Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-213

NOVEMBER TERM, 2004

In re Appeal of Michael and Mary Leikert	}	APPEALED FROM:
	}	
	}	
	}	Environmental Court
	}	
	}	
	}	DOCKET NO. 132-8-03 Vtec
		Trial Judge: Merideth Wright

In the above-entitled cause, the Clerk will enter:

Applicants Michael and Mary Leikert appeal the environmental court's order upholding a decision of the Town of Morristown Developmental Review Board (DRB) that denied their request for a conditional use permit to operate an automobile repair business at their home. We vacate the decisions of the DRB and the environmental court and remand the matter to the DRB for additional factfinding and, if necessary, another hearing.

The Leikerts live in a high-density residential zoning district in the Town of Morristown. Home businesses are a conditional use in that district. The Leikerts sought a permit to operate an automobile repair shop at their home. In April 2003, a hearing was held before the DRB, but no recording was made of the proceeding. Because the Town had opted for on-the-record appeals from DRB decisions pursuant to 24 V.S.A. § 4471(a) (if municipality has determined that appeals of certain municipal panel decisions shall be "on the record," then appeal from such decisions shall be made "on the record" in accordance with civil rules of procedure), the environmental court remanded the matter for another hearing. A second hearing was held, and the DRB issued a decision denying the Leikerts' request for a conditional use permit based on its conclusion that the proposed home business would adversely affect the traffic in the area and the character of the residential neighborhood. The environmental court upheld the DRB's decision based on its examination of the record. On appeal to this Court, the Leikerts argue that there was neither credible nor substantial evidence to support the environmental court's decision, and that the DRB's findings and conclusions are so inadequate that they should be granted a permit by default.

We conclude that the matter must be remanded to the DRB for more complete findings and conclusions and, if necessary, an additional hearing. The DRB is obligated to make findings of fact

in rendering its decision. 24 V.S.A. § 4470(a). The purpose of findings is to make a clear statement to the parties and the court in the event of an appeal on what was decided and how the decision was reached. New England P'ship v. Rutland City Sch. Dist., 173 Vt. 69, 74 (2001); see also Potter v. Hartford Zoning Bd. of Adjustment, 137 Vt. 445, 447 (1979) ("The findings are intended to indicate to the parties, as well as the appellate court, what was decided and upon what considerations."), overruled on other grounds by City of Rutland v. McDonald's Corp., 146 Vt. 324, 330 (1985). "Findings serve to: (1) facilitate judicial review; (2) prevent judicial usurpation of administrative functions; (3) assure more careful administrative consideration; (4) help the parties plan their cases for rehearings and judicial review; and (5) keep administrative agencies within their jurisdiction." City of Rutland, 146 Vt. at 329 n.2. In short, "the Legislature intended that an appealing property owner would get reasons, as well as a result, when a zoning board . . . rules against him." Potter, 137 Vt. at 447.

Here, after briefly indicating the location of the property, the type of zoning district, and the nature of the Leikerts' proposal, the DRB stated that the application (1) met each of the seven home business criteria contained in the Town's zoning bylaws, including those concerning noise and volume of traffic, and (2) met all but three of the conditional use criteria. The DRB concluded, however, that the proposed automotive repair business would adversely affect traffic and the residential character of the neighborhood, and thus did not conform with all of the conditional use criteria contained in the Town's zoning bylaws. In explaining the adverse affect upon the neighborhood, the DRB stated merely that the area was exclusively a residential neighborhood with predominantly single-family homes. In and of itself, this sentence was insufficient to support denial of a conditional use permit for a home business in a district in which home businesses are a conditional use. As for traffic, the DRB stated that there would be limited visibility for vehicles entering and leaving the Leikerts' residence, which is located at the crest of a steep hill. Although this single sentence provides some basis for the DRB's decision regarding the effect of the proposal on traffic, it says virtually nothing about the state of the evidence on this subject.

Given the paucity of these findings and conclusions, and the DRB's failure to make a record of its observations at the site visit, the environmental court was put in the position of perusing the record and making its own assessment of the credibility of the witnesses and the weight to be given the evidence. This is not the role of an appellate court reviewing a decision on the record, particularly considering the statutorily mandated obligation of the DRB to make findings in rendering its decision. Consequently, notwithstanding the environmental court's efforts to fill in the gaps left by the DRB's decision, we conclude that the matter must be remanded to the DRB for further factfinding and, if necessary, another hearing. We recognize that developmental review boards are often made up mostly of lay people, many of whom have limited experience or training in adjudicative matters. But property owners are entitled to a decision that leaves them with an understanding of how a board's decision was reached based on the evidence submitted. See In re Town of Sherburne, 154 Vt. 596, 605 (1990) (even if record contains conflicting evidence, board's findings will ordinarily be upheld; however, if board fails to explain its reasons for finding as it does, its decision may appear arbitrary). We urge the Vermont League of Cities and Towns to provide

education to citizen boards on how to make adequate findings and render decisions that allow informed appellate review.

Finally, we find no merit to the Leikerts' argument that they are entitled to a default decision in their favor because of the DRB's deficient findings. The case that they cite in support of this argument—Potter v. Hartford Zoning Board of Adjustment—was overruled precisely on this point by City of Rutland v. McDonald's Corporation, 146 Vt. at 330. In City of Rutland, we "held that a timely decision by a zoning board based on inadequate findings is not equivalent to a failure to render a decision." McGlynn v. Town of Woodbury, 148 Vt. 340, 342 (1987).

The Town of Morristown Development Review Board's July 17, 2003 decision and the environmental court's May 3, 2004 decision are vacated, and the matter is remanded to the developmental review board for further factfinding.

BY THE COURT:

_____
Marilyn S. Skoglund, Associate Justice

_____
Paul L. Reiber, Associate Justice

_____
Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned