

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

(FILED: May 26, 2015)

COLIN M. O'SULLIVAN, RICKEY L. :  
 THOMPSON, KRISTEN MAROTTO, BARBARA :  
 HART, FRANK FIORI, ROBIN WILSON, JOHN :  
 METRO, PETER TRASK, JULIE CASEMERE, :  
 TODD SABITONI, THERESA FLORIO, :  
 JEFFEREY COOK, CARL SCHAEFER, :  
 BRENDA RICCI, LYNDA AVANZATO, :  
 PATRICK MCHUGH, JEANNE TIRRELL, :  
 ROBERT WALASON, RALPH CROCKFORD, :  
 EMMA MCGEE, TIM MCGEE, PATRICK :  
 HASKELL, ROBERT FAMIGLIETTI, MEGHAN :  
 BULLARD, RAYMOND DESANTIS, FRANK :  
 CASTELA, GREGORY HALL, SOUTHLAND :  
 COMMUNICATIONS, INC. THE TOWN OF :  
 EXETER, by and through its TOWN COUNCIL, :  
 ARLENE B. HICKS, WILLIAM P. MONAHAN, :  
 RAYMOND A. MORRISSEY, JR., ROBERT :  
 JOHNSON, CALVIN A. ELLIS, in their official :  
 capacity :

Plaintiffs

v.

C.A. No.: WC-2014-0438

TOWN OF NORTH KINGSTOWN and the :  
 NORTH KINGSTOWN TOWN COUNCIL, :  
 ELIZABETH S. DOLAN, KEVIN V. MALONEY. :  
 KERRY P. MCKAY., CAROL H. HUESTON, :  
 RICHARD A. WELCH in their capacity as :  
 members of the NORTH KINGSTOWN TOWN :  
 COUNCIL, and M.L. HAWK REALTY LLC, :  
 Defendants :

Defendants

DECISION

THUNBERG, J. This matter is before the Court for decision upon the  
 Defendants' Joint Motion for Summary Judgment under Rule 56 of the

SUPERIOR COURT  
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Rhode Island Rules of Civil Procedure, pursuant to an appeal by Plaintiffs from a decision of the Town of North Kingstown's Town Council (Town Council) on June 23, 2014 to amend the Town's Comprehensive Plan and adopt Ordinance Nos. 14-15 and 14-16.

This Court has jurisdiction over this matter pursuant to G.L. 1956 § 45-24-71. For the reasons that follow, this Court grants Defendants' Motion for Summary Judgment to affirm the validity of Ordinance Nos. 14-15 and 14-16 adopted by the Town Council.

## I

### Findings of Fact

This controversy originated in 2012 when the Town of North Kingstown Planning Commission (the Planning Commission) and the Town Council began discussing and planning how the Town of North Kingstown (the Town) could implement its "strategic vision" for the development of the intersection of Route 102 and Route 2. Some residents of the Town had expressed concern about land use development with the potential of exasperating sprawl-type development, burdensome to land and water resources. The Town enlisted experts and conducted hearings to design a development scheme in conformance with the State of Rhode Island's development goals and to enact a comprehensive plan in order for the Town

to attain those goals. The Town Council ultimately reviewed a proposal to adopt amendments to the Comprehensive Plan and North Kingstown Code of Ordinances (the Code) which would allow limited, compact mixed residential and commercial "village" use in the area of the Route 102/Route 2 intersection.

A public hearing was held on November 29, 2012, wherein the Planning Commission recommended that the Town Council adopt the comprehensive plan and the ordinance amendments. The Council subsequently voted to adopt both recommendations. Following those changes, many of the Plaintiffs in the instant case challenged the Town Council's decision in Colin M. O'Sullivan, et al. v. Town of North Kingstown, et al., WC-2012-0789. In that suit, because both the plaintiffs and the defendants conceded that certain errors had been made in noticing the hearings to the public, a consent judgment was entered invalidating the 2012 Comprehensive Plan and Code changes.

The Planning Commission and Town Council thereafter resumed planning for the Route 102/Route 2 intersection and convened additional public hearings. In April of 2014, the Town introduced Ordinance Nos. 14-15<sup>1</sup> and 14-16,<sup>2</sup> which proposed to change fourteen parcels of land (Plat 110,

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<sup>1</sup> Ordinance No. 14-15 proposed the following:

Lots 2-11; Plat 126, Lot 5; and Plat 102, Lots 8-7 and 25) to Compact Village District (CVD) zoning and changed the public water service map, allowing certain parcels to continue using public water and removing other parcels from the service. The hearing in front of the Planning Commission was held on May 20, 2014, at which time the Planning Commission voted to

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“Section 1. Article XIV. Zoning District Descriptions. That Section 21-362 of the Code of Ordinances . . . is hereby amended to read the following: See attached zoning map amendments for Assessor’s Plat 102, Lots 6, 7, 8, and 25 changing from General Business (GB) to Compact Village District (CVD) and for Assessor’s Plat 110, Lots 2, 3, 4, 5, 6, 7, 9, 10, 11, and 12 and Assessor’s Plat 126, Lot 5 changing from General Business Use Limited (GBUL), Rural Residential (RR), Village Residential (VR), and Neighborhood Residential (NR) to Compact Village District (CVD).

“Section 2. Article XIV. Zoning District Descriptions. That Section 21-363 of the Code of Ordinances . . . is hereby amended to read of following: See attached zoning map amendments for Assessor’s Plat 102, Lots 6, 7, 8, and 25 changing from General Business (GB) to Compact Village District (CVD) and for Assessor’s Plat 110, Lots 2, 3, 4, 5, 6, 7, 9, 10, 11, and 12 and Assessor’s Plat 126, Lot 5 changing from General Business Use Limited (GBUL), Rural Residential (RR), Village Residential (VR), and Neighborhood Residential (NR) to Compact Village District (CVD).” (Def.’ Mem. in Supp. of Mot. for Summ. J., Ex. L, 1.)

<sup>2</sup> Ordinance No. 14-16, titled An Ordinance in Amendment of Chapter 20 of the Code of Ordinances, Town of North Kingstown, Entitled, “Utilities,” proposed the following:

“Section 1. The Section 20-22(d) of the Code of Ordinances, Town of North Kingstown, entitled, “Water distribution mains is hereby amended as follows:

“(NOTE: The intent of this section is to manage available water supply, to support the comprehensive planning goal of channeling growth into appropriate areas with existing infrastructure and to protect groundwater and other community natural resources.)

“(d) Water main installation and extensions shall only be allowed in the water service areas included on the Water Service Area Map as indicated in the North Kingstown Comprehensive Plan (\*Editors note\* see attached map.) [] The extension of water mains in all other areas is prohibited. [Proposal included text of existing language with strikeout line throughout.]” (Def.’ Mem. in Supp. of Mot. for Summ. J., Ex. L, 2.)

recommend to the Town Council passage of the Comprehensive Plan amendment and Ordinance Nos. 14-15 and 14-16.

The Town Council scheduled a hearing for June 23, 2014 and published notice in the North Kingstown Standard Times on June 5, June 12, and June 19, 2014. The advertisement contained a notice of both the Comprehensive Plan amendment and zoning and water use map amendments. The notice described the matters to be addressed at the hearing, stating that it was “for the purpose of considering amendments to the North Kingstown Comprehensive Plan text, Future Land Use Map, and Water Service Area map.” (Defs.’ Mem. in Supp. of Mot. for Summ. J., Ex. F, 1.) The notice described the changes to be made to the North Kingstown Comprehensive Plan text and land use classifications (included a table listing the planned designation changes to particular parcels) and provided a map showing the parcels intended to be changed. Id. at 1-7. The advertisement described when and where the hearing was to take place, when and where the full proposals could be viewed ahead of the meeting, and stated that proposed amendments could be changed prior to the close of the public hearing without additional advertising. Id.

The notice additionally described the Water Service Area Map Amendment, Ordinance No. 14-16, as “chang[ing] the North Kingstown

Water Service Area map to include areas in town that are currently targeted for future growth and development such as Hamilton, Allenton, Lafayette, Wickford, Post Road, Wickford Junction, and the western intersection of Route 2 and 102 in the vicinity of the Corner Tavern and Rolling Greens.”

Id. The notice listed several other town areas and stated that “[a]ll other areas in town not listed above will be removed from the Water Service Area Map.” Id.

Notice of the zoning ordinance and zoning map amendments, Ordinance No. 14-15, were published on the same days and stated that “[t]he proposed amendments are requesting to amend the zoning ordinance map so as to change the land use classifications of the below described properties to Compact Village Development (CVD).” A table and map of proposed parcels to be changed were included. (Defs.’ Mem. in Supp. of Mot. for Summ. J., Ex. G, 1-5.) The advertisement again stated when and where the hearing was to take place, when and where the full proposals could be viewed ahead of the meeting and noted that the proposed amendments could be changed prior to the close of the public hearing without additional advertising. Id.

At the hearing on June 23, 2014, many members of the community appeared to give testimony to the Town Council. At least twenty-six people,

a majority of which were members of the public, appeared before the Town Council to give a presentation or to make a statement about the proposed amendments. Representatives of the Plaintiffs in this matter presented testimony to the Town Council, including that of Plaintiffs' expert, Ashley V. Hahn, Plaintiffs' expert (then the planning director of the City of West Warwick). After hearing from the public, the Town Council deliberated in open session and ultimately voted three to two in favor of adopting the Comprehensive Plan amendment and Ordinance Nos. 14-15 and 14-16.

Exactly one month later, on July 23, 2014, Plaintiffs filed a Complaint seeking to overturn the Comprehensive Plan amendments and the 2014 Zoning Ordinance and Map Changes. The Plaintiffs maintain that the hearing notice was defective and they additionally challenge the validity of both the Comprehensive Plan amendments and the ordinance and map changes. The Defendants have filed a motion for summary judgment to declare the amendments valid. The Plaintiffs have filed a cross-summary judgment motion and, by order of this Court, the parties were required to submit memoranda addressing Plaintiffs' standing to bring suit on a challenge to a comprehensive plan amendment and the issue of whether Defendants gave proper notice. Since that time, Plaintiffs have conceded the

issue of standing and the case is now before this Court for decision solely on the issue of notice.

## II

### Standard of Review

This Court's review of a zoning board decision is governed by § 45-24-71, which provides as follows:

“(a) An appeal of an enactment of or an amendment to a zoning ordinance may be taken to the superior court for the county in which the municipality is situated by filing a complaint within thirty (30) days after the enactment or amendment has become effective. The appeal may be taken by an aggrieved party or by any legal resident or landowner of the municipality or by any group of residents or landowners whether or not incorporated, of the municipality. The appeal shall not stay the enforcement of the zoning ordinance, as enacted or amended, but the court may, in its discretion, grant a stay on appropriate terms, which may include the filing of a bond, and make other orders that it deems necessary for an equitable disposition of the appeal.” Sec. 45-24-71(a).

This Court reviews determinations of law de novo; determinations of law “are not binding upon [the Court] and may be freely reviewed to determine the relevant law and its applicability to the facts presented in the record.” Dep’t of Env’tl. Mgmt. v. Labor Relations Bd., 799 A.2d 274, 277 (R.I. 2002) (citing Carmody v. RI Conflict of Interest Comm’n, 509 A.2d

453, 458 (R.I. 1986)). A Superior Court “reviews issues of statutory construction de novo; therefore, a [] board’s determination of law is not binding on this Court, and [it] may review such determinations as to ‘what the law is and its applicability to the facts.’” Cohen v. Duncan, 970 A.2d 550, 561 (R.I. 2009) (quoting Gott v. Norberg, 417 A.2d 1352, 1361 (R.I. 1980) and Narragansett Wire Co. v. Norberg, 118 R.I. 596, 607, 376 A.2d 1, 6 (1977)).

Additionally, summary judgment must be granted in cases where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Konar v. PFL Life Ins. Co., 840 A.2d 1115, 1117 (R.I. 2004); Avco Corp. v. Aetna Cas. & Sur. Co., 679 A.2d 323, 327 (R.I. 1996). Summary judgment is appropriate when, viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party, there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. Tavares v. Barbour, 790 A.2d 1110, 1112 (R.I. 2002) (quoting Delta Airlines, Inc. v. Neary, 785 A.2d 1123, 1126 (R.I. 2001)).

In Rhode Island a “moving party bears the burden of proving that no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.” Olshansky v. Rehrig Int’l, 872 A.2d 282, 286

(R.I. 2005). “This burden is satisfied by ‘submitting evidentiary materials, such as interrogatory answers, deposition testimony, admissions, or other specific documents, and/or pointing to the absence of such items in the evidence adduced by the parties.’” Id. (quoting Heflin v. Koszela, 744 A.2d 25, 29 (R.I. 2001)). When the moving party has satisfied this initial burden, “the nonmoving party then must identify any evidentiary materials already before the court or present its own evidence demonstrating that factual questions remain.” Id. To satisfy its burden, the nonmoving party may not rely upon mere allegations, conclusions, improbable inference and/or unsupported speculation. Grande v. Almaca’s Inc., 623 A.2d 971, 972 (R.I. 1993). If the opposing party cannot establish the existence of a genuine issue of material fact, summary judgment must be granted. Id. Or, if the evidence adduced in opposition to summary judgment is merely colorable or not significantly probative, then summary judgment should be granted to the moving party. Id.

### III

#### Analysis

Plaintiffs argue that notice of the hearing was defective on two grounds. Plaintiffs first maintain that the water service zone changes were “changes to a zoning ordinance” and, as such, valid notice required that a

map of the proposed changes be advertised in the same manner as the zoning ordinance changes, which map was not published until one week after the hearing. Plaintiffs secondly assert that Southland Communications (Southland) was entitled to receive personal notice of the changes because it owned a development interest in property in the vicinity of the said zone changes, but did not receive personal notice of the changes.

The Rhode Island Zoning Enabling Act of 1991 (the Act), codified at §§ 45-24-27 et seq., provides the requirements for establishing, repealing and amending zoning ordinances by a town or municipality. Section 45-24-53(a) contains the requirements that a town must follow in order for the adoption, repeal or amendment of any zoning ordinance to be valid. Prior to a hearing on such a matter, the statute requires the following actions:

“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.” Sec. 45-24-53(a).

The parties do not dispute that the proposed amendments were noticed in accordance with the above requirements. Plaintiffs assert that the content of

the notices did not comport with the Act's requirements and, additionally, that the Town failed to provide personal service to each entitled party.

A

**Water Service Zone Change**

Plaintiffs claim that Ordinance No. 14-16 is an amendment to a zoning district map because it "made a drastic zoning change" by removing in excess of eighty percent of the Town from municipal water service. Plaintiffs contend that the Ordinance is an amendment to a zoning district because the provision of water to some parcels and not others affects "the nature and extent of uses of land." See § 45-24-31(71). Plaintiffs additionally assert that, due to the Act's definition of an overlay district, amendments to the water use district result in changes to zoning districts, and, therefore, an amendment to a water use district is, in essence, an amendment to a zoning ordinance. Defendants respond that § 45-24-53(c) applies only to changes to "a zoning district map," and that Ordinance 14-16 clearly states that it is an amendment of Chapter 20 of North Kingstown's Code of Ordinances, which regulates utilities, an entirely separate chapter from that which regulates zoning, i.e., Chapter 21. Furthermore, Defendants assert that the fact that an amendment to the water service area may affect

zoning areas within an overlay district does not convert the water service district into a zoning district itself.

The Act specifies substantive requirements for the content of the notice, including the following requirement:

“Where a proposed amendment to an existing ordinance includes a specific change in a zoning district map, but does not affect districts generally, public notice shall be given as required by subsection (a) of this section, with the additional requirements that: (1) Notice shall include a map showing the existing and proposed boundaries, zoning district boundaries, and existing streets and roads and their names, and city and town boundaries where appropriate...” Sec. 45-24-53(c).

The Act defines a zoning ordinance as “[a]n ordinance enacted by the legislative body of the city or town pursuant to this chapter . . . which establish regulations and standards relating to the nature and extent of uses of land and structures . . . which includes a zoning map, and which complies with the provisions of this chapter.” Sec. 45-24-31(71). An overlay district is defined as “[a] district established in a zoning ordinance that is superimposed on one or more districts or parts of districts.” Sec. 45-24-31(52). “Use” is defined by the Act as “[t]he purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained.” Sec. 45-24-31(64).

This Court is not persuaded that water service districts are zoning districts as defined by the Act. The water services are regulated under a separate chapter of the Town of North Kingstown Code of Ordinances from zoning ordinances, those being chapters 20 and 21, respectively. Additionally, the Act's definition of zoning ordinances, as those that "establish regulations and standards relating to the nature and extent of uses of land and structures," does not apply to regulations for water use, because water use does not define how land may be used. The Act defines "use," as "[t]he purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained." Sec. 45-24-31(64). While the availability of water to a particular property may affect how an owner chooses to develop that property, the provision of water, or lack thereof, does not itself provide rules or regulations for which purposes or activities the land may legally be used.

Plaintiffs' argument that changes to a water service area automatically change the uses allowed in an overlay district and, therefore, convert the amendment into an amendment of a zoning district is also without merit. Ordinance 14-16 does not in any way purport to regulate the uses of the lots identified as receiving or losing municipal water services. The Ordinance's stated purpose is "to manage available water supply, to support the

comprehensive planning goal of channeling growth into appropriate areas with existing infrastructure and to protect groundwater and other community natural resources.” (Defs.’ Ex. L, 2.) While the purpose acknowledges that water use can affect growth and development, it does not in and of itself regulate land use.

Our Supreme Court has previously interpreted whether certain ordinances addressing water use were “zoning” or “municipal” ordinances. In Hometown Props., Inc. v. R.I. DEM, 592 A.2d 841 (R.I. 1991), the Court found it persuasive that the ordinance at issue was a zoning ordinance because it was found within the chapter on zoning ordinances, then Chapter 17 of the Code. The ordinances at issue, then designated as §§ 17-8-6 and 17-8-7 were, in fact, overlay district ordinances that identified the location of the district and contained “permitted uses” for those districts. Id. at 845, n. 6. The Court held that the ordinances were zoning ordinances and not municipal ordinances identifying water districts.

Because Ordinance 14-16 did not change “a zoning district map,” the Town was not required to follow the additional requirements for advertisement contained in § 45-24-53(c). Therefore, the June 5, June 12, and June 19, 2014 advertisements of Ordinance 14-16 were not defective for failure to include a map of the proposed changes to the water service area.

**B.****Personal Service**

Plaintiffs argue that notice of Ordinance 14-15 was defective because Southland did not receive personal written service as required by § 45-24-53. Plaintiffs argue that Southland purchased the development rights to Plat 102, Lots 11 and 133, which parcels allegedly abut the property subject to the zoning amendment, such that Southland's ownership interest entitled them to personal notice as owners of property. Plaintiffs further argue that the Rhode Island Supreme Court has not settled the issue of what extent of ownership qualifies a person or entity as an "owner" within the meaning of the statute. Therefore, a factual question exists regarding whether Southland is an "owner" sufficient to overcome a motion for summary judgment. Defendants counter that Plaintiffs did not adequately demonstrate that Southland has any property interest in properties adjacent to those affected by the amendments. Defendants argue that, even taking Southland's alleged ownership as true, in the light most favorable to the nonmoving party, § 45-24-53(c)(2) requires that personal notice be given only to owners of record of property affected by proposed amendments, abutting landowners and owners within 200 feet of the affected property, or, alternatively, owners of

conservation rights of the affected property, none of which apply to Southland.

Sec. 45-24-53(c)(2) provides as follows:

“Written notice of the date, time, and place of the public hearing and the nature and purpose of the hearing shall be sent to all owners of real property whose property is located in or within not less than two hundred feet (200') of the perimeter of the area proposed for change, whether within the city or town or within an adjacent city or town. Notice shall also be sent to any individual or entity holding a recorded conservation or preservation restriction on the property that is the subject of the amendment. The notice shall be sent by registered or certified mail to the last known address of the owners, as shown on the current real estate tax assessment records of the city or town in which the property is located.”

This provision identifies two separate potential parties entitled to personal written notice: 1) “owners of real property whose property is located in or within not less than two hundred feet (200') of the perimeter of the area proposed for change;” and 2) “any individual or entity holding a recorded conservation or preservation restriction on the property that is the subject of the amendment.” Id.

Because Plaintiffs do not assert that Southland’s property interest is in a parcel directly affected by the proposed changes, this Court need not address the issue of whether development rights are analogous to

conservation restrictions entitling Southland to personal notice under the second sentence of § 45-24-53(c)(2). The only issue to address is whether Southland is an “owner” entitled to personal service. Defendants urge that Southland is not entitled to personal notice for two reasons: (1) that the last sentence of § 45-24-53(c)(2) decides the matter, because only those owners who are registered in the current real estate tax assessment records are entitled to personal notice, and Southland is not so registered; and, (2) the Legislature did not intend for holders of property interests of less than full ownership, other than those specifically provided for, to be given personal notice.

In support of their first argument, Defendants provided this Court with an affidavit of the Town of North Kingstown’s Tax Assessor, Linda Cwiek, who attests that the tax assessment records for Plat 102, Lots 11 and 133, show only Richard J. Schartner as the current owner and the owner during 2014. Ms. Cwiek additionally attached copies of the Town’s tax assessor cards for those properties as exhibits. Plaintiffs respond that they dispute that Southland’s ownership is not listed on the Tax Assessor’s records. Plaintiffs failed to submit any evidence to dispute Defendant’s argument, and indeed the Court cannot conceive of what evidence Plaintiffs could

possibly present to dispute that the owner listed on the Tax Assessor's card is not who it appears to be.

On the issue of legislative intent, Defendants assert that this Court is bound to the principle of statutory construction which states that the Court may not construe a statute in a manner that reduces any phrase or clause to mere surplusage, citing In re Harrison, 992 A.2d 990, 994 (R.I. 2010); Swain v. Estate of Tyre, 57 A.3d 283, 292-93 (R.I. 2012). In that vein, Defendants point this Court to the General Assembly's decision to include the provision of personal service to those holders of conservation restrictions of the property affected by proposed amendments. Defendants argue that, by including that additional language, the General Assembly demonstrated that such a property interest holder would not otherwise receive notice under the first set of "owners," or else that language would have been entirely superfluous. Plaintiffs respond that Defendants' interpretation of the Act would require this Court to read additional language into the statute, although Plaintiffs are unclear as to what that additional language would be.

This Court finds that Plaintiffs' argument that adjacent property owners with less than full property ownership are entitled to personal notice is without merit because it would require this Court to ignore the last sentence of § 45-24-53(c)(2). If this Court were to hold that owners of an

interest in property less than full ownership, such as mortgage or lien holders, are entitled to personal service, then town officials would have to look somewhere other than the tax assessment records to both determine who those owners are and identify an address where personal service could be sent. The General Assembly's choice to direct town officials to the tax assessment records indicates their intent that, insofar as adjacent property owners are concerned, town officials need not engage in a time and resource consuming endeavor to identify and locate all parties with any interest in the property. Furthermore, it was logical for the General Assembly to identify other types of owners in the property actually being affected by proposed zoning amendments because their interest in the property could be more substantially impacted.

Finally, in regard to Plaintiffs' assertion that factual issues regarding Southland's property interests remain preventing this Court from granting summary judgment, it is important to reiterate the standard that "the nonmoving party [] must identify any evidentiary materials already before the court or present its own evidence demonstrating that factual questions remain." Olshansky, 872 A.2d at 286. Plaintiffs' assertion that they dispute the fact that Southland is not listed as an owner in the tax assessment records is insufficient to meet their burden to prove the existence of a genuine issue

of material fact. Defendants have produced the tax assessment records for the lots in question demonstrating that Southland was not a listed owner, and Plaintiffs did not attempt to present any evidence demonstrating Southland's ownership interest in the lots. As our Supreme Court has stated, "from an evidentiary standpoint, once a party files and serves a properly supported summary-judgment motion, an alarm bell begins to toll and it is time for the opposing parties either to put up their evidence or shut up their case." Wright v. Zielinski, 824 A.2d 494, 499 (R.I. 2003) (citing Bourg v. Bristol Boat Co., 705 A.2d 969, 970 (R.I. 1998)).

The Defendants have sustained their burden of proving that they are entitled to judgment as a matter of law because Plaintiffs failed to provide evidence that Southland had any interest in the alleged adjacent properties. Southland was not entitled to personal notice of the proposed zoning amendments as a holder of development rights to properties adjacent to those affected by the proposals.

#### IV

#### Conclusion

For all of the foregoing reasons, Defendants are entitled to judgment as a matter of law on the issue of the validity of the notice published on June 5, June 12 and June 19, 2014 advertising the public hearing before the Town

of North Kingstown's Town Council for consideration of adoption of Ordinance Nos. 14-15 and 14-16.

Defendants' counsel shall submit a judgment in conformance with this decision.