

Northborough Realty Holdings, LLC v. Tiverton Zoning Board of Review, et al., C.A. No. NC-2021-0201 (June 8, 2022)

<https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/21-0201.pdf>

Holding:

Rhode Island Superior Court determined the Planning Board Decision and the Board of Appeals Decision was arbitrary and capricious and that substantial rights of the Petitioner were prejudiced. The Court reversed the Decision of the Planning Board and Board of Appeals, and remanded the case back to the Board of Appeals to refer it back to the Planning Board to consider the applicant's amendment to its Final Plan Approval as a minor change.

Key Takeaways:

1. Tiverton Code Section 23-50(b) (Changes to recorded plans and plats.) does not comport with the requirements set forth in R.I. Gen. Laws § 45-23-65 because it does not define a "major" or "minor" modification.
2. *"It is immaterial whether the Planning Board might have gotten it right as to substance. It has so botched the procedure that the Planning Board Decision, as affirmed by the Board of Appeals, cannot be allowed to stand."*
3. *"Missing criteria, out-of-date regulations, and post facto interpretations each serve to undermine public reliance on our local land development review procedures while impermissibly delegating basic policy matters for ad hoc, subjective resolution."*

Facts:

In June of 2008 Northborough Realty Holdings, LLC (Petitioner) obtained Final Plan Approval to develop a 52-unit condominium complex located at 994-1000 Main Road in Tiverton, RI.

Due to the Great Recession, the Final Plan was not recorded and the project was put on pause until 2020.

Since 2008, DEM's stormwater management regulations had changed, and as a result, Northborough updated their stormwater management plan and submitted to the Town of Tiverton (Defendants) as a "minor change" to a Final Plan Approval.

In June of 2020 the Administrative Officer denied Northborough's request for a modification to their Final Plan Approval stating that the application now required "*a Special Use Permit from the Zoning Board concomitant with an Administrative Subdivision*" to merge the two lots the development was location on.

In November of 2020 Northborough appealed the decision of the Administrative Officer which was denied by the Board of Appeals.

In March of 2021 the Planning Board denied Northborough's application to request the Town consider their amended stormwater management plan as a "minor change".

In June of 2021 Northborough appealed the decision to the Planning Board to the Board of Appeals. The Board of Appeals affirmed the Planning Board decision.

Northborough appealed the decision to Superior Court.

Analysis:

1. Imposition of a Retroactive Condition

The proposed condominium development is located on two parcels. The parcels at the time of the original Final Plan Approval in 2008 were to be residential, and commercial. When DEM updated their stormwater management regulations, the proposed development plan needed to use 100% of the commercial lot for stormwater management.

The respondents argued that several meeting minutes from public meets discussing the development plan show that the Commercial Lot was approved to be used for commercial use and that the proposed change for that lot to be used solely for storm water management necessitates a “major change”.

The Court disagreed, finding that no such condition that the Commercial Lot must remain commercial was listed as a condition of approval. Therefore, using the commercial lot for stormwater management could not trigger a “major change” because the Petitioner was never bound to such a condition.

2. Failure to Define a Major or Minor Change

Both Petitioner and Defendant acknowledge that Tiverton’s regulations do not define a “minor” or “major” change.

Petitioner argued “*the Planning Board’s failure to define a minor versus a major change makes Tiverton’s “major change” determination de facto erroneous.*”

The Court found that by failing to define a major versus minor change, the Town of Tiverton to be out of compliance with the mandates of Rhode Island General Laws §§ 45-23-26 (Requirements in all municipalities) and 45-23- 65 (Procedure — Changes to recorded plats and plans).

3. Due Process and Procedural Implications

The Court found the Planning Board’s decision was arbitrary and capricious because it was not based on any definition of a “minor” or “major” modification to an approved plan. “*It is immaterial whether the Planning Board might have gotten it right as to substance. It has so botched the procedure that the Planning Board Decision, as affirmed by the Board of Appeals, cannot be allowed to stand.*”

The Court’s decision details how a lack of clarity in the regulations is contrary to R.I. General Law’s land development goals to provide thorough, orderly, and expeditious processing of development project applications. *“Missing criteria, out-of-date regulations, and post facto interpretations each serve to undermine public reliance on our local land development review procedures while impermissibly delegating basic policy matters for ad hoc, subjective resolution.”*

4. Merger of Residential and Commercial Lot

The Court found the Petitioner’s stormwater management basins do not constitute a “structure” according to Tiverton’s Zoning Ordinance and therefore would not result in the merger of the two lots in-scope.

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