sediment Control, and this subdivision Land Development and subdivision Regulation.

Mr. Archambault said the notice is complete and properly before the board. He said the applicant did not comply with Subsection 10.5 a) a land development use regulations and a hearing shall be held within 45 days. It didn't happen within 45 days and has not been complied with.

Mr. Juhr made a motion at 10:15 p.m. to extend the meeting for 10 more minutes, seconded by Scott Martin, with all in favor.

Mr. Goodier stated there was clear specific time frame for the appeal to deny be heard. If the motion to dismiss isn't clear from the testimony provided that has been going on since 7:00 p.m. to make a clear decision to Mr. Ericson's decision.

Mr. Juhr made a motion to dismiss Mr. Ericson's complaint for lack of compliance with 10.5 a) for the 45 days. Mr. Ericson's decision didn't comply with in the 45 days. Mr. DiNunzio stated the board did not receive the appeal within the 45 days.

A motion to dismiss the appeal of the Planner's decision was made by Mario DiNunzio, seconded by Paul Pasquariello. A YES vote is to dismiss the complaint. Roll call vote was as follows: YES: Mr. Juhr, and Mr. Pasquariello; NO: Mr. Martin, and Mr. DiNunzio. Motion failed, with a tied vote of 2-2.

The next meeting on continuing Mr. Ericson's ruling because of a tied vote is January 14, 2014. Mr. Juhr would like the Election of Officer's on the agenda.

5. Mr. DiNunzio made a motion to adjourn at 10:30 pm. Mr. Pasquariello seconded the motion, with all in favor.

Submitted by Diane Agostini