

STATE OF RHODE ISLAND

WASHINGTON, SC.

SUPERIOR COURT

(FILED: July 22, 2025)

TRESTLE PARK, LLC

VS.

DYANN BAKER, *et al.*

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C.A. No. WC-2023-0227

DECISION

LANPHEAR, J. Before the Court are Trestle Park, LLC’s motions for reconsideration and for summary judgment. In this appeal, Trestle Park challenges the validity of Chapter 2034 of the General Ordinances of the Town of Westerly. The particular ordinance rezoned an assessor’s lot from Highway Commercial use (HC) to General Commercial use (GC) and amended the use table to allow mini-storage operations in a GC zone with permission by a Special Use permit.

I

Travel

The Court previously denied the appeal addressing only Count I directly. Since that time our Supreme Court has issued *Koziol Firearms, Inc. v. Marchand*, 334 A.3d 439 (R.I. 2025) allowing some declaratory judgment requests to be considered in the same complaint as local land use appeals. Trestle Park has moved for reconsideration, urging this Court to address the declaratory judgment requests. Thereafter, Trestle Park moved to dismiss Count III of the Second Amended Complaint (requesting a declaratory judgment on the claim of illegal spot zoning) and moved for Summary Judgment on Count II. The Town has not only objected but has moved for summary judgment as well.

Count II of the Second Amended Complaint alleges the Town violated the Zoning Enabling Act when it enacted the ordinance in a manner inconsistent with the state Zoning Enabling Act, G.L. 1956 chapter 24 of title 45.

II

Analysis

A

Standing

Before addressing the alleged failures to comply with state law, the Court must address the Town's claim that Trestle Park lacks standing. The Town alleges declaratory relief cannot be afforded to one who cannot establish a "personal stake in the outcome of the controversy." *Bowen v. Mollis*, 945 A.2d 314, 317 (R.I. 2008) (internal quotation omitted). The harm alleged must be "actual or imminent, not 'conjectural' or 'hypothetical.'" *Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I. 1997) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). The Town has consistently raised the issue of Trestle Park's standing. It was not until Trestle Park submitted its Sur-Reply Memorandum when it suggested proof of economic injury. On page two of its memorandum of July 1, 2025, Trestle Park references a Market Analysis of Storage Investment Management, LLC,¹ which focuses on how to make the Trestle Park facility more successful, not whether Trestle Park would suffer injury from the project proposed here.

¹ While an older report had been submitted, the new report was never produced for the Court before and was produced in the Sur-Reply Brief of Trestle Park, providing the Town and the Applicant no opportunity to respond. Oddly, the sixty-eight-page report is undated but for the year 2025, though the raw data was apparently collected on June 3, 2025 (Desktop Market Analysis performed by Self Storage 101 at 8). The Court previously inquired of Trestle Park if an evidentiary hearing was necessary. (Hr'g Tr. 17, May 27, 2025.) It is unfair to produce purported expert evidence when the Town and the Applicant can no longer respond. Here, Trestle Park acknowledged having briefed the matter already. *Id.* at 18:12. The report appears to focus on how to make the Trestle Park storage facility more successful, not on whether or not Trestle Park would suffer harm from

The Court continues to be in doubt as to whether this alleged, prospective economic injury to a business competitor is sufficient for standing. Rather than continuing to delay consideration of the merits of the declaratory judgment request and delaying consideration of this development several more months by holding an evidentiary hearing which no party has requested, the Court defers the issue of standing and will consider the motions for summary judgment and reconsideration.²

1

Failure of the Ordinance to Find Consistency with the Comprehensive Plan

Trestle Park claims that the Westerly Town Council, in passing the Ordinance on May 1, 2023, failed to make the finding that the Ordinance is consistent with the Town's Comprehensive Plan. The Town does not dispute this. Section 45-24-34(a) requires that "[a] zoning ordinance . . . include a statement that the zoning ordinance is consistent with the comprehensive plan" Trestle Park is correct, the Ordinance does not include the requisite language. The Town Council was incorrect to leave out this finding.

the proposed facility which is the subject of the appeal. Even without determining all of the variables (management, extent of automation, likely charges) for Trestle Park or the proposal, the report concludes only that Trestle Park is a "B+ site" in a "B+ market," and recommends consideration of further expansion of Trestle Park. Concluding that Trestle Park would be impacted by the proposed facility remains quite speculative.

² Our General Assembly established the Land Use Calendar of this Court by finding:

"(1) There are significant delays in the development permitting process in the State of Rhode Island which results in lost opportunity for the needed development of housing units and commercial development to neighboring states.

"(2) Contributing to the delay were lengthy administrative appeals to local and state boards prior to appeals to superior court." G.L. 1956 § 8-2-40(a).

Prompt consideration of this dispute, already pending for two years, is therefore appropriate and may avoid multiple appeals.

Effect of the Failure to Include the Required Language

Trestle Park claims that the failure to include the language voids the Ordinance *ab initio*. (Trestle Park’s Mem. in Supp. of Mot. for Summ. J. 8.) Trestle Park also claims that the actions of the Town agencies acting pursuant to the Ordinance are void. *Id.* The Town suggests that Trestle Park failed to cite any authority for declaring the Ordinance to be void. This, of course, requires further examination.

First, the Ordinance was enacted after a review of the proposal by the Westerly Planning Board. The Planning Board found the proposal consistent with the Comprehensive Plan on two occasions, first on September 20, 2022 and next on February 21, 2023. Statement of Exs. Part 1 at 9 and 11. On September 20, 2022, the Planning Board also found the Ordinance consistent with the Future Land Use Map. These communications were forwarded to the Town Council.

As our high court has recently confirmed, the Comprehensive Plan and its map have key roles:

“The Rhode Island Zoning Enabling Act (ZEA) ‘requires that zoning ordinances be developed and maintained in accordance with a comprehensive plan prepared pursuant to the Rhode Island Comprehensive Planning and Land Use Regulation Act (CPLURA).’ *P.J.C. Realty, Inc. v. Barry*, 811 A.2d 1202, 1204 (R.I. 2002); *see also* § 45-24-30(a). A comprehensive plan ‘is a statement (in text, maps, illustrations, or other media of communication) that is designed to provide a basis for rational decision making regarding the long term physical development of the municipality.’ *P.J.C. Realty, Inc.*, 811 A.2d at 1204 (internal quotation marks omitted). A comprehensive plan is not an ‘innocuous general-policy statement,’ but rather such a plan ‘establishes *a binding framework or blueprint* that dictates town and city promulgation of conforming zoning and planning ordinances.’ *Town of East Greenwich v. Narragansett Electric Co.*, 651 A.2d 725, 727 (R.I. 1994) (emphasis added). A municipality ‘is legally compelled to enact or to amend its zoning ordinance in conformity’ with its comprehensive

plan. *Id.* at 728.” *Peter Scotti & Associates, Inc. v. Yurdin*, 276 A.3d 915, 925-26 (R.I. 2022).

See also Town of East Greenwich v. Narragansett Electric Co., 651 A.2d 725, 727 (R.I. 1994) (“We believe a comprehensive plan is not simply the innocuous general-policy statement the town contends it is. Instead, the comprehensive plan . . . establishes a binding framework or blueprint that dictates town and city promulgation of conforming zoning and planning ordinances.”). It is the important task of the local planning board to establish the Comprehensive Plan, ensure its enactment, ensure ordinances comply with the plan, and update the plan periodically. Clearly, the Westerly Planning Board’s interpretation of the plan carried, and should carry, great weight.

The Town Council not only considered the importance of having consistency with the Comprehensive Plan and Future Land Use Map, they discussed the two. (*See* Statement of Exs. Part 3 at 431-35.)

Before declaring a statutory enactment void, the Court must consider whether the provision is mandatory or directory. As the Supreme Court held last year:

““[W]here the language of a *statute* is directed at public officers *or* where the Legislature does *not* provide a sanction for the failure to meet that requirement, the *statute* may be deemed *directory* so long as substantial rights of the parties are *not* prejudiced.”” *Rosa v. PJC of Rhode Island, Inc.*, 270 A.3d 37, 41 (R.I. 2022) (quoting *Begg v. Alexander-Scott*, 242 A.3d 23, 29 (R.I. 2020)) (emphasis added) (brackets omitted). “As such, ‘where the act is performed but *not* in the time or in the precise manner directed by the *statute*, the provision will *not* be considered mandatory if the purpose of the *statute* has been substantially complied with and no substantial rights have been jeopardized.”” *Id.* at 41-42 (quoting *Begg*, 242 A.3d at 29).

Here, there is no sanction set forth in § 45-24-34 if the Town Council fails to include the Comprehensive Plan language in the Ordinance, as it is required to do. The Ordinance was

enacted, but not in the “precise” manner directed by statute. The provision requiring the language is not the essence of the statute, rather the essence of the statute is to ensure that the Comprehensive Plan is consistent. The language is directed at public officers, of course, as only town and city councilors may enact such ordinances. *See West v. McDonald*, 18 A.3d 526 (R.I. 2011).

The parties and the hearing justice in this case relied on the factors set forth in *West* to support their analyses on whether the statutory time limitation is mandatory or *directory*. As stated therein,

“[t]his Court looks to a variety of factors when analyzing whether time provisions are *directory* or mandatory, including (1) the presence or absence of a sanction, (2) whether the provision is the essence of the *statute*, and (3) whether the provision is aimed at public officers.”³ *West*, 18 A.3d at 534 (emphasis added).

Justice Robinson recently held for the high court:

“While a violation ‘of a mandatory statute either invalidates the transaction or subjects the noncomplier to the consequences stated in the statute,’ failure to comply with a *directory* statute does not have such consequences ‘since there is a permissive element.’ 1A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 25:3 (7th ed. 2007).” *Rosa*, 270 A.3d at 41.

Accordingly, even though such an ordinance should contain a statement of consistency with the Comprehensive Plan, this Ordinance was consistent with the Comprehensive Plan and was directory rather than mandatory. Accordingly, Westerly Ordinance Chapter 2034 is in full force and effect and not void.

³ Pages 534 and 535 of the *West* case analyze and apply the separate factors in detail.

III

Conclusion

Trestle Park's request for a declaratory judgment is granted. Its request for reconsideration of Count II of their Second Amended Complaint is also granted. Trestle Park's motion for summary judgment is denied. The Town of Westerly's cross-motion for summary judgment is granted.

For the reasons stated, the Court declares and adjudges Westerly Ordinance Chapter 2034 is given full force and effect. The Ordinance is not illegal, null, or void. Its enactment, and the reliance and enforcement of the Ordinance by the Town, its boards, agencies and officials are not void. Trestle Park's request for attorneys' fees, interest, and costs are denied.

Final Judgment on all counts may enter for the Town and the Applicant.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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COURT: Washington County Superior Court

DATE DECISION FILED: July 22, 2025

JUSTICE/MAGISTRATE: Lanphear, J.

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