

SUPREME COURT OF RHODE ISLAND

Armand Cortellesso a/k/a Patriot Homes v. Town of Smithfield
Zoning Board of Review

888 A.2d 979 (R.I. 2005) · No. No. 2005-21-Appeal · Decided November 10, 2005

SUMMARY

The Rhode Island Supreme Court affirmed the State Housing Appeals Board's dismissal of Armand Cortellesso's appeal for lack of standing. The court held that Cortellesso lost his individual legal interest in the property when he conveyed it to Hoxie Farms, LLC, a distinct legal entity, and therefore was not an aggrieved party entitled to pursue the appeal. The court concluded that SHAB's decision was not arbitrary, capricious, clearly erroneous, or in excess of its statutory authority.

CASE DETAILS

COURT	Supreme Court of Rhode Island
JURISDICTION	Rhode Island
DECIDED	November 10, 2005
DOCKET	No. 2005-21-Appeal
DISPOSITION	affirmed
PROCEDURAL POSTURE	Armand Cortellesso appealed to the Rhode Island Supreme Court from the State Housing Appeals Board's dismissal of his appeal from the Smithfield Zoning Board of Review for lack of standing.
STANDARD OF REVIEW	The Supreme Court reviews a SHAB decision under a standard analogous to the Superior Court's review of appeals from local zoning boards. It may reverse if the decision violates constitutional or statutory provisions, exceeds statutory authority, rests on an error of law, is clearly erroneous in view of the evidence, or is arbitrary or capricious.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion
PARTIES	Armand Cortellesso a/k/a Patriot Homes v. Town of Smithfield Zoning Board of Review

TOPICS

- appellate procedure
- judicial review of agency action
- zoning
- administrative law
- statutory interpretation

PRACTICE AREAS

administrative law

zoning and land use

appellate procedure

municipal law

limited liability companies

QUESTIONS PRESENTED

1. Whether SHAB exceeded its statutory authority by dismissing Cortellesso's appeal without determining whether the comprehensive permit application was substantially complete as of February 13, 2004.
2. Whether Cortellesso had standing to prosecute the SHAB appeal in his individual capacity after conveying his interest in the property to Hoxie Farms, LLC.
3. Whether SHAB's dismissal for lack of standing was arbitrary, capricious, clearly erroneous, or otherwise unlawful.

HOLDINGS

1. Cortellesso lacked standing to prosecute the appeal in his individual capacity because the February 13, 2004 quitclaim deed divested him of his individual legal interest in the property, and the application was not amended to identify Hoxie Farms, LLC as the owner.
2. SHAB's dismissal of Cortellesso's appeal for lack of standing was not arbitrary, capricious, clearly erroneous, or in excess of statutory authority.

KEY QUOTATIONS

“aggrievement remains a fundamental prerequisite for a party to possess the requisite standing to obtain judicial review of SHAB decisions and orders.” (981)

“a limited liability company is a legal entity distinct from its members.” (981)

FACTUAL BACKGROUND

Cortellesso applied for a comprehensive permit under Rhode Island's Low and Moderate Income Housing Act to develop sixty single-family home sites on approximately sixty-eight acres. He owned two parcels comprising approximately sixty-five acres, while other parcels were owned by Bilal R. Hussain and the Estate of Ruth W. Lebeck. On February 13, 2004, the effective date of a statutory moratorium on use of the Act by private for-profit developers, Cortellesso conveyed his property interest by quitclaim deed to Hoxie Farms, LLC, which he claimed to control exclusively. The application was never amended to identify Hoxie Farms, LLC as the owner.

PROCEDURAL HISTORY

Cortellesso filed a comprehensive permit application to create sixty single-family home sites, including affordable housing sites. After he conveyed his property interest to Hoxie Farms, LLC, the zoning board declined to review the application on the merits based on a statutory moratorium. Cortellesso appealed to SHAB, which dismissed the appeal because he no longer owned the property in his individual capacity. The Supreme Court affirmed SHAB's decision and remanded the record to SHAB.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The record was remanded to the State Housing Appeals Board after affirmance of its decision.

CASES CITED

- Kaveny v. Town of Cumberland Zoning Board of Review, 875 A.2d 1, 7 (R.I. 2005)
- Curran v. Church Community Housing Corp., 672 A.2d 453, 454 (R.I. 1996)
- Town of Coventry Zoning Board of Review v. Omni Development Corp., 814 A.2d 889, 896-898 (R.I. 2003)

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