STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

(Filed: October 1, 2019)

183 EUSTIS AVE LLC; 477 THAMES STREET LLC; 517 THAMES ST LLC; MEAGHAN M. ADAMS; DAVID R. AHOUSE, JR.; MICHELE AHOUSE; IRIT ALTMAN; PHILIP ALTMAN; BEAR AND LION LLC; BRENDA E. MORRISON-BOLDT; RICHARD F. BOLDT; ANTHONY CIOFFI; BARBARA CIOFFI; JUSTIN CLOUGHER; KERRY CLOUGHER; PATRICK BRENNAN DANIELS; DAVID S. DROOKER; MARINA M. DROOKER; JAMES G. DUSTY; LISA T. DUSTY; LAURA GILL; LESLIE GILLETTE; HAMISH A. GUNN; GEORGE C. KARAGEORGOS; BRIAN J. KIRACOFE; TIMOTHY LAUGHRIDGE; ANTHONY LORUSSO; MONTGOMERY MCFATE; DANIELLE MCNAMARA; SUSAN AVINO MITCHELL; NANCY O. MORTON; PHILIP A. MORTON; NEWPORT SYNDICATION GROUP, LLC; GAIL M. NORTON; JAMES PALLIS; BRANDON PICO; ANDREA L. RESTREPO; SCHMITZ FAMILY TRUST; STEVEN L. SMITH; LAURIE J. DANIELS; ERICA ZAP,	:	
***Plaintiffs*,**	:	
VS.	:	**C.A. No. NC-2018-0207**
CITY OF NEWPORT; and LAURA L. SITRIN, in her capacity as Finance Director for the City of Newport,	:	
***Defendants*.**	:	

DECISION

LICHT, J. This matter arises out of Plaintiffs' short-term rental of their properties (Properties) and the decision of the City of Newport (City) to require Plaintiffs to register those Properties. Plaintiffs move for partial summary judgment on Counts I and II of the Amended Complaint, and Defendants move for summary judgment on all counts of the Amended Complaint. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13, 8-2-14 and 9-30-1 *et seq.*

I

Facts and Travel

Plaintiffs are all record owners of different pieces of property (single-family, two-family, multifamily, and residential condominiums) located in the City who have rented either individual dwelling units in multiunit properties or entire single-family homes to other individuals. They do not rent individual rooms. All of Plaintiffs' Properties have less than ten dwelling units, and none of the units are dependent on external facilities for the furnishing of meals, meaning there is a full kitchen within each dwelling unit.

The City sent notices of violation (Notices) to Plaintiffs, stating that they are required to register their Properties under the Newport Code of Ordinances Chapter 5.40, Section 5.40.020 (Section 5.40.020) which provides that "transient guest facilit[ies]" and "guest houses" must be registered with the City clerk. *See* Pls.' Mot. Partial Summ. J. (Pls.' Motion), Ex. C. The Notices further advised that the City intended to begin issuing citations if Plaintiffs did not discontinue short-term renting or apply for a special use permit, and the fine for operating an unregistered

short-term rental unit is $200.00 per day. *See id.* For purposes of summary judgment, Defendants do not contest these facts.[1]

In response to the Notices, Plaintiffs filed a Complaint in Newport County Superior Court on June 8, 2018, and an Amended Complaint thereafter on July 8, 2019, that removed the allegations in the Complaint related to a class action. Plaintiffs' Amended Complaint contains counts seeking declaratory relief: Count I, that their Properties are not subject to the requirements of Section 5.40.020; Count II, that renting property does not constitute a change in use; Count III, that the application of Section 5.40.020 to Plaintiffs' Properties constitutes a taking; and Count IV, that such application violates Plaintiffs' equal protection rights. The Amended Complaint also contains Counts V and VI for violations of procedural and substantive due process rights, respectively, and Count VII seeks a prohibitory injunction against the City. Oral argument was heard on July 16, 2019. During oral argument, all parties agreed on the record that the Plaintiffs' Motion and Defendants' Crossmotion for Summary Judgment (the Motions) applied to the Amended Complaint.

II

Standard of Review

"[S]ummary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously." *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 451 (R.I. 2013). "[S]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of

[1] For any purpose besides summary judgment, Defendants contest the facts contained in Plaintiffs' Motion, Exhibit A which are the affidavits from the Plaintiffs-property owners. Defs.' Mem. Supp. Obj. to Pls.' Mot. Partial Summ. J. (Defs.' Mem.).

law." *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Educ.*, 93 A.3d 949, 951 (R.I. 2014) (internal quotations omitted).

Under the Uniform Declaratory Judgments Act found in §§ 9-30-1 *et seq.*, the Superior Court has the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Sec. 9-30-1. "This power is broadly construed, to allow the trial justice to facilitate the termination of controversies." *Bradford Assocs. v. Rhode Island Div. of Purchases*, 772 A.2d 485, 489 (R.I. 2001) (internal quotations omitted). Therefore, it is the function of this Court to "decide whether declaratory relief is appropriate." *Town of Barrington v. Williams*, 972 A.2d 603, 608 (R.I. 2009).

III

Analysis

Before the Court addresses the merits of the Motions as they relate to the Amended Complaint, it must first address two preliminary arguments raised by Defendants: first, that Plaintiffs have no standing to bring this suit and second, that Plaintiffs have failed to exhaust their administrative remedies. Standing is a threshold determination, and thus, the Court will address it first.

Defendants first contend that Plaintiffs lack standing to bring the instant suit because "there is no evidence that the City has prevented Plaintiffs from renting their dwelling units or penalized them for these rentals," nor has the City fined Plaintiffs for their failure to register their rentals. Defs.' Mem. 3-4. Plaintiffs counter that they have standing because the Notices assert that the City intends to begin imposing fines in the amount of $200 per day. Additionally, Plaintiffs contend that they have suffered a "destruction of property rights, loss of due process protections,

and . . . future economic harm." Pls.' Reply Defs.' Obj. to Pls.' Motion 3.[2] Plaintiffs contend that their Properties were reclassified from single family residential to guest houses that require a special use permit, which destroys their grandfathered rights to dwell in houses built in the 1880s. *Id.* at 3-4.

"[W]hen standing is at issue, the focal point shifts to the claimant, not the claim, and a court must determine if the plaintiff whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable." *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005) (internal quotations omitted). To have standing, the claimant must allege an injury in fact, which must be "an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical." *Narragansett Indian Tribe v. State*, 81 A.3d 1106, 1110 (R.I. 2014) (internal quotations omitted). "The line is not between a substantial injury and an insubstantial injury. The line is between injury and no injury." *Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I. 1997). Where future harm is the injury alleged, such allegations "require greater caution and scrutiny because the assessment of risk is both less certain, and whether the risk constitutes injury is likely to be more controversial." *Kerin v. Titeflex Corp.*, 770 F.3d 978, 982 (1st Cir. 2014). Standing remains a requirement when the Court is faced with a request for a declaratory judgment. "[W]hen confronted with a UDJA claim, the inquiry is whether the Superior Court has been presented with an actual case or controversy. Without making this determination, the Court will not have

[2] Plaintiffs cite to *Key v. Brown Univ.*, 163 A.3d 1162, 1170 (R.I. 2017), where the Rhode Island Supreme Court found standing when property owners sought declaratory relief regarding their rights under a zoning ordinance. However, in that case, the plaintiffs' alleged injury, "including physical damage to their home, a decrease in their home's value, and a diminished use and enjoyment of their property," was due to Brown violating the applicable zoning ordinance.

jurisdiction to entertain the claim." *Key*, 163 A.3d at 1168 (internal quotations and citations omitted).

To date, the only injury the City has inflicted on Plaintiffs is the issuance of the Notices. Those Notices state that the Plaintiffs-recipients have "30 days from the issuance of [the Notice] to apply for a special permit with the City or discontinue" renting the properties or the City will assess penalties in the amount of $200.00 per day. This is not a hypothetical injury nor is the risk to Plaintiffs uncertain because the Notices give both a timeframe for compliance and a specific penalty that will be assessed for noncompliance. Thus, the Court finds that Plaintiffs have standing to bring this suit as it relates to the determination of whether Plaintiffs must register their Properties.

Plaintiffs' allegation that their Properties have been rezoned and their argument that renting does not constitute a change in use for zoning purposes is a separate issue requiring a separate analysis of standing. Plaintiffs admit that they have not received Notices of Violation or any other administrative notice from the City Zoning Official that their Properties are not in compliance with City Zoning Ordinances. Am. Compl. ¶ 51. The City also confirmed in oral argument that it has taken no zoning action against these Plaintiffs. Additionally, all parties conceded at oral argument that the City Director of Finance who sent the Notices regarding Plaintiffs' failure to register, has no authority to make zoning determinations; therefore, Plaintiffs cannot use the Notices to show standing to contest the City's alleged categorization of short-term renting as a special use because it has done no such thing. Because the Notices do not relate to zoning and the City has taken no zoning-related actions, there is no case or controversy between these Plaintiffs and Defendants regarding zoning. Moreover, some Plaintiffs may need to apply for a special use permit to rent

their Properties and some may not;[3] therefore, even if there was a case or controversy related to zoning, any zoning-related injury is speculative, at best. There is no controversy and no injury to Plaintiffs concerning zoning of the Properties, and thus, as to zoning, Plaintiffs lack standing.[4] Consequently, the Court declines to address whether short-term renting constitutes a change in use.

Next, Defendants argue that Plaintiffs have failed to exhaust their administrative remedies, and thus cannot come to this Court seeking relief. To support this contention, Defendants cite to *Nardi v. City of Providence*, 89 R.I. 437, 449, 153 A.2d 136, 143 (1959). Defendants point to Plaintiffs' arguments that the City has characterized Plaintiffs' Properties as uses which are inapplicable, that renting is a change in use, and that the Properties fit within the City's definition of a guest facility to contend that a zoning question is at issue, and this suit circumvents the administrative process. Defendants note that if the City determined a zoning violation existed, it would have filed a complaint against the offending party in Newport Municipal Court to adjudicate the same.

Plaintiffs counter that the issues in this case are outside of the scope of powers given to municipal zoning boards under the Rhode Island Zoning Enabling Act of 1991 (ZEA) found at G.L. 1956 § 45-24-27 *et seq.* Plaintiffs note that they are not appealing from a zoning board decision, and there is no power under ZEA for the board to review determinations made by the Director of Finance. Alternatively, Plaintiffs argue that even if there were an administrative

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[3] Pursuant to the Zoning Ordinance's use table, a special use permit approval of the City's zoning board of review is required in R-3, R-10, R-20 and R-40 zoning designations for all Guest Facilities, which include, but are not limited to, a Guest House, Historic Guest House, Transient Guest Facilities and Vacation guest facilities. *See* Pls.' Motion, Ex. B.

[4] Even if they had standing, the facts relating to each Plaintiff differ and summary judgment would be inappropriate at this time.

remedy available, such availability does not preclude a party from seeking declaratory relief because the questions presented in this case are purely questions of law which the Court can adjudicate.

"The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate." Super. R. Civ. P. 57. Likewise, the Rhode Island Supreme Court has held that "persons whose rights are affected by an ordinance . . . are entitled to bring a declaratory judgment suit despite the possibility that administrative remedies might be available." *Taylor v. Marshall*, 119 R.I. 171, 180, 376 A.2d 712, 717 (1977).[5] Furthermore, a party is not required to exhaust administrative remedies where "appeal to an administrative review board would be futile." *Burns v. Sundlun*, 617 A.2d 114, 117 (R.I. 1992).

Because a case or controversy only exists regarding the registration requirement, Plaintiffs are not required to exhaust their administrative remedies. As Defendants point out, there is no appellate review or administrative remedy available because the Notices themselves do not cause Plaintiffs any injury—it is the future, threatened harm that gives Plaintiffs standing in this Court. Therefore, Plaintiffs are not required to exhaust administrative remedies because such an exercise in this case would be futile as there is no appeal process regarding the Notices. Counts III through VI of the Amended Complaint that raise constitutional issues and Count VII that seeks a prohibitory injunction against the City are clearly outside of the scope of a zoning board's authority. *See* Sec. 45-24-57. Thus, any appeal to the zoning board would be futile also.

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[5] "Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." Sec. § 9-30-2.

Finally, Defendants' reliance on *Nardi* is misplaced. In that case, the court found that the complainant was not entitled to equitable relief without exhausting his administrative remedies; however, the Court rested its decision on the fact the complainant failed to apply for a permit after his land was rezoned. *Nardi*, 89 R.I. at 449, 153 A.2d at 143. Such failure meant there was no case or controversy between the complainant and the city, and thus, the Court's reasoning rested on complainant's lack of standing. *See id.*

In the case at bar, the Court finds that there are no administrative remedies available to Plaintiffs to exhaust in order to bring this suit.

Count I

In Count I, Plaintiffs seek a declaratory judgment that they are not subject to the registration requirement of Section 5.40.020. (This section and Chapter 5.40, Section 5.40.010 (Section 5.40.010) are referred to as the Registration Ordinance.) They contend their Properties are not guest houses, transient guest facilities, historic guest houses, or vacation guest facilities, as defined in the Registration Ordinance.

The Registration Ordinance is awkwardly drafted. Section 5.40.020 requires transient guest facilities and guest facilities, as defined in Section 5.40.010, to be registered with the city clerk. However, when one discovers that Section 5.40.010 does not define these terms but instead defines "hotel" for the purposes of Chapter 5.40, as:

> "any transient guest facility and guest house offering one or more rooms for which the public may, for consideration, obtain transient lodging accommodations. The term 'hotel' includes hotels, motels, guest houses with one or more rooms, tourist homes, tourist camps, lodging houses and inns, and shall exclude schools when used for non-profit education uses, hospitals, sanitariums, nursing homes and chronic-care centers." Section 5.40.010.

None of these terms are further defined.

Plaintiffs, through sworn affidavits, attest that they do not rent individual rooms, but instead rent an entire dwelling unit (or units). Because the hotel definition in the Registration Ordinance refers to facilities "offering one or more rooms," Plaintiffs claim they do not meet that definition.

The Plaintiffs urge the Court to focus on the Newport Code of Ordinances Chapter 17.08, Section 17.080.010 (Section 17.08.010), where guest facilities are defined as follows:

> "'Guest facilities' means establishments for renting of rooms are defined as follows:
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> "1. Guest House. A building in which five or less rooms are rented to no more than ten persons on a daily, weekly, or monthly basis, with or without the furnishing of meals and with the owner or manager thereof residing on the guest house premises. In those districts where guest houses are permitted by right, the requirement for the owner or manager to reside on the guest house premises shall not apply;
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> "2. Historic Guest House. A building the sole principal use of which is the rental of no more than eighteen (18) rooms rented on a daily, weekly, or monthly basis, with or without the providing of meals and which: (a) is listed on the National Register of Historic Places; and (b) is in a building which is subject to the jurisdiction of the Newport historic district commission pursuant to Chapter 17.80 of this zoning code; and (c) does not contain any other uses, accessory or otherwise, without being granted by a special use permit;
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> "3. Transient Guest Facilities. Facilities designed primarily for occupancy on a day-to-day, or week-to-week basis and dependent on external facilities to the guest unit for the furnishing of meals, including time-share property and time-share units, as defined by Rhode Island General Laws 34-41;
>
> "4. 'Vacation guest facilities' means facilities of ten or more units with kitchens, designed primarily for occupancy on a day-to-day or week-to-week basis and for not more than thirty-one (31) consecutive days by any one guest or guest family, including time-share properties and time-share units as defined by Rhode Island General Laws Section 34-41.
>
> "Guest House. See 'guest facilities.'"

In their affidavits, the Plaintiffs further attest that none of them rent more than ten units and that each dwelling unit has its own kitchen facilities. As such, they claim that they also fail to meet any of the definitions of "guest facility" under the Zoning Ordinance.

Defendants, on the other hand, urge the Court to use dictionary definitions of those terms where they are not defined elsewhere in the ordinances[6] and argue that even if the definitions in the Zoning Ordinance are used, "units" are comprised of "rooms," and thus, Plaintiffs fit within those definitions. The dictionary definitions that Defendants urge the Court to use all incorporate the renting of *rooms*, which, as discussed, Plaintiffs do not rent. The Court must determine if renting dwelling units is encompassed by definitions that specify renting of "rooms."

Renting of "rooms" and renting of "units" is clearly distinguishable on its face; importantly, even the Zoning Ordinance definition makes this distinction. The definitions of guest house and historic guest house both discuss renting "rooms," whereas the definitions of transient guest facilities and vacation guest facilities both use the term "units." Because Plaintiffs rent dwelling units, not rooms, they do not fit within the definitions of guest house or historic guest house. For this same reason, Plaintiffs' Properties are not transient guest facilities or guest houses contained in the definition of "hotel" in the Registration Ordinance. Finally, Plaintiffs' Properties do not fit the final two definitions in the Zoning Ordinance because they all have kitchens, and thus do not fit within the definition of transient guest facilities and have less than ten units and

[6] Defendants contend that "tourist home" should be defined as "a house in which rooms are available to rent to transients," and "lodging house" should be defined as "a house in which rooms are rented, especially a house other than an inn or hotel; rooming house." Defs.' Mem. 7.

therefore cannot be deemed vacation guest facilities. The Court concludes that as the Registration Ordinance is currently written, Plaintiffs are not required to register their units.[7]

To the extent that Count I alleges that Plaintiffs' Properties "have been characterized as a specific use without notice," and argue that short-term renting does not constitute a change in use, this allegation and argument goes to whether the City has recategorized the Properties for zoning purposes. *See* Am. Compl. ¶ 52. As discussed above, the Court declines to exercise its jurisdiction regarding the applicability of the zoning ordinances because there is no case or controversy regarding zoning before the Court.

Count II

In Count II, Plaintiffs seek an additional declaratory judgment. Although Count II is titled, in part, "Declaratory Judgment that Rental of Property does not constitute a change in use . . . ," in Count II's prayer for relief Plaintiffs ask the Court to declare that application of the ordinances

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[7] While the parties never referenced the following statute, in considering the parameters of future short-term renting ordinances, the parties should be aware of G.L. 1956 § 42-63.1-14 which states,

> "For any residential unit offered for tourist or transient use on a hosting platform that collects and remits applicable sales and hotel taxes in compliance with § 44-18-7.3(b)(4)(i), § 44-18-18, and § 44-18-36.1, cities, towns or municipalities shall not prohibit the owner of such residential unit from offering the unit for tourist or transient use through such hosting platform, or prohibit such hosting platform from providing a person or entity the means to rent, pay for or otherwise reserve a residential unit for tourist or transient use. A hosting platform shall comply with the requirement imposed upon room resellers in § 44-18-7.3(b)(4)(i) and § 44-18-36.1 in order for the prohibition of this section to apply. The division of taxation shall at the request of a city, town, or municipality confirm whether a hosting platform is registered in compliance with § 44-18-7.3(b)(4)(i)." Sec. 42-63.1-14.

In adding this footnote, the Court is not rendering any opinion as to its applicability to the issues in this case.

is preempted by G. L. 1956 §§ 45-24-72 *et seq.*, that Plaintiffs are not subject to the Registration Ordinance, and that Plaintiffs are not subject to the building code requirements for hotels.

Section 45-24-72 relates to severability of Chapter45-24 entitled Zoning Ordinances, and it is unclear what Plaintiffs' contention is on this point. Neither Plaintiffs nor Defendants make any arguments regarding statutory preemption of an ordinance, thus that argument is deemed waived. As to the Registration Ordinance that was decided above, the issue of the building code was a matter before the State of Rhode Island Building Code Commission. The Motions regarding Count II are denied.[8]

Count III

Defendants move for summary judgment on Count III wherein Plaintiffs allege that the City's application of the Registration Ordinance contravenes the Takings Clause of Article I, Section 16 of the Rhode Island Constitution because it substantially impairs Plaintiffs' property rights (*i.e.*, the ability to rent) and should be declared unconstitutional. Defendants argue that Section 5.40.020 only requires that Plaintiffs register their properties with the City and does not prevent them from renting their properties; thus, there has been no taking.

"Private property shall not be taken for public uses, without just compensation." R.I. CONST. art. I, § 16. However, "use regulations that are reasonably necessary to protect the public health and safety are permissible exercises of the police power which do not require compensation, provided that they do not become arbitrary, destructive, or confiscatory. Furthermore, . . . a zoning

[8] Plaintiffs all own property containing one or more "dwelling units," which are defined in the City's Zoning Ordinance as "a structure or portion thereof occupied by a family providing complete, independent living facilities for one or more persons . . . ." Section 17.08.010. If Plaintiffs are renting their properties to anyone other than family members, having unrelated individuals rent the properties (for any length of time) could be deemed to be a change of use. However, there is no evidence before the Court on this point.

ordinance that deprives an owner of all beneficial use of his property is confiscatory and requires compensation." *Annicelli v. Town of S. Kingstown*, 463 A.2d 133, 139 (R.I. 1983) (internal citations omitted).

Plaintiffs do not have standing to assert Count III as it relates to zoning and the registration requirement, even if it did apply to Plaintiffs, in no way deprives them of use of their Properties. Defendants' Crossmotion for Summary Judgment with regard to Count III is granted without prejudice.

Count IV

Defendants move for summary judgment on Count IV wherein Plaintiffs allege that the City's application of the Registration Ordinance violates the Equal Protection Clause of the Rhode Island Constitution because it was applied "in a manner which is not uniform or equitable among similarly situated parties." Am. Compl. ¶ 63. Defendants contend that Plaintiffs have not identified any similarly situated transient guest facilities or guest houses that have been treated differently than the Plaintiffs' Properties and conjecture that Plaintiffs' equal protection argument may be based on a comparison of short-term rental units or long-term rental units which, according to Defendants, are not similarly situated because "[s]hort-term rentals impact vehicle traffic, parking demand and noise complaints more than long-term rentals[,]" leading to increases in police and medical services. Defs.' Mem. 18. Defendants' Memorandum goes on to mention numerous other contrasts between short and long-term rentals.

Plaintiffs have put forth no evidence of similar rentals and how Defendants have treated them differently. Defendants' Crossmotion for Summary Judgment with regard to Count IV is granted without prejudice.

Count V

In Count V, Plaintiffs allege that Defendants violated their rights to procedural due process by not giving them an opportunity to be heard with regard to the application of the Registration Ordinance to their Properties. Defendants move for summary judgment on Count V and contend that they have not denied Plaintiffs a property right because they can still rent their property, they must only register it, and secondly, there are procedural safeguards for Plaintiffs in the Newport Code of Ordinances Chapter 17.116, which allows Plaintiffs to appeal zoning violation notices.

As previously discussed, Plaintiffs' injuries that give them standing in this action are injuries that are imminent and concrete, but nevertheless will occur in the future. Because Defendants have caused Plaintiffs no *present* injury, it cannot be said that they deprived Plaintiffs of their procedural due process rights. Moreover, if Defendants had already fined Plaintiffs for failing to register, Plaintiffs have a means of appealing such a fine. Plaintiffs have put forth no evidence to the contrary. Defendants' Crossmotion for Summary Judgment with regard to Count V is granted without prejudice.

Count VI

Plaintiffs allege violation of their substantive due process rights under Count VI, and Defendants move for summary judgment on the same. Plaintiffs contend that Defendants' application of the Registration Ordinance constitutes a deprivation of their property rights because Defendants' actions constituted "egregious official misconduct that shocks the conscience and offends a sense of justice contrary to the guarantee of the substantive due process[.]" Am. Compl. ¶ 73. Defendants counter that requiring Plaintiffs to register their properties does not rise to the "conscience shocking level necessary to invoke the protections of substantive due process." Defs.' Mem. 23. Plaintiffs have put forth no evidence of how Defendants acted "egregiously," and thus,

Defendants' Crossmotion for Summary Judgment regarding Count VI is granted without prejudice.

IV

Conclusion

In light of the foregoing, Plaintiffs' Motion for Partial Summary Judgment on Count I is granted in part as it pertains to the registration requirement. Neither Plaintiffs nor Defendants have argued Count II, and thus, both the Motions with regard to that Count are denied without prejudice. Finally, Defendants' Crossmotion for Summary Judgment with regard to Counts III through VI are granted without prejudice. Counsel shall confer to prepare the appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	183 Eustis Ave LLC, et al. v. City of Newport, et al.
CASE NO:	NC-2018-0207
COURT:	Newport Superior Court
DATE DECISION FILED:	October 1, 2019
JUSTICE/MAGISTRATE:	Licht, J.

ATTORNEYS:

For Plaintiff:	Michael A. Kelly, Esq. Joelle C. Rocha, Esq.
For Defendant:	Christopher J. Behan, Esq. Michael DeSisto, Esq.