**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

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

**[Filed: May 2, 2016]**

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| **SCOTT R. LABOSSIERE** | : | |
| | : | |
| **v.** | : | |
| | : | **C.A. No. WC-2013-0593** |
| **THE TOWN OF NORTH KINGSTOWN THROUGH ITS ZONING BOARD OF REVIEW AND ITS MEMBERS, DANIEL PIRHALA, ARTHUR CARDENTE, BRIERLY MELLOR, JOHN GIBBONS, AND JAMES ALMEIDA** | : | |

## DECISION

**K. RODGERS, J.** This matter is presently before this Court on appeal by Appellant Scott R. Labossiere (Labossiere or Appellant) from a decision of the Town of North Kingstown's Zoning Board of Review (the Zoning Board). A Notice of Violation (NOV) and Order were issued on November 28, 2012, citing Labossiere for storing material and equipment in a residential zone and for conducting a business use in a residential zone that does not conform to a Customary Home Occupation.[1] After hearing on August 27, 2013, the Zoning Board issued its decision dated September 10, 2013 (the Decision) denying Labossiere's appeal from that NOV and Order.

This Court has jurisdiction over this matter pursuant to G.L. 1956 § 45-24-69. For the reasons that follow, this Court affirms the decision of the Zoning Board and enters judgment on its behalf.

[1] The within matter is the second time Appellant has been issued an NOV. In 2008, North Kingstown Building Official and Zoning Enforcement Officer Gary Tedeschi (Tedeschi) issued Appellant an NOV for operating a business use in a residential zone. That matter was heard on appeal before the Zoning Board. However, the Zoning Board failed to articulate findings of fact in its decision, and it ultimately stipulated to a judgment entered in Appellant's favor in the Superior Court. See C.A. WC-2008-0563.

## I

## Facts and Travel

Appellant is the owner of real property located at 655 Tower Hill Road in North Kingstown, Rhode Island, designated as Lot 98 on the Assessor's Plat 85 (the Property). The Property is located in a Village Residential (VR) zoning district and in Groundwater Overlay Zone 2. Appellant resides in the single story dwelling on the Property. Since at least 2006, Appellant has been storing certain items on the Property, including several large commercial vehicles that are used in his business "Mister Tree, Inc."

Tedeschi issued Appellant an NOV on November 28, 2012, informing him that an inspection of the Property had taken place on November 6, 2012 and that two violations of the Town's Zoning Ordinance were noted: "Material and equipment storage in a residential zone" and "Business use in a residential zone that does not conform to a Customary Home Occupation." (Appellee's Ex. A.) That NOV also noted two Ordinance provisions, presumably as reference to the provisions that are alleged to have been violated: Sec. 21 Article III Land Use Tables[2], and Section 21-320.[3] (Id.)

[2] The Land Use Tables were noted as having been attached to the NOV. The NOV made available to this Court did not include this attachment, see Appellee's Ex. A, but it was attached separately as Appellee's Ex. E. The Land Use Tables prohibits "material equipment storage and lay down yard" from properties zoned VR. (Appellee's Ex. E.)

[3] Section 21-320 permits activities in a home to be carried out for gain where such activities are conducted as an accessory use of the dwelling and subject to the following conditions:

> "(1) The use of the dwelling unit or, where permitted, an accessory structure by the resident for a business is incidental and subordinate to its use for residential purposes and occupies 25 percent or less of the floor area within the dwelling unit on the premises.
> "(2) No more than two nonresident employees are permitted on site.
> "(3) There is no change in the outside appearance of the building or premises or any visible or audible evidence detectable from the

Labossiere appealed the NOV to the Zoning Board, which held a hearing on the matter on August 27, 2013. The Zoning Board heard testimony from Appellant, Tedeschi, and five neighbors.

Tedeschi testified that he received a complaint from a neighbor in 2011 that the business being operated on the Property had greatly expanded from what had been occurring in 2008, when the prior NOV was issued. Tedeschi stated that he "visited the property and observed piles of wood, two trucks with aerial lifts with the marking Master [sic] Tree, Inc., a long-body dump truck, a medium-sized truck that had an attached snow plow, wood splitter, storage container, and various other heavy-duty equipment." Tr. 8, Aug. 27, 2013. An 8-foot cedar fence had been

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> property line of the conduct of such business, except that one sign not larger than two square feet in area bearing only the name of the practitioner and occupation shall be permitted (words only). The sign shall be flush-mounted to the dwelling unit and shall not be illuminated internally.
> "(4) Traffic, including traffic by commercial delivery vehicles, shall not be generated in greater volumes than would normally be anticipated in a residential neighborhood.
> "(5) No hazard or nuisance, including noise, dust, odors, heat, glare, noxious fumes or vibrations, shall be created to any greater or more frequent extent than would normally be expected in the neighborhood under normal circumstances wherein no home occupation exists.
> "(6) There shall be no display of goods, outside storage or retail sales on the premises.
> "(7) Parking for the home occupation shall be met on site.
> "(8) Permitted home occupations include but are not necessarily limited to the following, provided, however, the occupations do not violate subsections (b)(1) through (b)(7) of this section: dressmaking, sewing and tailoring; telephone solicitation work; photography studio; tutoring; home crafts; studios for artists or craftworkers; single-operator hairdresser; offices for doctors, dentists, attorneys, real estate agents, insurance agents, accountants, stockbrokers, engineers, architects, landscape architects, musicians, writers, data programming, and sales representatives; and family day care." Sec. 21-320(b) (Appellee's Ex. F).

built on the Property since Tedeschi issued the NOV in 2008, which fence concealed much of the equipment from the street. Tedeschi testified that as of the day of the August 27, 2013 hearing, there was a wood chipper for sale in front of the gate that was visible from the street. Id. at 10.

Tedeschi explained to the Zoning Board that, in applying the Town Ordinance to the Property which prohibits material and equipment storage, "materials, to me, in this case would be the storage of the piles of wood." Id. at 12. Additionally, he explained that while many of the equipment items found on the Property could be routinely found in residential homes or even small businesses, such as a snowplow, big equipment tire, smaller wood cutting equipment, rakes, and shovels, he considered those items to fit into the Ordinance's definition of "equipment storage." See id. Tedeschi noted that he had not observed any selling of wood or other materials occurring on the premises, other than the "For Sale" sign on the wood chipper in front of Appellant's house. Id. at 13. Tedeschi considered the vehicles on the Property to fit into the "equipment" category of the Ordinance, even though they could also be considered "commercial vehicles" which were not then prohibited by the Ordinance.[4] Id. at 17.

Appellant testified before the Zoning Board that Mister Trees, Inc. is a tree service that primarily involves going to customers' houses, cutting down trees, chopping the wood and hauling it away. Id. at 19. He stated that the business had a separate site off Exeter Road in Exeter, Rhode Island, to where the wood was typically hauled. Id. at 21. Appellant stated that he conducted some business at his home, using a desk and a fax machine that took up 10% or less of the entire square footage of the residence. See id. at 24-25. He testified that all business calls went directly to his cell phone. Id. at 24.

[4] At the time of the NOV, the Zoning Ordinance permitted the storage of commercial vehicles with three axles or fewer in a residential zone. See Sec. 21-321(a).

When asked what he used the Property for, in terms of equipment, Appellant testified that he stored approximately seven trucks on the Property that are used in his tree business, as well as a wood splitter and some trailers. Id. at 26-27. He stated that employees came to the Property, but generally only in the morning to meet at the house and then take the trucks to that day's job site. Id. at 27. Appellant further testified that his employees did not work on the Property except to sometimes help his father with chores or to split wood "once in a while." Id. at 27-28. Appellant acknowledged that some dust was created, but that on average only two trucks left and returned to the Property each day. Id. at 29. He also testified that the wood splitter generated approximately the same amount of noise as a handheld lawnmower, and that any wood splitting that did take place on the Property happened only during regular business hours, roughly from 8 A.M. to 4 P.M. Id. at 29-30.

Appellant further stated that wood was brought back to the Property if it was improperly cut at a job site or the Exeter site and if it required correcting. Id. at 32-33. In response to questions from the Zoning Board, he admitted that it was typical for there to be three or four piles of wood at a time on the Property needing to be corrected. Id. at 34. The wood contained in these piles would be cut on the Property, loaded on a truck within a day or two, and then returned to the Exeter site. Id.

The Zoning Board next heard testimony from Keith Warren Mercado Lazarski (Lazarski), who resided at 673 Tower Hill Road with his parents, wife and children, directly adjacent to the Property. He expressed concern about the business operations then taking place on the Property, which operations had expanded since 2008. Lazarski testified that there were closer to 11 to 13 vehicles being stored on the Property, in addition to the wood chippers, log splitters and other devices used in the business that remained on the Property. Id. at 41. Further,

he stated that there were two businesses operating from the Property, Mister Tree Truck Service and Ray's Wood. Id.

Lazarski explained that his mother suffers from emphysema and Chronic Obstructive Pulmonary Disease (COPD), which precludes any outdoor activity during periods of poor air quality. Id. at 41-42. He testified that Appellant's activities on the Property produced gasoline and diesel fumes both from the vehicles moving on and off the Property and by people working on the vehicles at the Property. Id. The fumes often prevented his mother from being able to go outside, and consequently prevented his children from being able to play outside when his mother was caring for them. Id. Lazarski testified that the business created "high-flow traffic" in the area, because the trucks went in and out of the Property "conservatively two to three times a day," making him concerned for his children's safety. Id. at 46.

Elizabeth Shackelford Smith (Mrs. Smith), who lived two parcels to the north of the Property, testified that activity is conducted on the Property by two businesses, including Ray's Firewood, as Lazarski also explained. See id. at 49. She stated that "[i]t's a daily business putting firewood in [the trucks] that they're delivering" just after 7:00 when she drives to work. Id. at 49-50. Furthermore, Mrs. Smith stated that the activity was "very, very loud," and that even from two houses down, the loading and splitting of wood was loud enough to wake her up on days she did not go to work. Id. at 50.

Mrs. Smith's husband, Frederick Smith (Mr. Smith), testified that the trucks were "heavy equipment trucks" that created a lot of noise, including loud beeping noises when backing in and out. Id. at 51. He stated, "[i]t's enough in the morning and the afternoon and the evening to be very disruptive." Id. He also testified that loud, disruptive noise from chainsaws and wood splitters could be heard from the Property nearly every day, including Sundays. Id. at 52.

John Capilli (Capilli) lived across the street from the Property and, despite there being a house and large hedges between his house and the Property, he still heard a lot of noise from trucks, chainsaws and other activities. Id. at 54-55.

Don Thela (Thela), the adjacent property owner to the north, testified that his property was approximately six feet higher in elevation than Appellant's, and that he could see the trucks and hear the noise from his property. Id. at 56.

Following the close of testimony, the Zoning Board voted unanimously to affirm the issuance of the NOV. Its written Decision was issued on September 10, 2013, and recorded on October 23, 2013. (Appellee's Ex. C.) In its findings of fact, the Zoning Board found that "[t]he tree service business use being carried out on site does not satisfy the required conditions of section 21-320 (b) (1-8) of the North Kingstown Zoning Ordinance to allow for the existing business use to be classified as a Home Occupation." Id. at 4, ¶ 5. More specifically, in relation to Section 21-320, the Board found as follows:

> "(a) The existing business use is not incidental or subordinate to its use for residential purposes as required in condition (b) (1) of Section 21-320.
> "(b) There has been a change in the outside appearance of the premises with visible and audible evidence presented. This violates condition (b) (3) of Section 21-320.
> "(c) Traffic has been generated as a result of the tree service business in greater volumes than would be anticipated in a residential neighborhood. The use therefore violates condition (b) (4) of Section 21-320.
> "(d) Nuisance, including noise, has been created to a greater extent than would be expected in the neighborhood under normal circumstances wherein no occupation exists. This violates (b) (5) of Section 21-320.
> "(e) There is outdoor storage of machines and wood piles on site. This violates condition (b) (6) of Section 21-320.
> "(f) While the permitted home occupations list in [sic] not necessarily limited to the list as set out in subsection (b) (8) is was [sic] decided by the Zoning Board of Review that apart from the

> use violating the above sections it is not of a similar nature or use to any of the listed occupations." Id. at 4-5, ¶ 9.

Appellant timely appealed the Zoning Board's Decision to this Court for review.

## II

## Standard of Review

This Court's review of a zoning board decision is governed by § 45-24-69(d), which provides as follows:

> "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." Sec. 45-24-69(d).

"[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 Town of New Shoreham, 770 A.2d 396, 401 (R.I. 2001) This Court "must examine the entire record to determine whether 'substantial' evidence exists to support the [zoning] board's findings." Salve Regina Coll. v. Zoning Bd. of Review of City of Newport, 594 A.2d 878, 880 (R.I. 1991) (quoting DeStefano v. Zoning Bd. of Review of City of Warwick, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979)). The term "substantial evidence" is

defined 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.'" Lischio v. Zoning Bd. of Review of N. Kingstown, 818 A.2d 685, 690 n.5 (R.I. 2003) (quoting Caswell v. George Sherman Sand & Gravel Co., Inc., 424 A.2d 646, 647 (R.I. 1981)).

"It is well settled that 'the rules of statutory construction apply equally to the construction of an ordinance.'" Pawtucket Transfer Operations, LLC v. City of Pawtucket, 944 A.2d 855, 859 (R.I. 2008) (quoting Mongony v. Bevilacqua, 432 A.2d 661, 663 (R.I. 1981) (citing Town of Warren v. Frost, 111 R.I. 217, 222, 301 A.2d 572, 575 (1973))). The Superior Court "give[s] clear and unambiguous language in an ordinance its plain and ordinary meaning." Id. (quoting Park v. Rizzo Ford, Inc., 893 A.2d 216, 221 (R.I. 2006)). "However, when interpreting the language of an ordinance that is unclear and ambiguous, [this Court] must 'establish[ ] and effectuate [ ] the legislative intent behind the enactment.'" Id. (quoting State v. Fritz, 801 A.2d 679, 682 (R.I. 2002)). "Finally, when the provisions of a statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency, or board, charged with its enforcement is entitled to weight and deference, as long as that construction is not clearly erroneous or unauthorized." Id. at 859-60 (citing Flather v. Norberg, 119 R.I. 276, 283 n.3, 377 A.2d 225, 229 n.3 (1977)).

## III

## Analysis

Appellant argues that this Court should reverse the Zoning Board's Decision because there is insufficient evidence in the record to support the violations and because the Zoning Ordinance is unconstitutionally vague. Appellant contends that each of the items cited as "equipment" is a common residential object that is not illegal under the Zoning Ordinance and

that the Building Official's interpretation of the Zoning Ordinance as applied to the Property was clearly erroneous. Appellee responds that there was substantial evidence in the record to support the Zoning Board's Decision, including the abutting landowners' testimony that Appellant was storing equipment and materials related to his business on the Property. Appellee further argues that such witness testimony also demonstrated that the tree cutting service conducted on the Property was not a Customary Home Occupation.

**A**

**Material Equipment Storage**

"Material equipment storage" is prohibited in a VR zone, see Z. Ord., § 21, Art. III, but it is not defined in the Zoning Ordinance. "Material equipment storage" could prohibit the storage of materials and storage of equipment, or it could prohibit the storage of equipment that is material to an operation of some sort. In the absence of a definition, this Court cannot conclude that "material equipment storage" is clear or unambiguous. Thus, this Court must proceed to determine the Town's intent in enacting this ambiguous provision within the Land Use Tables. Pawtucket Transfer Operations, 944 A.2d at 860; see also Labor Ready Northeast, Inc. v. McConaghy, 849 A.2d 340, 344 (R.I. 2004).

In determining the intent of the municipality, this Court must consider the Ordinance as a whole. The Ordinance defines the term "storage" as follows:

> "any items, materials or inventory that is/are unassembled and not ready or intended for immediate sale and not readily accessible to customers. Outdoor storage shall only occur on the side or rear of the main structure but shall not be located within any building set-back. Outside storage does not include areas in a permanent, approved structure attached to the main structure." Sec. 21-22.

The Ordinance also defines the term "Outdoor storage/display, large-scale" as "the keeping of goods associated with a non-residential use outside of the primary enclosed structure. Said storage or display is generally deemed integral to the operation of the business. Large scale storage or display shall occur along the side or rear of the structure." Id. Each of the two definitions associated with the term "storage" identify the objects as being associated with a business use, or at least a "non-residential use."

Next, "material equipment storage and laydown yard"[5] is listed in the category "Professional and Business Services" in the Land Use Tables. (Appellee's Ex. E.) Thus, like all the other listed under "Professional and Business Services" in the Land Use Tables, "material equipment storage" was intended to apply to items that are used in association with a business. Finally, the definition of "equipment" as found in Black's Law Dictionary is "[t]he articles or implements used for a specific purpose or activity (esp. a business operation)." Black's Law Dictionary (10th ed. 2014).

Based upon the Zoning Ordinance definitions of storage and outdoor storage, the category within the Land Use Tables within which "material equipment storage" is listed, and the common definition of equipment, this Court concludes that material equipment storage includes all materials and equipment used for business purposes that are not ready or intended for immediate sale and not readily accessible to customers. The intent of the Town in prohibiting "material equipment storage" in a VR zone was to restrict certain items used for business purposes from being stored, and not to prohibit the storage of items used for residential purposes.

[5] While Appellant spent some time during the hearing discussing the definition of a "laydown yard," it is unnecessary for this Court to address that aspect of the provision as neither the decision of the Building Official nor the Zoning Board was based on that language.

The evidence of record clearly demonstrates that Tedeschi as well as the Zoning Board relied upon the presence of both equipment and materials stored on the Property for business purposes as the basis for issuing and upholding the NOV. Tedeschi stated that "[i]t's still my belief that it's [sic] being used as a wood-cutting business with storage on the property of equipment and the actual materials, the wood itself, and the equipment is still there." Tr. 10-11, Aug. 27, 2013. Furthermore, each of the abutting landowners who testified at the hearing testified that wood cutting was being performed at the Property and that after being cut, the woodpiles were loaded onto commercial trucks. Appellant himself acknowledged that typically three to four piles of wood would be on the Property at a time needing to be recut, the piles would remain on site for a day or two, and they would ultimately be loaded onto a truck to be returned to a business site in Exeter. Additionally, the equipment used for wood cutting was present on the Property. In view of the substantial evidence on the record, the Zoning Board did not err in upholding the violation based upon the outdoor storage of wood cutting equipment and wood piles on site as being prohibited conduct under the Land Use Tables in a VR zone.[6]

Finally, this Court notes that the Zoning Board Decision does not rely upon common household items, such as rakes or shovels, or commercial vehicles on the Property as a basis for upholding the NOV. Accordingly, Appellant's arguments that the Ordinance is so vague as to prohibit common household items from being stored on one's property and that Appellant's commercial vehicles were permitted under the then-existing Ordinance are unavailing. Indeed, this Court has already concluded that the intent of the Zoning Ordinance in prohibiting "material

[6] To the extent that the focus of the Zoning Board's Decision, including its Findings of Fact, is on the various conditions considered in determining whether the Property was being used as a Customary Home Occupation, such findings also support the Zoning Board's affirmation of the NOV based upon the material equipment storage violation. Notably, it is the same outdoor storage of wood cutting machines and wood piles referenced as a violation of Sec. 21-320(b)(6) that constitutes the material equipment storage violation as found in the Land Use Tables.

equipment storage" was to restrict certain items used for business purposes from being stored, and not to prohibit the storage of items used for residential purposes.

For all these reasons, this Court finds that the Zoning Board's Decision upholding the NOV for having "material equipment storage" in a prohibited zone was not clearly erroneous, was not based on an unconstitutionally vague provision, and was supported by substantial evidence on the record. The Zoning Board's Decision on this issue is affirmed.

**B**

**Customary Home Occupation**

Unlike "material equipment storage," "home occupation" is specifically defined in the Revised Ordinance as "any activity customarily carried out for gain by a resident, conducted as an accessory use in the resident's dwelling unit." Sec. 21-22. Section 21-320(a) explains the purpose of such uses in residential zones is as follows:

> "to permit residents a broad choice in the use of such residents' homes as a place of livelihood and the production of supplemental personal and family income, to maintain and preserve the character of residential neighborhoods by protecting them from adverse impacts of activities associated with commercial uses, and to establish criteria and development standards for home occupations conducted in dwelling units in residential zones."

The Ordinance identifies eight conditions for home occupation. The Zoning Board's Findings of Fact cited violations of Sec. 21-320(b)(1), (3), (4), (5), (6) and (8). Each violation will be addressed *seriatim*.

**1**

**Incidental and Subordinate to Residential Use**

The first condition for permitted home occupation requires that the business use of a dwelling unit or accessory structure by the resident "is incidental and subordinate to its use for

residential purposes and occupies 25 percent or less of the floor area within the dwelling unit on the premises." Sec. 21-320(b)(1). Appellant contends that the Zoning Board was clearly erroneous because he testified that the only area of the dwelling unit that was used for business purposes was the desk and fax machine which occupied less than 10% of the floor area. While the Zoning Board does not specifically state the facts upon which it relied to decide that the business use was not incidental or subordinate, it is clear from the witness testimony and from the hearing transcript that the Zoning Board summarized (Decision, at 2-3) that the vast majority of the business activity on the property was occurring outside of the dwelling unit or any accessory structure. However, the Zoning Ordinance does not address a limitation on the footprint of a business outside a dwelling unit or an accessory structure, and there was no other basis in the Decision or in the hearing before the Zoning Board that offers any insight into the proportion of business being conducted in relation to the residential portion of the Property. Accordingly, this Court concludes that the Zoning Board's decision on this particular violation is not supported by the reliable, probative and substantial evidence on the record.

**2**

**Change in Outside Appearance, Visible and Audible Evidence**

Section 21-320(b)(3) conditions home occupation on there being "no change in the outside appearance of the building or premises or any visible or audible evidence detectable from the property line of the conduct of such business." Appellant argues that the Zoning Board's Decision was clearly erroneous because Tedeschi testified that there was no change in the outside appearance of the building or premises, stating that "there's an 8-foot fence. Unless that gate is left open, I really can't see much." Tr. 13, Aug. 23, 2013. Contrary to Appellant's suggestion, some witnesses testified that they could see the bucket truck over the fence,

depending on where it was parked, and one neighbor, Thela, testified that his property was approximately six feet higher than Appellant's and that he could see the trucks from his property. Id. at 56. There are also observed wood piles and wood cutting equipment that contribute to the changed outside appearance, which woodpiles and equipment were not obscured by fencing, to which Tedeschi and others testified. See id. at 8, 41.

There was substantial evidence on the record of the increase in "audible evidence detectable from the property line of the conduct of such business." See Sec. 21-320(b)(3) (emphasis added). Numerous abutting neighbors, including Mr. Smith and Capilli, testified to hearing chain saws and wood cutting during the day, id. at 51-52, 54-55; Mrs. Smith testified to noises waking her up when wood is thrown on trucks or being sawed, id. at 50; Thela testified that noise is generated when trucks are being worked on on the Property. Id. at 56. Mrs. Smith testified that the noises were "very very loud" and could be heard from two houses away, id. at 50, and Thela testified that he could hear noises from across the street despite a house and big hedges in between. Id. at 55. A summary of the same testimony is included in the Zoning Board's Decision. Decision, at 2-3.

There was substantial evidence on the record to support the Board's decision to uphold the NOV, as it pertained to Sec. 21-320(b)(3), and the Zoning Board was not clearly erroneous.

**3**

**Traffic**

Like the changed outside appearance, sights and sounds discussed supra, there was substantial and compelling evidence in the record to support the Zoning Board's finding of violation of Sec. 21-320(b)(4), which states that "[t]raffic, including traffic by commercial delivery vehicles, shall not be generated in greater volumes than would normally be anticipated

in a residential neighborhood." Appellant takes issue with the Zoning Board's Decision in this regard because he testified that the trucks only left and returned in the morning and evening, that the neighbors only testified that the trucks may return one additional time during the day, and that the location of the Property on Tower Hill Road demonstrated that the neighborhood already experienced heavy traffic.

Appellant's argument misstates the testimony of the neighbor-witnesses. Several of the neighbors testified that there were many trucks on the property generating a great deal of noise and increased traffic. Lazarski testified that there were close to eleven to thirteen trucks on the Property and that the trucks went in and out of the property "conservatively two to three times a day." Id. at 41, 46. He also testified that he shared a driveway with Appellant, allowing easy access by his young children to Appellant's property, and that, because of the "high-flow traffic" created by Appellant's activities, he was concerned for their safety. Id. at 46. Mr. Smith testified that the "heavy equipment trucks" produced loud beeping noises when backing in and out. Id. at 51. According to Mr. Smith, the heavy equipment trucks were on the Property in the morning, afternoon and evening. Id.

This Court finds there to be substantial evidence on the record to support the Zoning Board's Decision to uphold the violation of subsection (b)(4) of the Ordinance. Notwithstanding Appellant's right to store commercial vehicles with three axles or less on the Property under the then-existing Ordinance, the increased traffic generated by the business or businesses being operated on the Property clearly violates this home occupation condition. The Zoning Board's finding of violation was not clearly erroneous.

**4**

**Nuisance**

Sec. 21-320(b)(5) states that "[n]o hazard or nuisance, including noise, dust, odors, heat, glare, noxious fumes or vibrations, shall be created to any greater or more frequent extent than would normally be expected." Once again, the Zoning Board Decision summary of the testimony of each of the neighbor-witnesses reveals that at least four of the five described the amount of noise generated by Appellant's use of the Property. See supra, Sec. III(B)(2). Additionally, Lazarski testified that the gasoline and diesel fumes prevent his mother from going outside. Tr. 41-42, Aug. 27, 2013; see also Decision, at 2. Thus, in addition to the substantial evidence supporting a violation under Sec. 21-320(b)(3) for the same noise that constitutes a nuisance under Sec. 21-320(b)(5), the Board's summary of testimony and the testimony of Lazarski in particular provides substantial evidence for this Court to uphold the Zoning Board's finding that there was a violation of Sec. 21-320(b)(5) for creating a nuisance of noxious fumes.

**5**

**Outdoor Storage**

In order to be a permissible home occupation, it is required that there be "no display of goods, outside storage, or retail sales on the premises." Sec. 21-320(b)(6). As discussed at length, supra, in connection with the violation for having material equipment storage in a VR zone, the evidence before the Zoning Board and its Findings of Fact support the conclusion that the machines and woodpiles on the Property violate Sec. 21-320(b)(6) as well.

**6**

**List of Permitted Home Occupations**

Finally, the Zoning Ordinance sets forth a non-exclusive list of permitted home occupations provided there are no violations of Sec. 21-320((b)(1) through (b)(7). That list includes: "dressmaking, sewing and tailoring; telephone solicitation work; photography studio; tutoring; home crafts; studios for artists or craftworkers; single-operator hairdresser; offices for doctors, dentists, attorneys, real estate agents, insurance agents, accountants, stockbrokers, engineers, architects, landscape architects, musicians, writers, data programming, and sales representatives; and family day care." Sec. 21-320(b)(8). Wood cutting and/or tree service is not included in this nonexclusive list and, as set forth above, the numerous violations of Sec. 21-320(b) would otherwise preclude Appellant's business or businesses from operating on the Property as beyond the permissible home occupation.

**IV**

**Conclusion**

After reviewing the entire record, this Court finds the Decision of the Town of North Kingstown's Zoning Board of Review, dated September 10, 2013, to be supported by substantial evidence on the record and not otherwise affected by error. Appellant failed to demonstrate that the business use upon the Property located at 655 Tower Hill Road was not in violation of the Article III prohibition of "material equipment storage" in a village residential zone or that the business use in a residential zone conformed to a Customary Home Occupation, pursuant to Section 21-320 of the North Kingstown Zoning Ordinance. Accordingly, Appellant's appeal is denied and the Decision is affirmed.

Appellee's counsel shall submit a judgment consistent with this Decision.

**RHODE ISLAND SUPERIOR COURT**

***Decision Addendum Sheet***

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| **TITLE OF CASE:** | Scott R. Labossiere v. The Town of North Kingstown Through Its Zoning Board of Review, et al. |
| **CASE NO:** | WC 2013-0593 |
| **COURT:** | Washington County Superior Court |
| **DATE DECISION FILED:** | May 2, 2016 |
| **JUSTICE/MAGISTRATE:** | K. Rodgers, J. |
| **ATTORNEYS:** | |
| For Plaintiff: | James M. Callaghan, Esq. |
| For Defendant: | James H. Reilly, Esq. |