STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: DECEMBER 20, 2012)

TOWN OF SOUTH KINGSTOWN, **Appellant,**	:	
v.	:	**CA No. PC 12-3551**
RHODE ISLAND DEPARTMENT OF BUSINESSREGULATION and VILLAGE LIQUORS, LLC, **Appellees.**	:	

DECISION

Silverstein, J. The Town of South Kingstown ("Town") appeals from a decision of the Rhode Island Department of Business Regulations ("DBR") interpreting the Town's Class A liquor license ordinance, and subsequently granting Village Liquors, LLC ("Village Liquors") a Class A liquor license.

The issue raised by this administrative appeal is whether the DBR erred as a matter of law in reversing the decision of the South Kingstown Town Council ("Town Council") sitting as the Board of Licensing Commissioners[1] ("Liquor Board") denying Village Liquors a Class A

[1]In the several cases where the town councils or license boards of the several towns, the mayors and city councils of the several cities, or the mayor and council of a city are authorized to issue licenses, they are for that purpose constituted license commissioners, and in those cases the town or city clerk is the clerk of those commissioners.

R.I. Gen. Laws Ann. § 3-5-15

liquor license under the Town's Liquor License Rules and Regulations (the "Liquor Ordinance(s)").

For the reasons stated below, this Court finds that both the pre-amendment and post-amendment Liquor Ordinance unambiguously caps Class A liquor licenses at four in the Town. The Court also finds that equitable estoppel is unsuitable to the facts of this controversy, and that the DBR overlooked the limitations set on its authority by the Town's Liquor Ordinances, State legislation, and the Rhode Island Supreme Court. Accordingly, the Court reverses the DBR Decision that granted Village Liquors a Class A liquor License because such license would be in excess of the number of licenses authorized by the Town's Liquor Ordinances. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

On November 28, 2011, the Liquor Board, which is the local liquor licensing authority under R.I. Gen. Laws § 3-5-15 denied the application of Village Liquors for a new Class A liquor license based on the grounds that there were no licenses available to be granted. Previously, on April 25, 2011, the Town Council amended the Town's Liquor Ordinances to read: "The number of licenses for each class shall be authorized as indicated below: Class A – 4 (maximum)." The pre-amendment Liquor Ordinance read "The number of licenses for each class shall be authorized as indicated below: Class A- 4 (not to exceed 1 per 6,000 inhabitants)." On the same day as the amendment was adopted, the Town Council also unanimously rejected a resolution to increase the number of Class A liquor licenses from four to five at a meeting attended by Village Liquors. Before the amendment, Village Liquors applied to the Town's

Planning Department for an amendment to the South County Commons Master Plan and for Development Plan Review of the proposed liquor store on April 11, 2011.

After the November 28, 2011 denial, Village Liquors appealed the decision of the Liquor Board to the DBR. On December 23, 2011, a conference was held before the DBR. As a result of that conference, and with no objection from either party Wakefield Liquors, Inc., Patsy's Package Store, and Sweeney's Package Store, Inc. were allowed to intervene, and to submit legal memorandums to the DBR. The Liquor Board, Village Liquors, and the interveners agreed that the DBR would accept legal memorandums from each party, and decide the matter without oral argument. The DBR considered the legal memorandum, and requested that the Liquor Board, and Village Liquors appear before the DBR to present evidence and testimony. In response, the Liquor Board and Village Liquors requested, and were granted permission to submit a joint stipulation of facts instead of appearing for a full hearing before the DBR.

The parties stipulated that "[a]ll condition precedents, as required by the [Town's Liquor Rules], were properly and fully submitted, by [Village Liquors], to [the Liquor Board] prior to the setting of the November 28, 2011 Public Hearing."[2] The parties also stipulated that "On

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[2] 1. An application form must be obtained from the Town Clerk, fully completed, and returned to the Town Clerk with the application processing fee and all required documentation to include:

   a. Site Plan
   b. Special Use Permit
   c. Master Plan Amendment Approval for locations in Special Management Districts.

2. The application forms to be used are available in the Office of the Town Clerk and are specifically made part of these rules and regulations.

3. The non-refundable application processing fee is $25.

4. The application must contain a brief verbal description of the premises sufficient to identify the specific location, within the building and/or on the property grounds where liquor is to be served. A site plan, drawn to an acceptable engineering scale and accurately presenting all

April 11, 2011, prior to the close of the regular business day, [Village Liquors'] attorney hand-delivered to the [Town's] Planning Department, an application to amend both the South County Common "Master Plan" and Development Plan Review of [Village Liquors'] proposed retail liquor site. The submission was required by the [Liquor] Rules."

On June 18, 2012 the DBR decided that Village Liquors' pre-application submission gave Village Liquors' the legal right to be reviewed under the Liquor Ordinances that existed on April 11, 2011, and not the Liquor Ordinances as amended on April 25, 2011. DBR Decision and Order 11-L-124. The DBR also interpreted the pre-amendment Liquor Ordinance to create an automatically created per-capita limit rather than a maximum cap to the number of licenses. Id. As a result of this interpretation the DBR granted Village Liquor a Class A liquor license. Id. This liquor license would be the fifth Class A liquor license within the Town.

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required data must be submitted with, and as part of, the license application. The site plan shall contain:

Parcel identification (Tax Assessor's Map and Lot.)

Property ownership.

Zoning Classification.

Identification of all special use permits, variances, and other legally authorized deviations from the Zoning Ordinance with dates of authorization, including special use permits granted for the expansion of existing uses.

Identification of exact premises within the building and/or grounds where liquor is to be served.

Identification of all property owners within 200 feet of any point of the premises where liquor is to be served.

II

Standard of Review

The Court reviews administrative decisions pursuant to the Administrative Procedure Act, § 42-35-15 (g). This section provides that:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error or law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."
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> Sec. 42-35-15 (g).

This Court reviews an administrative agency decision in the manner of an appellate court with a limited scope of review, as prescribed by § 42-35-15. Mine Safety Appliances v. Berry, 620 A .2d 1255, 1259 (R.I. 1993). In reviewing an administrative agency's decision, this Court may not substitute its judgment for that of the agency with respect to credibility of the witnesses or the weight of the evidence as to questions of fact. Id. When dealing with questions of fact, this Court is limited to an examination of the certified record to determine whether the agency's decision is supported by substantial evidence. Section 42-35-15(g). See also Newport Shipyard, Inc. v. Rhode Island Commission for Human Rights, 484 A.2d 893, 896 (R.I. 1984). The Rhode

Island Supreme Court has defined substantial evidence as "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion and means an amount more than a scintilla but less than a preponderance." Town of Burrillville v. Rhode Island State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007). When the provisions of a statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to weight and deference as long as that construction is not clearly erroneous or unauthorized; this is true even when other reasonable constructions of the statute are possible. Labor Ready Northeast, Inc. v. McConaghy, 849 A.2d 340 (R.I. 2004). However, the court may reverse, modify, or remand the agency's decision if the decision violates constitutional or statutory provisions; is in excess of the statutory authority of the agency; is made upon unlawful procedure; is affected by other errors of law; is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or is arbitrary or capricious and therefore is best described as an abuse of discretion. Barrington School Committee v. Rhode Island State Labor Relations Board, 608 A.2d 1126, 1138 (R.I.1992) (citing § 42-35-15(g)). Notwithstanding the deference afforded to administrative agencies, questions of law decided by administrative agencies are not binding upon the court and may be reviewed de novo to determine what the law is and its applicability to the facts. Narragansett Wire Co. v. Norberg, 376 A.2d 1 (R.I. 1977).

III

Discussion

It is worth noting at the outset that the Rhode Island Supreme Court has held that courts in the State of Rhode Island presume that amendments operate prospectively "unless there is clear, strong language or a necessary implication" that the General Assembly intended to give

the amendment retroactive effect. Direct Action for Rights & Equal. v. Gannon, 819 A.2d 651, 658 (R.I. 2003) (citing Pion v. Bess Eaton Donuts Flour Co., 637 A.2d 367, 371 (R.I. 1994). "Substantive [amendments], which create, define, or regulate substantive legal rights, must be applied prospectively." Id. (citing Bess Eaton Donuts Flour Co., 637 A.2d at 371. The Town could not and did not apply the post-amendment Liquor Ordinance retroactively because the amendment to the Liquor Ordinance was not remedial or procedural in nature. See id.

The issue before the Court is whether the DBR made a clear error of law in reversing the decision of the Liquor Board denying Village Liquor a Class A liquor license under the Town's Liquor Ordinances. Specifically, whether Village Liquors' satisfaction of pre-application conditions entitled it to review under the pre-amendment rule, or whether DBR's decision was based on an error of law. There is no question that the post-amendment ordinance unambiguously caps Class A Liquor Licenses in the Town at four.

The Town maintains that the Liquor Ordinance amendment was meant to clarify the Liquor Ordinance, but also argues that both renditions of the Liquor Ordinance unambiguously limit Class A liquor license at four. Conversely, Village Liquors argues that the amendment was made to change the Liquor Ordinance from an automatic per capita system (making five licenses available based on the population of the Town) to a maximum of four. Village Liquors also argues that the pre-amendment rule is unambiguous in creating the automatic per capita system.

The DBR found that Village Liquors had instituted a proceeding before the Liquor Ordinance amendment on April 25, 2011 based on their submission of pre-application materials. DBR Decision and Order 11-L-124. The DBR relied on Tantimonaco v. Town of Johnston, 232 A.2d 235, 389 (R.I. 1967) and Town of Johnston v. Pezza, 723 A.2d 278, 283 (R.I. 1999) to find that the Liquor Board should be equitably estopped from reviewing Village Liquor's Class A

liquor license application under the post-amendment Liquor Ordinance. The DBR held that the pre-application steps taken by Village Liquors were the equivalent of actually filing an application for the purpose of determining what Liquor Ordinance should be applied. DBR Decision and Order 11-L-124, 5-6 (citing Pezza, 723 A.2d 278, 283 (R.I. 1999). Tantimonaco, and Pezza, are inapposite to the present controversy because their subject matter is not liquor licensing, but instead zoning, specifically the issuance of building permits.

There are fundamental difference between zoning and licensing, and even greater distinctions between building permits and liquor licenses. See California v. La Rue, 409 U.S. 109, 114 (1972), reh'g denied, 410 U.S. 948 (1973) (the authority to regulate, permit, and license businesses that sell liquor is very broad and confers "something more than the normal state authority over public health, welfare, and morals"). At one point, a liquor license was not afforded any property rights in the State of Rhode Island. Sepe v. Daneker,68 A.2d 101 (R.I. 1949); Casala v. Dio, 13 A.2d 693 (R.I. 1940). Today, the license, while not viewed as being property in the strict legal sense, is regarded as having some aspect of a property right that protects the possessor from arbitrary action by a local licensing board. Vars v. Citrin, 470 F.3d 413, 414 (1st Cir. 2006) (citing Vitterito v. Sportsman's Lodge & Restaurant, Inc., 228 A.2d 119 (R.I. 1967). "Where state law gives the issuing authority broad discretion to grant or deny license applications in a closely regulated field, initial applicants do not have a property right in such licenses protected by the Fourteenth Amendment." Mosby v. McAteer, 99-6504, 2001 WL 91407 (R.I. Super. Jan. 10, 2001) aff'd sub nom. Mosby v. Devine, 851 A.2d 1031 (R.I. 2004) (quoting Medina v. Rudman, 545 F.2d 244, 250-51 (1st Cir.1976)). The First Circuit Court of Appeals in Medina, when interpreting New Hampshire's greyhound licensing laws, found that where a statute states that an authority 'may' issue a license after certain requirements have been

met, that statute does not create an entitlement or a property right in that license. Quoting id. (citing Medina at 251. Rhode Island General Law § 3-5-16 provides that "licenses of Class A 'may' be granted in any year by any city or town only up to a total not exceeding one for each six thousand (6,000) of its inhabitants." R.I. Gen. Laws Ann. § 3-5-16. Therefore, § 3-5-16 does not create an entitlement or a property right in Class A liquor licenses, but once a Class A liquor license had been issued pursuant to § 3-5-16 the holder is afforded the federal constitutional guarantees of due process and equal protection. See A.J.C. Enterprises, Inc. v. Pastore, 473 A.2d at 273-74 (citing Sportsman's Lodge & Restaurant, Inc., 228 A.2d at 119.

"Since the repeal of prohibition in 1933 by the ratification of the Twenty-First Amendment to the United States Constitution, the decision to issue alcohol beverage licenses has rested with the qualified electors of the cities and towns." Amico's, Inc. v. Mattos, 789 A.2d 899, 909-10 (R.I. 2002). The Rhode Island Supreme Court has held that the sale of liquor in the State of Rhode Island is "so clearly and completely subject to exercise of the police power of the State that it may even be entirely prohibited by the State or it may be permitted subject to such restrictions and burdens, however great, as the State Legislature may deem it advisable to impose" without violating either the Equal Protection or Due Process Clauses of the United States Constitution. Id. (quoting Daneker, 68 A.2d at 104)

Pezza, is irrelevant regardless of whether this Court accepts the DBR's proposition that zoning and liquor licensing are analogous, and finds that their respective principles are communally instructive. DBR Decision and Order 11-L-124, 5-7. Nothing in the Pezza opinion equates fulfillment of prerequisite conditions with the institution of a proceeding. See 723 A.2d 278. In Pezza, the Court sustained the revocation of a building permit when the applicant had not complied with the pre-application requirement. 723 A.2d at 283-84. Our Supreme Court

than reemphasized that equitable estoppel cannot be applicable when a municipality's acts are *ultra vires.* Id. at 283 (citing Technology Investors v. Town of Westerly, 689 A.2d 1060, 1062 (R.I.1997). In addition, the distinction between the case at bar and Pezza, is that a *building permit* had been issued to the landowner in Pezza, albeit unlawful. Id. In contrast, Village Liquors never acquired any Class A liquor license, and therefore never obtained any right, valid or illusory.

The DBR also relies on Tantimonaco v. Town of Johnston, 232 A.2d 235, 389 (R.I. 1967), which states "[c]urrent trends in the decisions indicate that rights existing under an ordinance may not be swept aside by a subsequently enacted zoning ordinance, where, in reliance on the existing ordinance, expenses are incurred in preparing for the issuance of a permit." DBR Decision and Order 11-L-124. However; Tantimonaco, is incompatible with the present controversy because in Tantimonaco, the Rhode Island Supreme Court upheld a landowner's right to construct a gas station because he had incurred significant contractual obligations for the construction of the station in reliance on a *valid building permit* issued for a particular use, even after that use was prohibited by a later-enacted amendment to the zoning ordinance. Tantimonaco, 232 A.2d at 390. Here, Village Liquors never received a Class A liquor license, and had only taken the steps necessary to ensure their application would be reviewed. These steps included the filing of an application on April 11, 2011, to amend South County Commons "Master Plan" and for the Development Plan Review of Village Liquors' proposed retail liquor site; the July 14, 2011 request for a special use permit; the filing of an application on July 15, 2011 with the South Kingstown Zoning Board of Review for a "Special

Use Permit" for a retail liquor store[3]; and finally the August 23, 2011 submission of the Class A liquor license application to the Liquor Board.

Village Liquors also argues that the Town Council and Liquor Board's "efforts had the singular purpose of thwarting [Village Liquors] application." DBR Decision and Order 11-L-124, 8. The DBR accepts Village Liquor's claim of inequitable conduct, and admittedly relies on Board of license Com'rs of the Town of Narragansett v. O' Dowd, 179 A.2d 579, 582 (R.I. 1962) to "shape[ ] the Department's attitude towards changing the limiting number right before making a decision on a pending application." DBR Decision and Order 11-L-124, 8. In O' Dowd, the Rhode Island Supreme Court refused to consider an amendment that increased the available liquor licenses within a town from 23 to 24 when the amendment was adopted on the *same day* as the disputed liquor license application. 179 A.2d at 582. The Rhode Island Supreme Court "deem[ed] it advisable to ignore this latter amendment since it was made on the same day the applications were considered." Id. at 582. The Rhode Island Supreme Court went on to say that "[t]he question of whether raising an established maximum in such circumstances would be valid is not before us, but it is proper to note in passing that such a practice is highly questionable. Id. O' Dowd, is inapposite to the present controversy because the April 25, 2011 amendment to the Liquor Ordinance occurred *three months* before the July 14, 2011 request for a special use permit, *four months* before the August 23, 2011 application, and *seven months* before the November 28, 2011 hearing on the application. This Court finds that after the date of Liquor Ordinance amendment 120 days past before Village Liquors application was submitted to the Liquor Board. This extended period of time negates any finding of bad faith on the part of the Town Council or the Liquor Board.

[3] On August 17, 2011, Village Liquors was granted a "Special Use Permit".

Further, Village Liquors failed to establish the requisite conditions precedent to the application of estoppel. See El Marocco Club, Inc. v. Richardson, 746 A.2d 1228, 1233 (R.I. 2000). That is to say Village Liquors made no showing of "an affirmative representation or equivalent conduct" on the part of the Town Council or the Liquor Board, which the Town Council or the Liquor Board "directed to another for the purpose of inducing the other to act or fail to act in reliance thereon", and that "such representation or conduct in fact did induce the other to act or fail to act to his injury." See Providence Teachers Union v. Providence School Board, 689 A.2d 388, 391-92 (R.I. 1997) (quoting Lichtenstein v. Parness, 99 A.2d 3, 5 (R.I. 1953)). "The key element of an estoppel is intentionally induced prejudicial reliance." East Greenwich Yacht Club v. Coastal Resources Management Council, 376 A.2d 682, 686 (R.I. 1977) (citing Raymond v. B.I.F. Industries, Inc., 308 A.2d 820, 823 (R.I. 1973)). As a general rule, courts are reluctant to enjoin a governmental entity from enforcing a statute or ordinance. Aldo's Mopeds, Inc. v. Najarian, WC 05-0583, 2005 WL 3276200 (R.I. Super. Dec. 1, 2005) The party claiming estoppel against a governmental entity must show some affirmative misconduct or representation which induced reasonable reliance, to the party's detriment. Providence Teachers Union v. Providence Sch. Bd., 689 A.2d at 391-92 (quoting Lichtenstein v. Parness, 99 A.2d at 5-6. Mere inaction on the part of the government is not sufficient affirmative conduct upon which to premise a claim of estoppel against governmental conduct. Ferrelli v. Dept. of Employment Sec., 261 A.2d 906, 909 (R.I. 1970). But, "[t]he doctrine of estoppel should be applied against public agencies to prevent injustice and fraud where the agency or officers thereof, acting within their authority, made representations to cause the party seeking to invoke the doctrine either to act or refrain from acting in a particular manner to his detriment." Id. at 910. However, statutes and ordinances are subject to change, and accordingly do not

constitute a continuing representation by the municipality upon which citizens can rely *ad infinitum*. See Ocean Road Partners v. State, 612 A.2d 1107, 1111 (R.I.1992).

City of Wyoming v. Liquor Control Comm'n of Illinois, is a rare successful evocation of equitable estoppel against a government entity within the context of state liquor licensing. 48 Ill. App. 3d 404, 362 N.E.2d 1080 (1977). In that case a grocery store was issued a liquor license by the Mayor and local liquor control commissioner that permitted the sale of beer and wine for the period of approximately one year. Id. The basis for the issuance of the license was a purported amendment to the City's liquor ordinance that was evidenced by a notation in the minutes of the council meeting and a handwritten addition to the printed ordinance that purported to add a license classification allowing for the sale of beer and wine to be consumed off the premises. Id. Despite these procedural irregularities, a renewal license was issued to the grocery store granting it the ability to sell liquor for the additional year. Id. Subsequently, the city's attorney advised the city council that the license was invalid because there was no ordinance providing for the issuance of that license. Id. Accordingly, the succeeding Mayor of the city refused to issue a second renewal license to the grocery store. The Illinois Supreme Court found that the grocery store had instituted the sale of beer and wine in reliance on the issuance of the license by the local liquor control commissioner and mayor of the City. Id. As a result, the grocery store had built up its business and its inventory such that it stood to incur a substantial loss if the mayor-local commissioner was afterwards allowed to nullify the act of their predecessor in office. Id. Therefore, the Illinois Supreme Court held that the City and the Mayor were estopped from denying the validity or the existence of an amendment to the City's liquor ordinance that created the authority to issue a local license to the Grocery Store. Id.

The Illinois Supreme Court found that equitable estoppel was appropriate because of the

affirmative conduct of the City and Mayor that the grocery store relied on was the issuance of the liquor license. In the present controversy, equitable estoppel is improper because there was no such affirmative conduct by the Town or showing of bad faith by the Town, no issuance of a liquor license by the Town, and therefore nothing for Village Liquors to rely upon. There is no similarity between a landowner who received a permit, expended funds, started construction, and subsequently faces rezoning to a potential applicant who has only submitted prerequisite materials for a liquor license application. Therefore, the DBR's decision to review Village Liquors' application based on the pre-amendment Liquor Ordinance is a clear error of law. Pursuant to § 42-35-15 this Court has the power to reverse, modify, or remand the agency's decision. The Village Liquor Class A application should have been reviewed under the amended Liquor Ordinance adopted on April 25, 2011 by the Town Council.

When reviewed pursuant to that amended rule, which reads "The number of licenses for each class shall be authorized as indicated below: Class A – 4 (maximum)", the result is obvious. Namely, the maximum number of Class A licenses allowed is four, and as a result there is and was no license available to Village Liquors. "[A]mbiguity lurks in every word, sentence, and paragraph in the eyes of a skilled advocate the question is not whether there is an ambiguity in the metaphysical sense, but whether the language has only one reasonable meaning when construed, not in a hyper technical fashion, but in an ordinary, common sense manner." Garden City Treatment Center, Inc. v. Coordinated Health Partners, Inc., 852 A.2d 535, 542 (R.I. 2004) (quoting Textron, Inc. v. Aetna Casualty and Surety Co., 638 A.2d 537, 541 (R.I. 1994)). While utilizing that standard, the court should "refrain from engaging in mental gymnastics or from stretching the imagination to read ambiguity where none is present." Mallane v. Holyoke Mut. Ins. Co. in Salem, 658 A.2d 18, 20 (R.I. 1995). This Court is not confronted with an ambiguous

regulation. Therefore, this Court simply should determine what the words in this regulation mean. That is the culmination of this Court's interpretive endeavor. All that remains is to apply the regulation as written. Chambers v. Ormiston, 935 A.2d 956, 961 (R.I. 2007) (citing State v. Santos, 870 A.2d 1029, 1032 (R.I. 2005)).

The Town correctly argues that the DBR may not as a matter of law grant any Class A, limited, licenses in the Town beyond the limit fixed by the Town. The Town points to the express language of § 3-5-16: "The department of business regulation shall have the right and power to limit the number of licenses of each class; provided, however, that the limit shall not exceed the maximum number, if any, of any class of license that is fixed by the licensing boards within their respective towns or cities; . . ." The language is a precise and definite limitation of the power of the State drafted by the legislature. Our Supreme Court has recognized that limitation in Beachwood, Inc. v. Liquor Control Administrator, 122 A.2d 142 (R.I. 1956).

This Court's holding would be the same if the pre-amendment Liquor Ordinance was utilized by this Court to determine the amount of Class A liquor licenses available to Village Liquors because the April 25, 2011 amendment did not fundamentally change the existing Liquor Ordinance, but instead clarified the existing Liquor Ordinance. "Although it is generally true that, when a [regulatory] provision is amended, the General Assembly is assumed to have intended to accomplish some purpose thereby, such purpose may be the clarification-rather than the alteration of the original enactment." Hometown Properties, Inc. v. Flemming, 680 A.2d 56, 62 (R.I. 1996). However, before this Court initiates a comparative analysis between pre-amendment and post-amendment ordinances this Court is first required to determine that the pre-amendment provision at issue is ambiguous in nature. McCain v. Town of N. Providence ex rel. Lombardi, 41 A.3d 239, 246 (R.I. 2012) (citing Flemming, 680 A.2d at 62.). The language of

the pre-amendment Liquor Ordinance was "Class A – 4 (not to exceed 1 per 6,000 inhabitants)." The Court accepts the Town's argument that the pre-amendment Liquor Ordinance unambiguously capped Class A Liquor license at four because the pre-amendment Liquor Ordinances did not implicitly or expressly declare a scheme that contemplated an automatic increase with population ascertained by a population survey. After finding a statutory provision to be unambiguous, this Court "conclusively presumes" that "[t]he meaning expressed is * * * to be the meaning intended." Terrano v. State, Dept. of Corr., 573 A.2d 1181, 1183 (R.I. 1990) (quoting Murphy v. Murphy, 471 A.2d 619, 622 (R.I.1984)).

Furthermore, under the Town's Ordinances, Class C liquor licenses share a similar parenthetical to Class A liquor licenses, namely "(not to exceed 1 per 1,000 inhabitants)." The parentheticals unambiguously recognize that Rhode Island General Law § 3-5-16 forbids issuance of Class A and C liquor licenses in excess of the population ratio written within each parenthetical. The language of the pre-amendment Liquor Ordinance for Class C liquor licenses was "Class C – 0 (not to exceed 1 per 1,000 inhabitants)." If Village Liquors contention that the parentheticals created an automatic increase with population was to be accepted by this Court it would lead to an absurd result because the population survey conducted in March of 2011 by the United States Census Bureau reported the Town of South Kingstown population to be 30, 639. This illogical construction of the parenthetical would spontaneously and automatically create 30 Class C liquor licenses within the town, and ignore the operative term "0" within the Liquor Ordinance. The Rhode Island Supreme Court has held that punctuation can illuminate intent, but it cannot overcome or contradict the plain and express intent of a statute. Poirier v. Martineau, 136 A.2d 814, 816 (R.I. 1957). "A parenthetical is, after all, a parenthetical, and it cannot be

used to overcome the operative terms of the statutes." Peters v. Ashcroft, 383 F.3d 302, 302 (5th Cir. 2004) (quoting U.S. v. Monjaras-Castaneda, 190 F.3d 326, 330 (5th Cir. 1999)).

Conclusion

The DBR erred as a matter of law in reviewing the application under the pre-amendment Liquor Ordinance because Village Liquors did not acquire a vested right entitling it to review under the Town Council's pre-amendment Liquor Ordinance. The amended rule is unambiguous, and this Court finds the maximum number of Class A liquor licenses available under the amended Liquor Ordinance is four. The pre-amendment Liquor Ordinance is also unambiguous, and this Court finds the maximum number of Class A liquor licenses available under the pre-amendment Liquor Ordinance is four. By granting a fifth Class A liquor license the DBR raised the number of Class A liquor licenses in the Town beyond the limit fixed by the Town, and in doing so violated the express language of § 3-5-16 and the Rhode Island Supreme Court's holding in Beachwood, Inc. v. Liquor Control Administrator, at 142. Therefore, this Court reverses the June 18, 2012 decision of the DBR granting Village Liquors a Class A liquor license, and reinstates the November 28, 2011 decision of the Liquor Board denying the application of Village Liquors for a new Class A liquor license based on the grounds that there was no available license.

Prevailing counsel shall present an appropriate Order consistent herewith.