**STATE OF RHODE ISLAND**

**WASHINGTON, SC.** **SUPERIOR COURT**

**[Filed: June 1, 2021]**

| | | |
|---|---|---|
| **NARRAGANSETT 2100, INC.; LEMBO FAMILY REVOCABLE TRUST; SEASIDE PROPERTIES, LLC; GEORGE NONIS; RICHARD LUTH; ERIC S. FRANK; SHAWNA RIHANI; MARY JO VERCILLO REVOCABLE TRUST; RI NEWPORT 37 TRUST; RI LARCH 14 TRUST; KINGSTONS ROSE LLC; CARL N. MARCHAND LIVING TRUST; DEBORAH RUDMAN; KEITH BROWN; LYNN BISIGHINI; ERIC BISIGHINI; JAY M. VOAS TRUST; and 57 SAKONNET, LLC,** ***Plaintiffs,*** | : | |
| **v.** | : | **C.A. No. WC-2020-0353** |
| **THE TOWN OF NARRAGANSETT; CHRISTINE SPAGNOLI, in her capacity as Narragansett Finance Director; MATTHEW MANNIX, in his capacity as a President of the Narragansett Town Council; JILLIAN LAWLER, in her capacity as a Member of the Narragansett Town Council; RICHARD LEMA, In his official capacity as Town Council Member; and JESSE PUGH, in his official capacity as Town Council Member,** ***Defendants*** | : | |

**DECISION**

**TAFT-CARTER, J.** Before this Court for Decision are Plaintiffs'—Lembo Family Revocable Trust, Seaside Properties, LLC, George Nonis, Richard Luth, Eric S. Frank, Shawna Rihani, Mary Jo Vercillo Revocable Trust, RI Newport 37 Trust, RI Larch 14 Trust, Kingstons Rose LLC, Carl

N. Marchand Living Trust, Deborah Rudman, Keith Brown, Lynn Bisighini, Eric Bisighini, Jay M. Voas Trust and 57 Sakonnet, LLC (collectively, Plaintiffs)—Motion for Partial Summary Judgment with respect to Counts I and II of Plaintiffs' Complaint and Defendants'—Town of Narragansett (Town), Christine Spagnoli, in her capacity as the Finance Director for the Town, Matthew Mannix, in his capacity as the President of the Narragansett Town Council, Jillian Lawler, in her capacity as a member of the Narragansett Town Council, Richard Lema, in his capacity as a member of the Narragansett Town Council, Patrick Murray, in his capacity as a member of the Narragansett Town Council, and Jesse Pugh, in his capacity as a member of the Narragansett Town Council (collectively, Defendants)—Cross-Motion for Partial Summary Judgment as to Counts I and II. Jurisdiction is pursuant to G.L. 1956 § 9-30-1 and Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure.

## I

## Facts and Travel

This action arises from a public hearing held by the Narragansett Town Council (Town Council) concerning a zoning ordinance passed on August 24, 2020 that restricted student-occupied dwellings to no more than three college students unless owner-occupied (hereinafter Ordinance). On June 15, 2020, the Town Council adopted a resolution "instructing the [T]own Solicitor to prepare/amend an ordinance or ordinances governing student and other short-term rentals in single-family neighborhoods." (Pls.' Mem. at 3.) On June 29, 2020 the Town Council referred the Ordinance to the Town's Planning Board for review and recommendation. *Id.*

On July 1, 2020, the Town's Planning Board met to review the Ordinance and on July 29, 2020, unanimously voted to recommend the Town Council deny the Ordinance. *Id.* at 4. On August 17, 2020, the Town Council held a public hearing via Zoom Video Communications. *Id.*

Members of the public wishing to speak during the hearing could click a button (known as the "raise your hand" button) if the individual was using a computer or press a combination of buttons on their phone in order to notify the Town Council of an individual's interest in speaking. *Id.* at 5. The public comment was held from 9:00 p.m. until 11:00 p.m. when the Town Council voted to close the Public Hearing. *Id.* At the time the public hearing was closed, the Plaintiffs had their hands raised, indicating their desire to be heard on the matter. *Id.* Several Plaintiffs have submitted affidavits attesting to this as well as providing photographic evidence in the form of screenshots indicating their desire to speak. (Pls.' Ex. B.)

After the Public Hearing, the Town Council voted in favor of passing the Ordinance by a vote of 4-1. *Id.* at 6. A second reading was scheduled for August 24, 2020 which was not open to the public. *Id.* At the second reading the Council voted in favor of passage and enactment of the Ordinance by a 3-1 vote. *Id.*

Plaintiffs filed their complaint on September 1, 2020, consisting of three claims. In Count I, Plaintiffs seek declaratory judgment that the Town violated G.L. 1956 § 45-24-53 by depriving them of their opportunity to be heard on the Ordinance. (Compl. ¶¶ 72-73.) In Count II, Plaintiffs seek declaratory judgment that the Town violated Article 1, Section 2, the Procedural Due Process Clause of the Rhode Island Constitution by not giving the Plaintiffs an opportunity to object to the Ordinance. *Id.* ¶¶ 83-84. Count III is an appeal pursuant to § 45-24-71 of the enactment of the Ordinance. *Id.* ¶¶ 95-96. Plaintiffs filed their motion for partial summary judgment as to Count I and Count II on February 23, 2021. Defendants filed their cross-motion for partial summary judgment on April 6, 2021. The Court now renders its Decision as to both motions.

## II

## Standard of Review

The Rhode Island Supreme Court has warned that "summary judgment is a drastic remedy" and should be cautiously applied. *Cruz v. DaimlerChrysler Motors Corp*., 66 A.3d 446, 451 (R.I. 2013) (citation omitted). This Court will grant a motion for summary judgment if "'after reviewing the admissible evidence in the light most favorable to the nonmoving party,'" the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and "'that the moving party is entitled to judgment as a matter of law.'" *Liberty Mutual Insurance Co. v. Kaya*, 947 A.2d 869, 872 (R.I. 2008) (quoting *Roe v. Gelineau*, 794 A.2d 476, 481 (R.I. 2002)).

The moving party "bears the initial burden of establishing the absence of a genuine issue of fact." *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (citation omitted). Thereafter, the burden shifts, and "the nonmoving party has an affirmative duty to demonstrate … a genuine issue of fact." *Id.* Specifically, "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." *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013). To meet this burden, "'[a]lthough an opposing party is not required to disclose in its affidavit all its evidence, he [or she] must demonstrate that he [or she] has evidence of a substantial nature, as distinguished from legal conclusions, to dispute the moving party on material issues of fact.'" *Bourg v. Bristol Boat Co.*, 705 A.2d 969, 971 (R.I. 1998) (quoting *Gallo v. National Nursing Homes, Inc.*, 106 R.I. 485, 488, 261 A.2d 19, 21-22 (1970)).

Moreover, "[s]ummary judgment should enter 'against a party who fails to make a showing

sufficient to establish the existence of an element essential to that party's case.'" *Newstone Development, LLC v. East Pacific, LLC*, 140 A.3d 100, 103 (R.I. 2016). Thus, the court may enter summary judgment in favor of the moving party when the court concludes, "after viewing the evidence in the light most favorable to the nonmoving party, that there is no genuine issue of material fact to be decided and that the moving party is entitled to judgment as a matter of law." *Lacey v. Reitsma*, 899 A.2d 455, 457 (R.I. 2006).

**III**

**Analysis**

**A**

**Count I**

With respect to Count I, Plaintiffs argue that their statutory right to be heard pursuant to the Zoning Enabling Act (ZEA) was violated when the Defendants failed to provide all Plaintiffs an opportunity to speak regarding the passage of the Ordinance. (Pls.' Mem. at 2.) Plaintiffs contend the Town Council voted to close the public comment at the hearing for the Ordinance while sixteen individuals still wished to object. *Id.* at 10. Defendants argue Plaintiffs' motion "rests on the false premise that they were not heard as it pertains to the . . . Ordinance." (Defs.' Mem. at 6.) Defendants contend Plaintiffs' interpretation that all individuals were required to be heard would lead to an "absurd result." *Id.* Defendants also argue the ZEA only requires a chance to be heard at the hearing and that it is not required to hear each objection from every person who may be affected by a proposed ordinance. *Id.* at 10.

The Rhode Island Supreme Court has recognized that a "basic principle of statutory construction" is, if a statutory section "is clear and unambiguous," the Court will apply "the plain and ordinary meaning of the statute" and will not "delve into any further statutory interpretation."

*Grasso v. Raimondo*, 177 A.3d 482, 489 (R.I. 2018). In fact, "'[i]t is only when a statute is ambiguous that we apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature.'" *Id.* (quoting *State v. Diamante*, 83 A.3d 546, 548 (R.I. 2014)). In other words, "'[i]f a statute is clear and unambiguous we are bound to ascribe the plain and ordinary meaning of the words of the statute and our inquiry is at an end.'" *In re Kapsinow*, 220 A.3d 1231, 1234 (R.I. 2019) (quoting *Olsen v. DeMayo*, 210 A.3d 431, 435 (R.I. 2019)).

The ZEA, as set forth in §§ 45-24-25 *et seq*., lists the requirements for the adoption, repeal, and amendment of zoning ordinances. The statute includes a mandate relating to an interested party's opportunity to be heard. Section 45-24-53. Specifically, the statute states:

> "No zoning ordinance shall be adopted, repealed, or amended until after a public hearing has been held upon the question before the city or town council. The city or town council shall first give notice of the public hearing by publication of notice in a newspaper of general circulation within the city or town at least once each week for three (3) successive weeks prior to the date of the hearing, which may include the week in which the hearing is to be held, *at which hearing opportunity shall be given to all persons interested to be heard upon the matter of the proposed ordinance.*" Section 45-24-53(a) (emphasis added).

Defendants argue that the word "opportunity" makes the statute ambiguous because it could be interpreted to mean that there simply needs to be a hearing "at which it is possible, *albeit* not guaranteed, that an interested person will be heard." (Defs.' Mem. at 10.) However, this Court disagrees with the Defendants' narrow reading of the statute. The statute clearly and unambiguously states that "opportunity *shall be given to all persons* interested to be heard" upon a proposed ordinance at the hearing. Here, Plaintiffs assert, and Defendants have not disputed, that Plaintiffs are property owners in the Town and lease their properties to more than three college students. (Pls.' Mem. at 10; Pls.' Ex. B.) Further, Plaintiffs' affidavits indicate that at least six of

the Plaintiffs had their "hands raised," indicating they wish to be heard. (Pls.' Ex. B.) Finally, the Defendants admitted that at the time the Town Council voted to close public comment, there were members of the public with their hands raised requesting to be heard. (Pls.' Ex. D ¶¶ 6-8.)

Defendants correctly point out that "under no circumstances will this Court 'construe a statute to reach an absurd result.'" *See Generation Realty, LLC v. Catanzaro*, 21 A.3d 253, 259 (R.I. 2011). Defendants cite to *Crispin v. Town of Scarborough*, 736 A.2d 241 (Me. 1999) for support as to why this Court should find Plaintiffs' interpretation of the statute would lead to an absurd result. In *Crispin*, the Maine Supreme Court construed a statute that required the public be given the opportunity to be heard on zoning issues. *Crispin*, 736 A.2d at 248. There, the Maine Supreme Court found that the town council satisfied the statutory requirement when it limited the public's, including the plaintiff's, initial comments to three minutes. *Id.* Additionally, the court noted that the plaintiffs were allowed to "submit abundant written material" which the town council reviewed and considered and plaintiffs' lawyer was allowed to speak, "essentially without limitation, after each person who wanted to speak had been heard." *Id.*

This Court finds the instant case distinguishable from *Crispin*. First, and most importantly, the statute at issue in *Crispin* simply stated that "[t]he public shall be given an adequate opportunity to be heard in the preparation of a zoning ordinance." 30-A M.R.S.A. § 4352(1). That statute did not mandate, as the statute here does, that "all persons interested" be given the opportunity to be heard on the proposed ordinance *at the public hearing.* Section 45-24-53(a). Further, unlike the plaintiffs in *Crispin* who had their initial comments heard but were limited in the amount of time they were permitted to speak, the Plaintiffs here were given no opportunity to be heard as the Town Council voted to close public comments while members of the public still had their hands raised. (Pls.' Ex. D ¶¶ 6-8.)

Defendants further argue that Plaintiffs were "heard" because Narragansett 2100, a group to which the Plaintiffs all belong, submitted a letter four days prior to the hearing on the Ordinance. (Defs.' Mem. at 6.) However, this Court points again to the clear and unambiguous language of the statute, which requires a public hearing and "at which hearing" all interested persons shall be given the opportunity to be heard. Section 45-24-53(a). Therefore, this Court is bound to the plain and ordinary meaning of the statute and finds that the Defendants violated the ZEA when it did not give all interested persons the opportunity to be heard at the hearing on the Ordinance. *See In re Kapsinow*, 220 A.3d at 1234.

**B**

**Count II**

With respect to Count II, Plaintiffs contend Defendants violated article I, section 2 of the Rhode Island Constitution, the Procedural Due Process Clause. (Pls.' Mem. at 11.) Plaintiffs argue they had a constitutional right to be heard on the passage and adoption of the Ordinance and were deprived of their procedural due process rights when the Town Council ended the hearing prior to affording Plaintiffs an opportunity to be heard. *Id.* at 11, 13. Defendants argue that it is well settled that procedural due process is not required for legislative actions and that it has been held that reasonable limits can be placed on the opportunity to be heard on legislative matters. (Defs.' Mem. at 13.)

The Rhode Island Constitution provides procedural due process protections in article I, section 2, which states that "[n]o person shall be deprived of life, liberty or property without due process of law." R.I. CONST. art I, § 2. The Rhode Island Supreme Court has held "[p]rocedural due process ensures that notice and an opportunity to be heard precede any deprivation of a person's life, liberty, or property." *Moreau v. Flanders*, 15 A.3d 565, 588 (R.I. 2011). In analyzing

a due process violation, the Supreme Court explained there is a two-step analysis. *Mosby v. Devine*, 851 A.2d 1031, 1074 (R.I. 2004) (citing *DiCiantis v. Wall*, 795 A.2d 1121, 1126 (R.I. 2002)). First, there must be a protected liberty or property interest. *Id.* The next inquiry the Court prescribes is "whether the procedures afforded to the plaintiff were 'constitutionally sufficient'" to satisfy due process. *Id.* (quoting *DiCiantis*, 795 A.2d at 1126).

In 1963, the Rhode Island Supreme Court recognized that the enactment of zoning legislation "*may* well violate the constitutional guaranties against procedures which deprive one of property without due process of law." *Cugini v. Chiaradio*, 96 R.I. 120, 125, 189 A.2d 798, 800 (1963) (emphasis added). However, the Court went on to state that "[i]t is for this reason that statutes which authorize local legislatures to enact zoning ordinances make elaborate, specific provisions for hearing and notice of the pendency of such action by the local legislature." *Id.* at 96 R.I. at 125, 189 A.2d at 800-01.

Defendants correctly point out that "*as it pertains to due process* in the context of legislative functions, both federal courts[] and this Court have held that reasonable limitations on debate are permissible to avoid 'paralysis,' and provide for the efficient conduct of the business of governing." (Defs.' Mem. at 13 (emphasis added).) This precedent began with *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441, 445 (1915) in which the Supreme Court stated that the "Constitution does not require all public acts to be done in town meeting or an assembly of the whole." *See also Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 283 (1984) ("The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy.").

In *Smithfield Concerned Citizens for Fair Zoning v. Town of Smithfield*, 719 F. Supp. 75, 83 (D.R.I. 1989), the plaintiffs argued their due process rights were violated because notice was

not provided for a meeting that would be open to the public. There, the court explained "while notice and an opportunity to be heard are required in judicial or quasi-judicial proceedings where the rights of specific individuals are being determined, they are not required in legislative proceedings that deal with determinations which apply generally to broad classes of persons." *Id.* The court concluded the ordinance at issue, "like any other zoning ordinance, was a legislative act. Consequently, procedural due process did not require that the plaintiffs receive notice or an opportunity to be heard." *Id.* (citing *Bi-Metallic Investment. Co.*, 239 U.S. at 445).

The First Circuit ruled on a similar due process claim in *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995) where the appellant argued that his due process rights were violated when the town enacted an article that limited the hours the movie theatre could have showings. In that case, the appellant was able to attend the hearing at which the town voted, participate in the discourse, and deliver a speech objecting to the article's passage. *Id.* at 746. The Court found the Supreme Court of the United States' decision in the *Bi-Metallic* case "particularly instructive" because the petitioner raised the same issue (as do Plaintiffs at bar) of "'whether all individuals have a constitutional right to be heard before a matter can be decided in which all are equally concerned.'" *Id.* (quoting *Bi-Metallic Investment Co.*, 239 U.S. at 445). Moreover, the *National Amusement* Court took the analysis a step further, noting "procedural due process is a doctrine most closely associated with assuring fairness in regard to the *enforcement* of laws . . . the doctrine bears no relation to the initial *enactment* of a law." *Id.* (emphasis added).

Finally, this Court, in *Cournoyer v. City of Woonsocket Budget Commission*, No. PC-2013-4082, 2015 WL1735536, at *14 (R.I. Super. Apr. 10, 2015), ruled against the plaintiffs' claim that their procedural due process rights were violated without an opportunity to be heard. In making its determination, this Court held "[i]t is well settled that a Legislature performing its legislative

function is not required to provide notice and an opportunity to be heard to every individual affected by a law aimed at the general public." *Id.* Thus, this Court concluded the defendants "are entitled to judgment as a matter of law because procedural due process rights are not applicable to the Budget Commission's legislative enactment of a generally applicable tax." *Id.*

In the instant case, the Town Council's actions were identical to the Budget Commission's actions in *Cournoyer* and would be considered legislative action that affects the general public. Therefore, it is well settled that procedural due process requirements do not apply to legislative actions, and the Town Council was not required to hear the objections of all individuals under the Procedural Due Process Clause in article I, section 2 of the Rhode Island Constitution.

## IV

## Conclusion

For the reasons stated above, Plaintiffs' Motion for Partial Summary Judgment is granted with respect to Count I and denied with respect to Count II. Accordingly, Defendants' Cross-Motion for Partial Summary Judgment is denied with respect to Count I and granted with respect to Count II. Counsel shall prepare the appropriate order.

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

| | |
|---|---|
| **TITLE OF CASE:** | **Narragansett 2100, Inc., et al. v. The Town of Narragansett, et al.** |
| **CASE NO:** | **WC-2020-0353** |
| **COURT:** | **Washington County Superior Court** |
| **DATE DECISION FILED:** | **June 1, 2021** |
| **JUSTICE/MAGISTRATE:** | **Taft-Carter, J.** |
| **ATTORNEYS:** | |
| **For Plaintiff:** | **Joelle C. Rocha, Esq.** |
| **For Defendant:** | **Andrew H. Berg, Esq.** |
| **Intervenor:** | **Diana E. Pearson, Esq.** |