

Rhode Island Grows, LLC, Richard J. Schartner, and Norman Schartner v. Richard Booth, in his capacity as a member of the Exeter Zoning Board of Appeals, Thomas McMillian, in his capacity as a member of the Exeter Zoning Board of Appeals, Richard Quattromani, in his capacity as a member of the Exeter Zoning Board of Appeals, Dr. Susan Littlefield, in her capacity as an alternate member of the Exeter Zoning Board of Appeals, Loren Andrews, in his capacity as a member of the Exeter Zoning Board of Appeals, Timothy Robertson, in his capacity as a member of the Exeter Zoning Board of Appeals, and Susan Franco-Towell, in her capacity as an alternate member of the Exeter Zoning Board of Appeals, C.A. No. WC-2022-0057 (August 11, 2022)

<https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/22-0057.pdf>

Holding:

Rhode Island Superior Court affirmed the decision of the Exeter Zoning Board which upheld the Town Zoning Inspector’s Notice of Violation and order to Cease and Desist to R.I. Grows for their construction on their property also known as Schartner Farm.

Key Takeaways:

1. If state regulations, in this case agriculture, are allowed in a community by-right, the proposed use still must follow local ordinances. In other words, a by-right use still must comply with municipal regulations such as site-plan review, building permits and inspection, and obtaining a zoning certificate.

Facts:

RI Grows seeks to build a greenhouse for the purpose of Controlled Environmental Agriculture.

On October 6, 2021, the Zoning Inspector for Exeter issued an Order to Cease and Desist, finding R.I. Grows in violation of the Town Zoning Code Appendix A, § 1.6.A.8 which states *“no building or structure shall hereafter be erected, enlarged or relocated, and no nonstructural use shall be initiated until a zoning certificate has been issued by the zoning inspector indicating that the proposed use and structure conforms to the provisions of this ordinance.”*

The Zoning Officer also stated Development Plan review is required for all permitted uses other than on or two-family dwellings or accessory buildings.

The Zoning Officer could not make a determination as to whether the Greenhouse’s *“Solar energy facilities”* required a zoning certificate, because no plan was submitted to the Zoning Officer. The Zoning Officer was also unable to identify if the greenhouse complied with maximum lot coverage and setbacks because no site plan was submitted to the town.

On February 7, 2022 the Zoning Board issued a written Decision upholding the Stop Work Order of the Zoning Officer, deciding *“b. the Project greenhouse constituted a permanent structure as it included fixed concrete pier foundation supports for the greenhouse structure and perimeter retaining walls.... no authority was presented by the Appellant to show[] that even as a permitted use under the General Laws the Project was preempted by state law or otherwise exempt from compliance with other regulatory provisions of the Exeter Zoning [Code], such as*

the issuance of a zoning certificate or development plan review; d. no evidence or authority was provided by the appellant to show that the Right to Farm act, so-called, precludes or preempts the Project from compliance with the sections of the Exeter Zoning [Code] cited by the Zoning Inspector in his [Order]”

Analysis:

1. Right to Farm

R.I. Grows argued Rhode Island’s Right to Farm Act protects agricultural use as a permitted use within all zoning districts of a municipality and preempts any application of the Zoning Code to their proposed greenhouse.

The Court determined there is no indication that the Right to Farm does not preclude R.I. Grows from undergoing the normal procedures for obtaining the Town’s zoning approval for the construction of their greenhouse. The Act pre-empts Exeter from prohibiting agriculture, but does not exempt the applicant from complying with zoning setbacks or obtaining a zoning certificate.

2. State Building Code

R.I. Grows argued the State Building Code preempts the Town of Exeter from considering the proposed greenhouse as a “permanent structure” subject to the zoning code. R.I. Grows cites a State Building Committee Decision that the greenhouse does not require a building permit because “*it is an agricultural and horticultural greenhouse used primarily for growing.*”

The Court decided that there is no conflict between the State Building Code and the Zoning Code. The Zoning Decision determined the Zoning Officer was unable to assess the greenhouse’s conformance to dimensional regulations because no site plan was provided. The State Building Code decided that R.I. Grows did not need a building permit for their greenhouse, but this decision did not exempt the greenhouse from complying with town dimensional zoning regulations.

3. Legal Effect of Zoning Certificates

R.I. Grows argued “*its failure to obtain a zoning certificate for the Greenhouse cannot constitute a violation of the Zoning Code or serve as a basis for the Order because zoning certificates are not legally binding and cannot create, extend, abridge, or modify a party’s legal rights.*”

The Zoning Board argued the Town has the authority to require R.I. Grows to obtain a zoning certificate prior to constructing the greenhouse.

The Court decided that the Zoning Code clearly states no building or structure shall be built until a zoning certificate has been issued by the zoning inspector, and that § 1.6.A of the Town’s Zoning Ordinance states “*the zoning inspector may require that information necessary to ensure compliance with the provisions of this ordinance be filed with the application for such permit.*”

4. Equal Protection

LAND USE RI – JUNE 8 2022 ISSUE

R.I. Grows argued an equal protection violation, arguing the Zoning Officer was selectively enforcing government regulations.

The Court decided R.I. Grows was unable to establish the required elements of an equal protection violation claim, as there was no evidence on the record that comparable greenhouses were exempt from complying with the Exeter Zoning Code.

****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.***