The Preserve at Boulder Hills, LLC v. The Town of Richmond, et al., C.A. No. WC-2021-0568 (December 12, 2022)
https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/21-0568.pdf

*This case originated from the Plaintiff's major land development project known as the Preserve in Richmond, RI developed by the Preserve at Boulder Hills, LLC. **This summary is only of the land use aspects of the case.**

Holding:

Plaintiff's filed complaints on five counts; (Count I) Substantive Due Process Under the Rhode Island Constitution; (Count II) Tortious Interference with Contract; (Count III) Tortious Interference with Prospective Business Advantages; (Count IV) Civil Liability for Crimes and Offenses; and (Count V) Civil Racketeer Influenced and Corrupt Organizations (RICO) Act.

Rhode Island Superior Court granted the Defendants' (Town of Richmond) Motion to Dismiss.

Key Takeaways:

1. The Court found the actions by the Town of Richmond followed Rhode Island General Laws regarding the timeframe in which a municipality must review and certify a land development project as complete or incomplete, and when the application must appear before a Planning Board.
2. The Court found it is not the responsibility of a town to certify or vote on a development application based on the timeline of a developer:
   "Are local planning officials now to be required to peruse finance commitment letters to determine when they must act? What of the purchaser whose purchase is conditioned on some zoning relief or other permit? Should the town officials have to march to the timetable established by a buyer and seller? This Court does not think so."
3. R.I. Gen. Laws § 45-23-58 provides that municipalities may adopt regulations to provide for reasonable fees, in an amount not to exceed actual costs incurred, to be paid by the applicant for the adequate review and hearing of applications and the issuance of permits.

Facts:
Plaintiffs entered into a Purchase and Sale Agreement for a 178-acre parcel zoned as *Planned Development* in Richmond, RI in 2011, seeking to establish an outdoor shooting range and gun club. Shooting ranges were an allowed use at the time in the *Planned Development* zone. In 2014, Richmond amended the zoning ordinance which prohibited indoor and outdoor shooting ranges in *Planned Development* zones.

In 2016, the Town created a *Preserve Resorts District* which allowed outdoor recreational activities the Plaintiff's sought to offer on their property, including indoor and outdoor shooting ranges.

In the meantime, the Plaintiffs developed other areas of the Preserve, including a clubhouse with a restaurant and banquet facility, golf course, tennis facility, trails and fishing ponds.

The Plaintiffs proposed a Hotel Expansion on the site for which they received Master Plan Approval in 2016. Plaintiffs then aligned financing for the Hotel Expansion which would expire in July of 2016. The Planning Board did not meet on the Preliminary Plan of the Hotel Expansion until August 2016. The Preliminary Plan was approved by the Planning Board in October of 2016 and the project's Final Plan was approved by the Administrative Officer in February of 2017.

In December of 2021, Plaintiffs filed a five count Complaint against the Town of Richmond, "(Count I) Substantive Due Process Under the Rhode Island Constitution; (Count II) Tortious Interference with Contract; (Count III) Tortious Interference with Prospective Business Advantages; (Count IV) Civil Liability for Crimes and Offenses; and (Count V) Civil Racketeer Influenced and Corrupt Organizations (RICO) Act, Violation of R.I. Gen. Laws § 7-15-1 et seq. Id."

Analysis:
Plaintiffs argued the Town of Richmond's "*actions and omissions have deprived and continue to deprive [Plaintiffs] of a property interest protected by the Due Process Clause of the Rhode Island Constitution*."

Plaintiffs argued three actions by the Town resulted in a substantive due process violation:

1. The Town's zoning amendment impacted the uses allowed on their property;
2. The amount of time it took the Town Planning Board to hear the development plan's application; which resulted in the developer losing its financing
3. The fees collected by the Town for reviewing the plan.

The Court determined that no rights of the Plaintiff were deprived and that all actions taken by the Defendants (Town of Richmond) were permissible under the applicable regulations.

Zone Change
Plaintiffs claimed they didn't receive notice of a zoning amendment which prohibited indoor and outdoor shooting ranges and gun clubs on properties zoned *Planned Development*. The Court found the Defendants complied with Rhode Island General Law process of amending the zoning ordinance.

The Court concluded that the Plaintiff could have applied to the Town for a special use permit to operate a gun range during the time period when they entered into an Agreement to purchase the property in 2011 through November 19, 2013 when the zoning amendment prohibiting such uses was enacted. The Plaintiffs did not apply for the permit, and therefore, such a use was not vested. "*Instead, Plaintiffs apparently chose to sell memberships without having secured the zoning permit and now want to hold Defendants responsible for their failure*."

Approval Timeline

Plaintiffs argued that when they submitted their Preliminary Plan for their Hotel Expansion they communicated to the town that their financing was set to expire in July of 2016, and that the Town delayed public hearings until after the financing expiration date.

The Court found the Town approved the preliminary plan within the statutory timelines. In 2016, Sections 45-23-40 to 45-23-43 of Rhode Island General Laws specified applications have to be certified complete or incomplete within 60 days of submission, and planning boards had to approve or deny the application within 120 days of certification. "*Plaintiffs are asking this Court to require local officials to meet a developer's deadlines, and that is the province of the General Assembly not the Superior Court. To allow Plaintiffs to succeed on this claim would essentially be putting all municipalities at the mercy of developers who come with their own deadlines. Are local planning officials now to be required to peruse finance commitment letters to determine when they must act? What of the purchaser whose purchase is conditioned on some zoning relief or other permit? Should the town officials have to march to the timetable established by a buyer and seller? This Court does not think so.*"

"*Plaintiffs were aware of the statutory deadlines that the Planning Board had to meet, the expenses that they would have to incur in pursuing their application, and obtaining financing was their responsibility not that of the Planning Board.*"

Application fees
Plaintiffs were required to pay a $500 pre-application fee, $15,050 for a Master Plan Major Land Development Application, $8,500 for a traffic study, and $13,691 in outside peer review fees of the Hotel Expansion proposal. The Plaintiffs argued that a nearby municipality charges $7,500 for application fees, and that the fees were arbitrary and capricious.

The Court determined that the Town acted pursuant to state and local regulations relating to charging and collecting application and peer review fees, citing G.L. 1956 § 45- 23-58 provides that "*[l]ocal regulations adopted pursuant to this chapter may provide for reasonable fees, in an amount not to exceed actual costs incurred, to be paid by the applicant for the adequate review and hearing of applications, issuance of permits and recordings of subsequent decisions."*

The Court found no meaningful constitutional violation under the present facts.

All information contained on this website and the newsletter associated therewith are intended solely for informational purposes and in no way should be interpreted as providing legal advice.