**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**(FILED: February 8, 2018)**

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| **ANN MARIE DIBIASIO** | : | |
| | : | |
| **v.** | : | **C.A. No. PC-2015-1101** |
| | : | |
| **ZONING BOARD OF APPEAL FOR THE TOWN OF JOHNSTON, AND BERNARD FREZZA IN HIS CAPACITY AS CHAIRMAN FOR THE ZONING BOARD OF APPEAL FOR THE TOWN OF JOHNSTON** | : | |

## DECISION

**CARNES, J.** Before the Court is an appeal of a decision of the Zoning Board of Review of the Town of Johnston (the Zoning Board). Appellant Ann Marie DiBiasio (Appellant or Ms. DiBiasio) asks the Court to reverse the Zoning Board's decision which determined that an illegal junkyard was being operated on her property at 1707 Plainfield Pike (the Property) within the Town of Johnston (the Town). Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons discussed below, the Court remands this matter to the Zoning Board for further proceedings consistent with this Decision.

## I

## Facts and Travel

Appellant is a co-owner of the Property, which is more specifically located at lot 115 of plat 26. (Certified Record (C.R.) at 2, 63) The Property is leased to several businesses which, ostensibly, operate automobile repair facilities thereon, and the Property is zoned as use classification B-2. *Id.* at 6, 14, 64.

After receiving multiple complaints, on October 15, 2014, Bernard J. Nascenzi, the Town's building official, issued Appellant and co-owner Arcangelo DiBiasio (Mr. DiBiasio) an official notice that the Property was in violation of Johnston Zoning Ordinance § 340-8, the table of use regulations, in that a junkyard was being operated on the Property, and junkyards are not permitted in B-2 zones. *Id.* at 62. On October 20, 2014, Appellant requested a hearing before the Zoning Board, and, after public notice, the hearing was conducted on January 29, 2015. *Id.* at 2, 59, 63.

Appellant and her husband argued at the hearing that their tenants were responsible for the condition of the Property, and that it was not being used as a junkyard. *Id.* at 22-23. Appellant did not ultimately dispute the physical condition of the Property on the date the notice of violation was issued, however. *Id.* Specifically, Appellant appeared to agree that there were a large number of non-operational vehicles on the Property. *Id.* at 31.

Prior to the hearing, Zoning Board Vice-Chairperson Anthony Pilozzi (Mr. Pilozzi) and alternate Zoning Board member Dennis Cardillo (Mr. Cardillo) visited the Property to view its condition. *Id.* at 7-8. Mr. Pilozzi stated during the hearing that he personally counted 120 unregistered cars on the Property, parked bumper to bumper, including some with flat tires, broken windows, grass growing on them, and no motors. *Id.* at 6-8, 21-22. Mr. Pilozzi entered photographs of the Property into evidence before the Zoning Board showing a large number of vehicles and the poor condition in which they were kept. *Id.* at 75-80. During the hearing, however, Appellant denied that any parts were being sold from the vehicles that were on the Property. *Id.* at 22.

The Zoning Board issued a written decision on February 11, 2015. *Id.* at 57-58. The Zoning Board found that a junkyard was operating on the Property, as evidenced by the number

and condition of unregistered vehicles on the Property. *Id.* The Zoning Board made no specific findings as to whether any parts were being sold, or how exactly the circumstances present on the Property fit the definition of a junkyard in the zoning ordinance. *Id.*

Appellant then filed an appeal with the State Board of Standards and Appeals pursuant to G.L. 1956 § 23-27.3-127.2.5(f). (Appellant's Mem. Ex. 9.) The State Board of Standards and Appeals returned the appeal application for lack of jurisdiction because the underlying issue was a zoning violation not a building code violation. (Appellant's Mem. Ex. 10.) Appellant then filed the instant appeal in this Court on March 18, 2015, thirty-six days after the Zoning Board issued its written decision. (Compl.)

## II

## Standard of Review

Superior Court review of local zoning board decisions is governed by the Rhode Island Zoning Enabling Act (the Act). Secs. 45-24-27 to -72. Specifically, § 45-24-69(d) provides this Court's standard of review:

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

After conducting a review of the entire record, this Court determines "whether substantial evidence existed to support" the decision of the zoning board. *Lischio v. Zoning Bd. of Review of N. Kingstown*, 818 A.2d 685, 690 (R.I. 2003) (quoting *OK Props. v. Zoning Bd. of Review of Warwick*, 601 A.2d 953, 955 (R.I. 1992)) (internal quotation marks omitted). Substantial evidence means evidence that is "'more than a scintilla but less than a preponderance.'" *Lloyd v. Zoning Bd. of Review for Newport*, 62 A.3d 1078, 1083 (R.I. 2013) (quoting *Apostolou v. Genovesi*, 120 R.I. 501, 508, 388 A.2d 821, 824-25 (1978)). This Court "may not substitute [its] judgment for that of the zoning board if [it] can conscientiously find that the board's decision was supported by substantial evidence in the whole record." *Mill Realty Assocs. v. Crowe*, 841 A.2d 668, 672 (R.I. 2004) (internal quotation marks and citations omitted).

Additionally, with respect to zoning board decisions, our Supreme Court has emphasized that "'a zoning board of review is required to make findings of fact and conclusions of law in support of its decisions in order that such decisions may be susceptible of judicial review.'" *Bernuth v. Zoning Bd. of Review of New Shoreham*, 770 A.2d 396, 401 (R.I. 2001) (quoting *Thorpe v. Zoning Bd. of Review of N. Kingstown*, 492 A.2d 1236, 1237 (R.I. 1985)). Our Supreme Court has also indicated that "when the board fails to state findings of fact, the court will not search the record for supporting evidence or decide for itself what is proper in the circumstances." *Irish P'ship v. Rommel*, 518 A.2d 356, 359 (R.I. 1986) (citing *Hooper v. Goldstein*, 104 R.I. 32, 44, 241 A.2d 809, 815 (1968)). In such a case, it is appropriate for this Court to remand the case to the zoning board for additional proceedings. *Id.*

## III

## Analysis

### A

### Superior Court Jurisdiction

As a threshold matter, this Court notes that § 45-24-69(a) provides only a twenty-day window for appeals to be filed in this Court, but this appeal was filed thirty-six days after the decision was recorded—sixteen days out of time. (Compl.) Filing an appeal outside the prescribed time generally precludes judicial review. *See Sousa v. Town of Coventry*, 774 A.2d 812, 814 (R.I. 2001) ("Statutes prescribing the time and the procedure to be followed by a litigant attempting to secure appellate review are to be strictly construed.").

Our Supreme Court has held that when an appeal under the Administrative Procedures Act—to which the Zoning Enabling Act is analogous—is untimely, the Superior Court maintains subject matter jurisdiction. *Rivera v. Emps.' Ret. Sys. of R.I.*, 70 A.3d 905, 911-12 (R.I. 2013). Untimeliness can, however, prevent the Court from exercising that jurisdiction. *See Trainor v. Grieder*, 23 A.3d 1171, 1174 (R.I. 2011) (noting that, while the Superior Court "had subject matter jurisdiction," the question was whether or not it "*should have exercised that jurisdiction*"). The timeliness of this appeal was not raised by either party, but "jurisdictional defects are not waived by the failure of the parties to raise them timely." *Cavanagh v. Cavanagh*, 118 R.I. 608, 615, 375 A.2d 911, 914 (1977); *see also Beacon Milling Co. v. Whitford*, 92 R.I. 253, 258, 168 A.2d 279, 281 (1961) ("it is well settled that [the Court] may raise jurisdictional questions *sua sponte*").

Our Supreme Court has recognized the equitable authority of the Superior Court to toll the jurisdictional filing times for appeals like the one at bar. *Rivera*, 70 A.3d at 912. In *Rivera*,

the appellant and her attorney received notice of the board's decision, which indicated a statutory right of appeal. *Id.* at 913. The board, however, also made two incorrect statements about the filing time—one on the record at the hearing and one within the decision itself. *Id.* In both instances, the board informed the appellant that her appeal must be filed within thirty days of her *receipt* of the decision. *Id.* The applicable statutory provision, however, provided that the appellant had thirty days from the date the decision was *mailed*. *Id.* The Court concluded:

> "Undoubtedly it would have been the better practice for [appellant's] attorney to have consulted the actual text of the [Administrative Procedures Act] in order to ascertain just when an appeal should be filed. However, the fact that the erroneous information about that issue was conveyed more than once by the agency makes it understandable to us why [appellant] might assume that such official utterances must be correct." *Id.*

Here, Appellant received a written notice of violation from the Town's building official. (C.R. at 62.) The notice provided that Appellant has the right to appeal his decision and stated:

> "You have the right to appeal under section *23-27.3-124.3 Appeals* which states: *The owner shall either comply with the order or shall appeal the order to the local board of appeals within thirty (30) days of mailing or posting of the notice and order. There shall be no appeal to the order to board an unsecured or vacant building structure. The board of appeals shall, if requested by the owner, hold a hearing where it will either confirm, modify, or revoke the notice and order of the building official in accordance with the provisions of 23-27.3-126.0 as may be deemed just and proper in the interest of public health, safety, and welfare.*" *Id.* (italics in original).

The statutory provision cited in the notice provides a right to appeal decisions related to building code violations, which are not pertinent to the dispute at issue here. *See* § 23-27.3-124.3. The appropriate statute, given that this is clearly a zoning violation and not a building code violation, would be § 45-24-64, which provides:

> "An appeal to the zoning board of review from a decision of any other zoning enforcement agency or officer may be taken by an

> aggrieved party. The appeal shall be taken within a reasonable time of the date of the recording of the decision by the zoning enforcement officer or agency by filing with the officer or agency from whom the appeal is taken and with the zoning board of review a notice of appeal specifying the ground of the appeal. The officer or agency from whom the appeal is taken shall immediately transmit to the zoning board of review all the papers constituting the record upon which the action appealed from was taken. Notice of the appeal shall also be transmitted to the planning board or commission."

Appellant filed her first notice of appeal with the Town on October 20, 2014. (C.R. at 63.) The Zoning Board, and not the Board of Appeals,[1] ultimately heard the appeal and rendered a decision.

[1] Section 23-27.3-127.2 provides for the composition of a Board of Appeals to adjudicate appeals from building code violations:

> "A board of appeals shall be appointed by each municipality. The board shall consist of the following five (5) members: one shall be an architect; two (2) shall be professional engineers; one shall be a builder or superintendent of construction; and one shall be a member of the general public. . . . An aggrieved party . . . may appeal an interpretation, order, requirement, direction, or failure to act under this code by a local official of a city or town charged with the administration or enforcement of this code of any of its rules and regulations, to the local board in that city or town."

The parties have stipulated that the Town has not established a Board of Appeals pursuant to § 23-27.3-127.2. (Stip. of Facts at ¶ 1.) The Zoning Board contends that if this Court were to conclude that the Board of Appeals, and not the Zoning Board, should have heard this appeal, the case should be remanded with instructions for the Town to establish a Local Board of Appeals, which would then rehear this appeal. (Zoning Board Mem. at 5.) While the Town should certainly comply with the requirements of § 23-27.3-127.2 and establish a Board of Appeals, its failure to do so is ultimately of no moment to this appeal. The violation alleged here is clearly founded within the text of the zoning ordinance, not the state building code. (C.R. at 62.) Accordingly, the Zoning Board was the appropriate body to hear this appeal in the first instance.

Our Supreme Court has held time and again that we look to "substance, not labels" when evaluating procedural matters. *See, e.g.*, *Sch. Comm. of Cranston v. Bergin-Andrews*, 984 A.2d 629, 649 (R.I. 2009) (holding that a "motion to reconsider," which does not exist in Rhode Island, can be treated as a motion to vacate pursuant to Super R. Civ. P. 60(b)); *Sarni v. Meloccaro*, 113 R.I. 630, 636, 324 A.2d 648, 651 (1974) (holding that an improper request for

Appellant, through counsel, followed the building official's instructions with respect to the appeals process. Specifically, after the Zoning Board, which Appellant apparently believed was acting as the Board of Appeals, rendered its decision, she appealed pursuant to § 23-27.3-127.2.5(f), which provides:

> "Any aggrieved party affected by the decision of the local board may appeal to the state board of standards and appeals within twenty (20) days after the filing of the local decision with the building official and owner. Any determination made by the local board shall be subject to review de novo by the state board of standards and appeals."

On February 27, 2015, Appellant filed an appeal with the State Board of Standards and Appeals. (Appellant's Ex. 9.) If the State Board of Standards and Appeals had jurisdiction over the issues presented on appeal, that appeal would have been timely filed. *See* § 23-27.3-124.3. As the violation related to the zoning ordinance and not the state building code, the State Board of Standards and Appeals lacked jurisdiction, and indeed, on March 9, 2015,[2] it returned the appeal to Appellant without conducting a hearing. (Appellant's Ex. 10.) Appellant filed the instant appeal on March 18, 2015—a mere nine days later. (Compl.)

Like the appellant in *Rivera*, Appellant followed the agency's instructions with respect to appealing its decision. *See* 70 A.3d at 908. While those instructions were ultimately incorrect, it was reasonable for Appellant to rely on them, and it would be manifestly unjust to dismiss her appeal for doing so. *See id*. Ultimately, as our Supreme Court held in *Rivera*, counsel for an appellant should be critical of the information provided by administrative agencies whose decisions they seek to overturn; but, in this case, the balance of equities is in favor of tolling the

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Writ of Mandamus could be properly treated as a request for equitable relief). As Appellant ultimately received a hearing before the proper administrative body, this Court finds no error in the erroneous labels assigned to that body.

[2] The letter rejecting the appeal is dated March 9, 2015. (Appellant's Ex. 10.) It is unclear on which date Appellant actually received the letter.

appeal window and permitting the appeal to progress in this Court. *See id.* It is noteworthy that the Town's failure to establish a Board of Appeals, as well as the Town's use of different names for its Zoning Board other than the name provided by the zoning ordinance, both contributed to confusion regarding the nature of this appeal.[3]

Accordingly, this Court exercises its discretion to equitably toll the filing period for this administrative appeal such that it was timely filed, and this Court can proceed to consider it on its merits.

**B**

**Merits**

The Johnston Zoning Ordinance[4] defines a "junkyard" as "[a] lot, land or structure, or part thereof, used primarily for the collecting, storage and sale of waste paper, rags, scrap metal

[3] Johnston's Zoning Ordinance established "The Zoning Board of Review of the Town of Johnston." Code of the Town of Johnston ch. 340, § 119. The Notice of Public Hearing for the appeal included the name "Town of Johnston, Rhode Island Board of Appeal." (C.R. at 59.) The decision itself reflects the name "Town of Johnston Zoning Board of Appeal." (C.R. at 57.) The inconsistency in the Zoning Board's self-identification allowed for easy conflation with the Board of Appeal commissioned pursuant to § 23-27.3-127.2, particularly given that the statutory scheme cited in the initial notice of violation was incorrect. (C.R. at 62.)

[4] The Court notes that other provisions of the Code of the Town of Johnston define an "automobile junkyard" differently and provide requirements for licensure thereof. Code of the Town of Johnston ch. 199. The notice of violation stated:

> "Based on an investigation of the above address you are in violation of ordinance 941 section 340-8 Table of Use Regulations sub section 11.5 (Junkyards or salvage yards including outdoor storage of used materials, scrap or other salvage material). The property is zoned B-2 and this use is strictly prohibited at this address." (C.R. at 62.)

The notice did not refer to any provisions outside of the zoning ordinance as it related to junkyards. *Id.* Furthermore, at the hearing, Mr. Pilozzi stated:

> "I don't know what the license allowed, how late they're allowed to stay open, we were just looking for zoning violations because of

or discarded material; or for the collecting, dismantling; storage and salvaging of machinery or vehicles not in running condition and for the sale of parts thereof." Code of the Town of Johnston ch. 340, § 4.

Our Supreme Court has long held that "[w]hen a legislative enactment consists of clear and unambiguous language, this Court will interpret it literally, giving the words contained therein their plain and ordinary meaning." *West v. McDonald*, 18 A.3d 526, 532 (R.I. 2011). "'In matters of statutory interpretation [the Court's] ultimate goal is to give effect to the purpose of the act[.]'" *O'Connell v. Walmsley*, 156 A.3d 422, 426 (R.I. 2017) (quoting *State v. Hazard*, 68 A.3d 479, 485 (R.I. 2013)).

The Town's definition of "junkyard" provides for two use cases that would constitute a junkyard. In the first, the property, or part thereof, must be primarily used for the "collecting, storage *and sale* of waste paper, rags, scrap metal or discarded material[.]" Code of the Town of Johnston ch. 340, § 4. (emphasis added). In the second, the property, or part thereof, must be primarily used for "storage and salvaging of machinery or vehicles not in running condition *and for the sale of parts thereof*." *Id.* (emphasis added). Both use cases described by the Town's definition of junkyard requires that something be sold as part of its operation. *Id.* The second portion of the definition, which specifically references vehicles not in running condition, is most applicable in this instance. *See id.* The ordinance definition is clear and unambiguous: in

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> our position on the Board. It had nothing [to] do with taxes. I'm sure they pay their taxes. Nothing to do with licenses. I'm sure they were operating with valid licenses." *Id.* at 12.

Accordingly, this Court's consideration will be confined to the provisions within the zoning ordinance that were identified in the notice of violation and adjudicated by the Zoning Board. Ordinance provisions outside those referenced in the notice or by the Zoning Board are irrelevant to this appeal.

addition to mere storage of vehicles, parts must be removed and sold for the Property to be considered a "junkyard." *Id.*

The record is replete with references and discussion of non-operational vehicles on the Property. (C.R. at 5-8, 12, 14-15, 17, 20-21, 24-25, 30-32, 37-40, 53, 57.) Lacking in both the decision and the record, however, is evidence or testimony suggesting that parts were being sold from the vehicles stored on the Property.

Pursuant to Rhode Island law, "[t]he zoning board of review shall include in its decision all findings of fact and conditions, showing the vote of each participating member, and the absence of a member or his or her failure to vote." Sec. 45-24-61(a). The purpose of this statute is to facilitate Superior Court review. *Thorpe*, 492 A.2d at 1236-37 ("This court has stated on numerous occasions that a zoning board of review is required to make findings of fact and conclusions of law in support of its decisions in order that such decisions may be susceptible of judicial review."). Our Supreme Court has concluded that:

> "the minimal requirements for a decision of a zoning board of review would be the making of findings of fact and the application of legal principles in such a manner that a judicial body might review a decision with a reasonable understanding of the manner in which evidentiary conflicts have been resolved and the provisions of the zoning ordinance applied." *Id.* at 1237.

This Court is charged with reviewing the decision, not for form, but substance, and ensuring that the "board members resolved the evidentiary conflicts, made the prerequisite factual determinations, and applied the proper legal principles. Those findings must, of course, be factual rather than conclusional, and the application of the legal principles must be something more than the recital of a litany." *Irish P'ship*, 518 A.2d at 358-59. Moreover, if the zoning board does not provide a decision with proper findings of fact and conclusions of law, "the court

will not search the record for supporting evidence or decide for itself what is proper in the circumstances." *Id.* at 359 (citing *Hooper*, 104 R.I. at 44, 241 A.2d at 815). Instead, the Court "will either order a hearing de novo or remand in order to afford the board an opportunity to clarify and complete its decision." *Hooper*, 104 R.I. at 44, 241 A.2d at 815-16.

Here, the Zoning Board's complete findings of fact were as follows:

> "1. The subject property in [sic] known as Assessor's Plat AP 26 Lot 469.
>
> "2. The Petitioner/Appellant is the Owner of the property.
>
> "a. The Petitioner/Appellant was cited by the Building Official for violation of 340-8 (11.5) having a junk yard in a B2 zone.
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> "3. The Building Official having received numerous complaints went to the subject premises and inspected and subsequently issued violation.
>
> "4. The Building Official gave Appellant 30 days to address the violations.
>
> "5. Appellant has failed to clean up the property and the condition still exists.
>
> "6. Members Pilozzi and Cardillo visited the site and personally viewed its condition and stated on the record with their vast experience in the auto body business that the site exceeds the normal quantity of cars used in an auto body business and that the condition and use of the property is consistent with that of a junk yard." (C.R. at 58.)

None of the findings relates substantially to the definition of "junkyard" in the zoning ordinance, and there is no finding regarding the sale of parts. *See id.*; Code of the Town of Johnston ch. 340, § 4. While this Court need not "search the record for supporting evidence or decide for itself what is proper in the circumstances" when the Zoning Board fails to make the necessary findings of fact, this Court has reviewed the entire record, and it is clear that the record would

also not support any such finding. *See Irish P'ship*, 518 A.2d at 359. Indeed, there was very little testimony about the sale of parts. (C.R. at 22, 30-31.) When asked by Zoning Board Chairperson Bernard Frezza (Mr. Frezza), Appellant denied that parts were being sold from the vehicles on the Property:[5]

> "MR. PILOZZI: Please, [Mr. DiBiasio]. You know what's going on there? You're running a salvage operation.
>
> "MS. DiBIASIO: A salvage operation is somebody coming in, buying parts and taking them out; that's not a junkyard. It's not a junkyard. We're not in business to bring in salvage vehicles, dismantle, and sell parts; we're not doing that.
>
> "MR. FREZZA: That's a junkyard. Joe, that's a junkyard, isn't that, Counsel?" *Id.* at 22.
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> . . .
>
> "MR. FREZZA: Excuse me. You admitted that they were pulling parts off those cars and selling the parts.
>
> "MS. DiBIASIO: No, I said to you -- the definition of a junkyard would be if you take and salvage vehicles and you pull the parts and you sell them to the public, that's a salvage yard. That's not what is happening." *Id.* at 30-31.

There was no testimony or evidence offered to rebut Appellant's contention.

The decision and record make clear that the Zoning Board was concerned with the condition of the Property; specifically, the number of cars on the Property and its appearance—not the actual definition of a junkyard. Mr. Pilozzi stated at the hearing [to Appellant] "[y]ou have over a hundred cars, unregistered, on the premises, parked illegally, bumper to bumper,

[5] The transcript reflects a chaotic hearing during which Appellant, her husband, and the Zoning Board bickered about the nature, condition, and use of the Property. There were constant interruptions and tangential questioning. The quoted exchange is interrupted by additional argument unrelated to the issue of the sale of automotive parts harvested from the non-operational vehicles on the Property.

violating the fire laws; that's what we want to address."[6] *Id.* at 6. The Zoning Board was clearly more concerned with these factors—all of which are immaterial to whether a junkyard was in operation on the Property—than the factors that were relevant to their inquiry.

Under the definition of junkyard in the zoning ordinance, if a small number of non-operational vehicles were on the Property, and parts were removed therefrom and sold, the Property could be a junkyard.[7] *See* Code of the Town of Johnston ch. 340, § 4. Similarly, if 10,000 non-operational vehicles were stored on the Property, but no parts were sold therefrom, the Property could not be considered a junkyard under the zoning ordinance.[8] *See id.*

The Zoning Board's failure to apply the definition of a junkyard, as enumerated in the zoning ordinance, to the facts and circumstances presented here and articulate specific findings of fact and conclusions of law in its decision impede the Court's review of this case. *See Thorpe*,

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[6] It is noteworthy that, while it is generally unlawful to park unregistered motor vehicles on private property in Johnston, licensed motor vehicle repair and sales facilities are specifically exempted from this requirement:

> "It shall be unlawful for any person, firm, corporation, partnership or other entity to allow a motor vehicle to stand or remain on private property without the valid registration plates attached thereon, in both front and rear of such motor vehicle as provided in R.I.G.L. §§ 31-3-1, and 31-3-18 as well as a proper and valid inspection certificate as provided in R.I.G.L. §§ 31-38-3. *All legally licensed new or used automobile dealerships and motor vehicle repair shops shall be exempt from the provisions of this article.*" Code of the Town of Johnston ch. 236, § 7 (emphasis added).

The record demonstrates that there are multiple licensed automobile repair and sales facilities operating on the Property. (C.R. 27-29, 72-74.) Thus, the vehicles need not be registered. *See* Code of the Town of Johnston ch. 236, § 7.

[7] Provided the "lot, land or structure, or part thereof" was used "primarily" for this purpose. *See* Code of the Town of Johnston ch. 340, § 4.

[8] The Court notes that there may be a myriad of other legal problems resulting from such a use, but this example is offered simply to demonstrate that the sale of parts is a required element of the definition of a junkyard, and the quantity of cars alone is inadequate to establish a junkyard under the ordinance. *See* Code of the Town of Johnston ch. 340, § 4.

492 A.2d at 1236-37. The findings of fact presented in the Zoning Board's decision are conclusory, and there was no meaningful application of the relevant ordinance provision to those facts. (C.R. at 57-58.) Indeed, the current decision lacks "sufficient facts that would facilitate [this Court's] judicial review." *Irish P'ship*, 518 A.2d at 359; *Hooper*, 104 R.I. at 44, 241 A.2d at 815-16. This issue is best addressed by remanding this case to the Zoning Board for additional proceedings.

## IV

## Conclusion

For the reasons set forth above, this case is remanded to the Zoning Board for further proceedings consistent with this Decision. Specifically, the Zoning Board must conduct a new hearing limited to applying the definition of a junkyard under the zoning ordinance to the present case. The Zoning Board must determine whether the subject use constituted a junkyard and issue a new decision stating non-conclusory findings of fact and legally-supported conclusions of law.

Counsel shall submit the appropriate order for entry.

**RHODE ISLAND SUPERIOR COURT**
***Decision Addendum Sheet***

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| **CASE NO:** | **PC-2015-1101** |
| **COURT:** | **Providence County Superior Court** |
| **DATE DECISION FILED:** | **February 8, 2018** |
| **JUSTICE/MAGISTRATE:** | **Carnes, J.** |
| **ATTORNEYS:** | |
| **For Plaintiff:** | **Patrick F. Dowling, Jr., Esq.** |
| **For Defendant:** | **Joseph R. Ballirano, Esq.** |