

which governs nonprofit organizations. Pl.’s Mem. 3, Pl.’s Ex. 1. Specifically, the 1998 Act exempts NEIT’s real and personal property from taxation so long as the property is utilized for the purposes set forth in SECTION 3 of the 1998 Act. Pl.’s Mem. 3, Pl.’s Ex. 1 §§ 3, 5.¹

NEIT purchased the Subject Property on June 3, 2010 with the intent to develop the parcel and an adjacent parcel into athletic and recreational fields. Pl.’s Mem. 1. However, NEIT claims the Subject Property is landlocked. *Id.* at 2-3. As a result, NEIT has not developed the Subject Property, although the Town of West Warwick has continued to assess taxes on it.² *Id.* at 2.

¹ “SECTION 3. Said corporation is constituted for the purpose of offering programs and courses of study and instruction either customary or appropriate in a junior college and in a four-year college, looking to attainment by its students of associate degrees, baccalaureate degrees and also both technical and nontechnical courses and programs of study designed to fulfill special occupational or educational needs and requirements in the nation and in the Rhode Island community and whether or not leading to degrees, and in addition, programs and courses of study to prepare qualified students for transfer to other institutions of learning; administering and grading educational and vocational tests; rendering counseling and placement services to students; and doing all things necessary, desirable, customary or appropriate for colleges and universities.

...

“SECTION 5. The real and personal property of the corporation shall be exempt from state and local taxes so long as said property is utilized for the purposes set forth in section 3 hereof.” Pl.’s Ex.

1.

² The Plaintiff was aware that the Subject Property was landlocked when it purchased the Subject Property. Def.’s Mem. Opp’n Mot. Summ. J. (Def.’s Mem.) 3. Specifically, the Plaintiff sought access over lots 81, 82, 86, 98, 103, and 334; the Plaintiff successfully purchased lots 81, 82, and 103, but was unable to purchase lots 86, 98, and 334 which resulted in limiting the Plaintiff’s ability to gain access to the Subject Property. *Id.* The Plaintiff took further action in attempting to gain access by requesting a use variance change or a zone change from the Town of East Greenwich, but these requests were denied. *Id.*

NEIT contends its charter exemption was never waived in whole or in part. *Id.* at 4. The Defendant, Salvatore Saccoccio, in his capacity as the Tax Assessor for the Town of West Warwick (Town), denied NEIT's tax appeals because the Subject Property is not being used exclusively for educational purposes. Pl.'s Mem. 4, Pl.'s Ex. 4. NEIT filed appeals with the Board of Assessment Review (Board) pursuant to § 44-5-26. Pl.'s Mem. 4. The Board denied all of NEIT's appeals. *Id.* Thereafter, NEIT filed these actions pursuant to G.L. 1956 § 44-5-26. *Id.* This Court granted NEIT's Motion to Consolidate these actions pursuant to Rule 42 of the Superior Court Rules of Civil Procedure on September 9, 2019.

NEIT moved for summary judgment on December 17, 2019 claiming that no genuine dispute as to a material fact existed regarding whether the Subject Property should be exempt from taxation pursuant to the legislative charter that incorporated NEIT and pursuant to § 44-3-3(a)(10). The Town has objected to the Court finding that the Subject Property is exempt from taxation because NEIT has failed to set forth specific facts that show that the Subject Property is exempt from taxation.

II

Standard of Review

When deciding a motion for summary judgment, the trial justice must keep in mind that it “is a drastic remedy and should be cautiously applied.” *Steinberg v. State*, 427 A.2d 338, 339-40 (R.I. 1981) (quoting *Ardente v. Horan*, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976)). This Court will grant summary judgment “only if, after reviewing the admissible evidence in the light most favorable to the nonmoving party, [the Court] conclude[s] that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law.” *Rhode Island American Federation of Teachers/Retired Local 8037 v. Johnston School Committee*, 212 A.3d

156, 158-59 (R.I. 2019) (quoting *Newstone Development, LLC v. East Pacific, LLC*, 140 A.3d 100, 103 (R.I. 2016)). However, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. *Steinberg*, 427 A.2d at 340. “Furthermore, the nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.” *JHRW, LLC v. Seaport Studios, Inc.*, 212 A.3d 168, 175 (R.I. 2019) (quoting *Cancel v. City of Providence*, 187 A.3d 347, 350 (R.I. 2018)); see also *Newstone Development, LLC*, 140 A.3d at 103.

III

Analysis

The issue before this Court is a question of statutory interpretation; specifically, the issue is whether NEIT has utilized the Subject Property in a way that satisfies the utilization requirement in the 1998 Act, thus rendering the Subject Property exempt from taxation pursuant to § 44-3-3(a)(10).

In moving for summary judgment on the issue of utilization, NEIT asserts that so long as purchasing the Subject Property is an activity that is “necessary, desirable, customary, or appropriate for colleges and universities,” then the Subject Property is exempt from taxation pursuant to the 1998 Act. Pl.’s Mem. 7. NEIT further argues that purchasing and holding the Subject Property for future expansion of its campus is a “necessary, desirable, customary, or appropriate activity for colleges and universities.” *Id.* at 8. Specifically, NEIT alleges that under the 1998 Act, in order for a property to be exempt from taxation, NEIT need only establish that it owns the Subject Property and that the Subject Property *will be utilized* for a use that is “necessary, desirable, customary, or appropriate for colleges and universities.” *Id.* NEIT owns the Subject

Property, as established by a Warranty Deed. Pl.’s Ex. 2. NEIT also contends that ownership of the Subject Property for the future purpose of expanding its campus and developing it into athletic and recreational fields constitutes a “necessary, desirable, customary, or appropriate [use] for colleges and universities.” Pl.’s Mem. 8.

The Town responds by indicating that the Subject Property remains in the same condition as it was when it was purchased, and that NEIT has not provided any evidence that the Subject Property will be used in the future for educational purposes. Def.’s Mem. 6. For these reasons, the Town indicates that the Subject Property is only exempt from taxation when and if the Subject Property is actually used for an educational purpose. *Id.* Further, the Town indicates that designs and plans that are never developed are only evidence of NEIT’s proposed purpose and not evidence that it is being used for an educational purpose. *Id.*

When the Court engages in statutory construction, “[its] ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” *State v. Whiting*, 115 A.3d 956, 958 (R.I. 2015) (internal quotation marks omitted). “It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Whittemore v. Thompson*, 139 A.3d 530, 540 (R.I. 2016) (internal citations omitted); *see also Pacheco v. Lachapelle*, 91 R.I. 359, 362, 163 A.2d 38, 40 (1960) (“This court has stated that in the absence of statutory definition or qualification the words of a statute are given their ordinary meaning.”); 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction* § 47:28 (7th ed., Nov. 2020 Update) (“A fundamental canon of statutory construction instructs that words are interpreted to take their ordinary, contemporary, common meaning in the absence of persuasive reasons to the contrary.”). Only when the Court is faced with an ambiguous statute will it “apply the rules of statutory

construction and examine the statute in its entirety to determine the intent and purpose of the Legislature.” *Powers v. Warwick Public Schools*, 204 A.3d 1078, 1086 (R.I. 2019).

The Court finds the language used in § 44-3-3(a)(10) and the 1998 Act is unambiguous. Accordingly, this Court will interpret the words according to their plain and ordinary meaning. Section 44-3-3(a)(10) provides that “(a) The following property is exempt from taxation: . . . (10) Property especially exempt by charter unless the exemption has been waived in whole or in part.” Section 44-3-3(a)(10). Also, the 1998 Act states: “[t]he real and personal property of the corporation shall be exempt from state and local taxes so long as said property is *utilized* for the purposes set forth in section 3 hereof.”³ (emphasis added). According to the Merriam-Webster Dictionary, the term “utilize” means “to make use of.” Merriam-Webster Online Dictionary (retrieved December 17, 2020, from <https://www.merriam-webster.com/dictionary/utilize>). Additionally, the term “use” means “to carry out a purpose or action by means of.” *Id.* (retrieved December 17, 2020, from <https://www.merriam-webster.com/dictionary/use>).

Taking into account the definition of “utilize” from a respected source, this Court finds that there is a factual dispute as to whether the Subject Property was in fact utilized for educational purposes. NEIT has averred that the Subject Property does satisfy the requirement of the tax exemption because the actual purchase and acquisition of the Subject Property in order to expand their recreational facilities is a “necessary, desirable, customary or appropriate activity for colleges and universities.” Pl.’s Mem. 9. Additionally, NEIT suggests that it has taken many actions in an attempt to actually develop the Subject Property into athletic and recreational fields. *Id.* For example, NEIT points to a Memorandum of Understanding entered into with the Town of East

³ The full language of Section 3 can be found in footnote 1, but importantly, SECTION 3 states “[s]aid corporation is constituted for the purpose of . . . doing all things necessary, desirable, customary or appropriate for colleges and universities.” Pl.’s Ex. 1.

Greenwich. *Id.* at 10. Additionally, there were several discussions with the Town of West Warwick that were attempts to facilitate the development of the Subject Property. *Id.* at 11. Lastly, NEIT mentions many proposed development plans. *Id.* However, all of the facts that NEIT sets forth regarding the attempts to develop the Subject Property suggest that there is a genuine issue of material fact as to whether the purchase alone of the Subject Property is sufficient to satisfy the tax exemption requirements.

Neither the original affidavit nor the supplemental affidavit filed by NEIT set forth evidentiary support that the Subject Property is being used for anything at this time. The exemption is applicable only “so long as said property is utilized . . .” 1998 Act, SECTION 5. Planning to use the Subject Property is not actual *utilization*. Proposals and engineering plans are also not actual *utilization*. Consequently, the Court is constrained to conclude that NEIT has failed to prove that there is no genuine issue of material fact as to whether the Subject Property was utilized for the required use or whether the purchase itself satisfies the tax exemption requirements.

After viewing the evidence in the light most favorable to the Town, the nonmoving party, the Court concludes that summary judgment is inappropriate because there is a genuine issue of material fact as to whether the Subject Property was in fact utilized for educational purposes. Therefore, for all of the foregoing reasons, NEIT’s Motion for Summary Judgment is denied.⁴

IV

Conclusion

For all of the foregoing reasons, this Court denies NEIT’s Motion for Summary Judgment.

⁴ NEIT claims the failure of our General Assembly to enact certain revisions of the law go to legislative intent. The Court is not persuaded by this argument and no Rhode Island cases are referenced. Even if the Court considered the failed legislation and the surrounding states’ treatment of similar issues, there is still a genuine issue of material fact concerning the present use of the Subject Property.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: New England Institute of Technology v. Salvatore Saccoccio,
in his capacity as Tax Assessor, Town of West Warwick

CASE NO: KC-2011-0645; KC-2012-0287; KC-20124-0712; KC-2015-
0116; KC-2016-0244; KC-2017-0162; KC-2019-0224; KC-
2019-0892 (Consolidated Cases)

COURT: Kent County Superior Court

DATE DECISION FILED: January 29, 2021

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

For Plaintiff: Elizabeth McDonough Noonan, Esq.; Hamza Chaudary, Esq.;
Joseph DeAngelis, Esq.

For Defendant: Timothy A. Williamson, Esq.