



Thus, the Environmental Court's decision focused on three issues: (1) the contention that the record before the DRB was inadequate such that de novo proceedings were required in the Environmental Court; (2) a motion to intervene by an individual who held a mortgage interest in one of the residential properties on Summer Street; and (3) review of the merits of the DRB decision to determine if the decision complied with the Town's zoning ordinances.

Regarding the request for de novo review, the court found residents' contention that the record before the DRB was inadequate to be without merit. First, the Town had established procedures pursuant to 24 V.S.A. §§ 4471 & 4472 for review on the record. While residents were entitled to order transcripts of the proceeding at their own expense, no such request was made here. See 24 V.S.A. § 1209 (provision of the Municipal Administrative Procedures Act requiring that transcription of proceedings be made available upon request). Rather, the residents claimed that the tape recording of the DRB proceeding was inaudible, such that transcription was impossible. The Environmental Court, however, found the tape "clearly audible" upon review.

Regarding the request for intervention, the court applied our holding in Town of Sandgate v. Colehamer, to conclude that the individual seeking to intervene did not have a sufficient interest to create standing as he had only a mortgage interest in the property on Summer Street. See id., 156 Vt. 77, 81-83 (1990) (holding that resident who held mortgage interest but no form of title to property lacked standing to challenge zoning decision).

Finally, regarding residents' claim that there was insufficient evidence in the record to support the conclusion that the changes to the municipal office building were in harmony with the existing character of the street, as required by the Town's zoning regulations, the court determined that there was substantial evidence in the record as a whole to support the conclusion. In particular, the court determined that the DRB characterization of the relevant portion of Summer Street as a "dense mixture" of residential and commercial uses was supported by substantial evidence. As such, the area would be "mostly unaffected by the Town's proposed addition," especially in light of mitigation efforts regarding lighting and safety undertaken by the Town. Any reduction in green space resulting from the removal of an existing crab-apple tree would be remedied by planting new trees along the side of the building.

On appeal, residents reiterate the following points of error presented to the Environmental Court: (1) the DRB decision violates the Town Plan regarding preservation of open space; (2) the DRB decision violates the Town zoning regulations in that the expanded municipal building is not in harmony with the surrounding area; (3) the DRB proceeded on an incomplete record, in that no transcript of the oral proceedings was provided, such that the Environmental Court should have held a de novo hearing; and (4) denial of intervenor status to the individual who possessed a mortgage interest in a property on Summer Street was error.

"We review the Environmental Court's interpretation of zoning ordinances and findings of fact for clear error." In re Armitage, 2006 VT 113, ¶ 3. Regarding any alleged violation of the Town Plan, residents have not overcome the Environmental Court's conclusion that provisions of the Town Plan are not enforceable unless codified in zoning regulations. See Kalakowski v. John A. Russel Corp., 137 Vt. 219, 225-26 (1979) ("Although the plan may recommend many desirable approaches

to municipal development, only those provisions incorporated in the [zoning] bylaws are legally enforceable.”). Neither have residents demonstrated clear error in the court’s conclusion that there was substantial evidence supporting the DRB’s conclusion that the renovation and expansion would be in harmony with the character of Summer Street. To the contrary, residents acknowledge that there are commercial structures on Summer Street, which was the primary basis for concluding that the expansion would be harmonious. Their central objection is based on the removal of the crab-apple tree, which does not constitute error, as discussed above. Neither have the residents demonstrated clear error with the Environmental Court’s factual finding that the audio tapes of the DRB proceedings were audible and capable of being transcribed. At most, residents allege that the Town indicated in a letter to the Environmental Court that a copy of the audio tape provided to the transcription service was inaudible, from which residents concluded that all the tapes were similarly flawed. This is insufficient to demonstrate that residents were denied access to an adequate record entitling them to de novo review in the Environmental Court. Finally, residents fail to present substantive argument on the question of whether it was proper to deny intervenor status to the individual who possessed a mortgage interest in a property on Summer Street. In any case, the matter is conclusively resolved by our precedent in Colehamer, discussed above.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice