

## LAND USE RI – SEPTEMBER 2022 ISSUE

Asa S. Davis v. Town of Exeter Zoning Board of Review, sitting as a Board of Appeal (September 28, 2022), <https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/19-383.pdf>

### **Holding:**

RI Superior Court (“the Court”) denied the Appellant’s appeal from a decision of the Town of Exeter Zoning Board of Review, sitting as a Board of Appeal (ZBR). The ZBR affirmed the Town of Exeter Planning Board’s denial of a major land development’s master plan where the applicant sought to develop a solar project on 32.6 acres. The Court found substantial evidence supported the Zoning Board’s decision to affirm the Planning Board.

### **Key Takeaways:**

- A Planning Board is justified in denying a master plan when it is unable to make a positive finding as to just one of the required findings (R.I. Gen. Law § 45-23-60)
- A proposed development does not automatically comport with a municipality’s comprehensive plan solely because the development consists of an allowed use (*Town of Exeter by and through Marusak v. State*, 226 A.3d 696, 702 (R.I. 2020))
- While detailed engineering isn’t required during the master plan phase, the absence of grading details, buffer options, and site lines to neighbors and abutters may be substantial evidence that supports a Planning Board’s negative finding regarding compliance with a town’s comprehensive plan, or that flooding and erosion is being minimized

### **Facts:**

The Applicant owns property located at 0 Ten Rod Road in the Town of Exeter, RI. The Appellant submitted a major land development application to the Town of Exeter to develop a solar project described as “a 10 MW Alternating Current ground-mounted photovoltaic solar facility to be located on 32.6 acres of the Property.”

Following three Planning Board hearings, the Town of Exeter Planning Board unanimously denied the applicant’s application stating they were unable to make positive findings necessary to the five following standards as set forth in R.I. Gen. Law § 45-23-60:

1. The proposed development is consistent with the town’s comprehensive plan and/or has to the board’s satisfaction addressed issues where there may be inconsistencies;
2. There will be no significant negative environmental impacts from the proposed development as shown on the preliminary plan as determined by the planning board, with all required conditions for approval;
3. All proposed land developments land development projects and all subdivision lots shall have adequate, permanent and safe physical vehicular access to a public street. Lot frontage on a public street without physical access shall not be considered compliance with this requirement;

4. Each subdivision shall provide for safe circulation of pedestrian and vehicular traffic for adequate surface water run-off, for suitable building sites, and for preservation of natural, historical, or cultural features that contribute to the attractiveness of the community; and
5. The design and location of streets, building lots, utilities, drainage improvements and other improvements in each subdivision shall minimize flooding, soil erosion, and shall embody to the degree feasible a design that minimizes future maintenance.

The Applicant appealed the Planning Board’s decision to the Zoning Board on the basis that the “Planning Board’s decision contained prejudicial procedural error, clear error, and lack the support of the weight of the evidence in the record.”

The ZBR affirmed the Planning Board’s denial of the applicant’s master plan application based on the five negative findings of the Planning Board. The applicant appealed the ZBR’s decision to RI Superior Court. The Court found substantial evidence supports the ZBR’s decision to affirm the Planning Board for the five reasons summarized below:

1. **Town of Exeter’s Comprehensive Plan:** The Court found the absence of buffer options and grading information on the solar project supports the Planning Board’s inability to make a positive finding regarding the project’s ability to detract from the rural character of Exeter and comply with the comprehensive plan.
2. **Environmental Impact:** The Court found that the applicant’s submission of a 2009 wetlands delineation of the property merely identifies wetland areas, and does not indicate any environmental impact of the project. Therefore, the Court could not find the Planning Board erred by finding the applicant failed to provide substantial evidence to address the environmental impact of the solar project.
3. **Vehicular Access:** The Court found the Planning Board did not err when it concluded the Applicant failed to demonstrate that he had access to the site through a public street, as one of the proposed access roads for the solar project is a “paper road”.
4. **Buffering – Attractiveness of Community:** The Court found the Planning Board did not err in finding the applicant did not provide a feasible buffer zone, as the application included a plan to utilize the buffer zone as a commercial Christmas tree farm instead of a permanent buffer.
5. **Flooding and Erosion:** The Court found the Planning Board has legitimate concerns to request general grading information and that the Court could not find the Planning Board erred when it concluded there was a lack of information to determine the site’s development minimized future flooding, erosion, and drainage issues.

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