STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: September 18, 2024)

JOHN M. RAINALDI and SANDRA L. RAINALDI *Appellants,*	:	
v.	:	**C.A. No. WC-2023-0366**
THE TOWN OF NARRAGANSETT ZONING AND PLATTING BOARD OF REVIEW; JAMES P. MANNING, in his official capacity as Chairman of Zoning and Platting Board of Review; ANTHONY BRUNETTI, in his official capacity as Vice Chairman of the Zoning and Platting Board of Review; JOSEPH PAGLIA, in his official capacity as Secretary of the Zoning and Platting Board of Review; CHRISTOPHER ALMON, in his official capacity as a Member of the Zoning and Platting Board of Review; KEITH KYLE, in his official capacity as a Member of the Zoning and Platting Board of Review; CHRISTINE SPAGNOLI, in her official Capacity as Finance Director for the Town of Narragansett; WAYNE R. PIMENTAL, in his capacity as Building and Zoning Official for the Town of Narragansett, *Appellees.*	:	

DECISION

LANPHEAR, J. Before this Court is John and Sandra Rainaldis' appeal of the Narragansett Zoning Board of Review's decision affirming Appellants' violation of chapter 731 of the Code of Ordinances of the Town of Narragansett entitled Zoning, Section 2.2, Definitions, Household (Four Unrelated Ordinance). Specifically, the Rainaldis question whether the Town's

prohibition against four unrelated people living in the same dwelling unit is enforceable. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth herein, this Court reverses the Zoning Board's decision.

I

Travel

The history of the Four Unrelated Ordinance is consequential. On November 16, 1987, the Narragansett Town Council adopted an ordinance that defined "family" as

> "One (1) or more persons related by blood, marriage or adoption using the same kitchen facilities and living together in a single dwelling unit as a single housekeeping unit; or no more then [*sic*] three (3) persons not related by blood, marriage or adoption using the same kitchen facilities and living together in a single dwelling unit as a single housekeeping unit. Roomers, boarders or lodgers are considered persons for the purpose of reaching the maximum of three (3) persons." *Distefano v. Haxton*, No. WC-92-0589, 1994 WL 931006, at *1 (R.I. Super. Dec. 12, 1994) (citing Code at Appendix A, § 17.2).

The ordinance was challenged in Superior Court in *Distefano*, and the trial justice concluded that the ordinance violated the due process and equal protection clauses of the Rhode Island Constitution.

In 2014, the Narragansett Town Council established an Ad Hoc Commission on Student Rental Issues, which created a report which recommended that the Town enact an ordinance "prohibit[ing] more than [four] unrelated persons from occupying a single household." (Appellants' Mem. Ex. B at 5.) On April 4, 2016, the Narragansett Town Council voted to introduce and accept a motion to amend Chapter 731 of the Code of Ordinances of the Town of Narragansett entitled Zoning, Section 2.2 Definitions Households. (Appellants' Mem. Ex. D at 5-6.) The Amendment (Four Unrelated Ordinance) defines a "household" as

> "One or more persons living together in a single dwelling unit, with common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit. The term "household unit" shall be synonymous with the term "dwelling unit" for determining the number of such units allowed within any structure on any lot in a zoning district. An individual household shall consist of any one of the following:
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> > "(a) A family, which may also include servants and employees living with the family; or
> >
> > "(b) A person or group of unrelated persons living together. The maximum number shall be four persons." *Id.* at 7.

On May 16, 2016, the Narragansett Town Council voted unanimously to adopt the motion to amend the Four Unrelated Ordinance. Narragansett began enforcing the Four Unrelated Ordinance in September and October 2016. Narragansett prosecuted these violations in municipal court.

On August 15, 2017, Judge DeCubellis issued a written decision granting the owner-defendants' Motions to Dismiss. Judge DeCubellis's order is extensive and thoughtfully drafted. The court refused to apply the ordinance in that instance. It applied the rational relationship test as courts are bound to do. The Town's appeal of the order was later withdrawn.[1] *Town of Narragansett v. Green Acres, LLC*, WM-2017-0426.

On August 24, 2020, the Narragansett Town Council voted 4-1 to amend the ordinance to limit the amount of college students living together to a maximum of three (Three Student Ordinance). *Narragansett 2100, Inc. v. The Town of Narragansett*, No. WC-2020-0353, 2021

[1] The municipal court decision stated "[u]nfortunately, the Town appears to lose sight of the difference between having the legislative authority to exercise its police powers, including limiting the maximum occupants within a single-family dwelling, and exercising those powers in a manner that would pass constitutional muster." *Id.* at 11. The Narragansett Town Council voted to appeal Judge DeCubellis' order. *See* Appellants' Mem. Ex. B at 11.

WL 2327266, at *1 (R.I. Super. June 1, 2021). On June 1, 2021, a trial justice in the Superior Court struck down the Three Student Ordinance pursuant to § 45-24-53(a) because the plaintiffs were not given an opportunity to be heard before passage. The statute requires a public hearing before the council votes on the ordinance. *Id.* at *6.

In September 2021, the Narragansett Town Council passed the exact same Three Student Ordinance. *See Narragansett 2100, Inc. v. The Town of Narragansett*, No. WC-2021-0448, 2022 WL 17068659, *3 (R.I. Super. Nov. 9, 2022). On November 9, 2022, the Superior Court struck down the 2021Three Student Ordinance for violating § 45-24-51. *Id.* at *7. In that same month, Narragansett's Zoning Official started issuing violations of the Four Unrelated Ordinance. (Appellees' Mem. Ex. 21, Hr'g Tr. 62:21-24, Apr. 25, 2023.) The statute was declared unenforceable because of the failure of the Town Council to refer the proposal to the town Planning Commission per § 45-24-11.

II

Facts

The Rainaldis' property is located at 45 Sylvan Road in Narragansett, R.I. On November 23, 2022, Narragansett Building Official, Wayne Pimental, issued a notice of a Zoning Ordinance Violation to the Rainaldis for violating the Four Unrelated Ordinance. The notice states that an inspector documented "that six . . . unrelated individuals were living in this dwelling unit." (Appellants' Mem. Ex. L.) Appellants appealed the Zoning Ordinance Violation to the Zoning Board.

A

Zoning Board Hearings

On March 23, 2023, the Zoning Board voted to continue the hearing. On April 25, 2023, Pimental testified about other cases pertaining to Four Unrelated Ordinance violations. At the same hearing, David Greene, former Narragansett Minimum Housing/Rental Inspector, testified about other cases involving Four Unrelated Ordinance violations. Greene testified about his process when receiving a complaint that more than four unrelated people are residing together, which included going to the house, informing them about the complaint, and inquiring if they are related. Greene also testified that he was unsure how he could prove unrelated people were living together. The Zoning Board voted to continue the hearing.

On May 18, 2023, the Zoning Board held another hearing in part on Appellants' appeal of the Zoning Ordinance Violation for the Four Unrelated Ordinance. Again, Pimental testified about an e-mail from Greene that discussed Appellants' violation of the Four Unrelated Ordinance. He testified that the e-mail does not say the renters are unrelated, but he spoke with Greene who inferred that he spoke with the renters and confirmed as much. Pimental testified the ordinance does not define "unrelated" and opined it meant unrelated "by blood." The Zoning Board unanimously voted to continue the hearing.

On June 22, 2023, the Zoning Board held a meeting and voted unanimously to continue the appeal to July 26, 2023. On July 26, 2023, the Zoning Board voted unanimously to enter the findings of fact into the record and uphold the determination of the violation by the Building Official. The Zoning Board for the first time defined "unrelated" as "not related by blood or marriage." Tr. 19:25-20:2, July 26, 2023.

B

Zoning Board Decision

On August 3, 2023, the Zoning Board issued a decision on Appellants' appeal of the Zoning Ordinance Violation. (Appellees' Mem. Ex. 4.) The decision laid out all the evidence presented at the hearings including the Second Amended Complaint filed on behalf of Appellants in the Washington County Superior Court on March 1, 2023. *Id.* at 1.

The Zoning Board found that,

> "1. The Board heard testimony from the Zoning Official and the Minimum Housing Inspector indicating that the dwelling had more than four unrelated persons living together. The appellant argued that the Town did not have definitive confirmation that the parties were unrelated but did not present any information to the contrary. The Appellant also argued that the statute was vague and unenforceable.
>
> "2. The Town submitted several exhibits, including the Second Amended Complaint, filed with the Superior Court on behalf of this appellant, as well as several others. In that Second Amended Complaint . . . under the section titled *'The Plaintiffs' Specific Factual Backgrounds'*, paragraph 89, states *'Prior to the Town's adoption of the Four Unrelated Ordinance, East Side (sic) and its predecessors-in-interest used, and continue to use, 45 Sylvan Road to rent to more than four unrelated individuals.'*
>
> "3. The Board concluded that this admission provides the additional evidentiary link and provided probative factual evidence that this Board can rely upon to support the issuance of the notice of violation. Having the Second Amended Complaint admitted into evidence, the appellant did not offer any evidence to contradict the admission. The Board also used the plain meaning of the term "unrelated" which was detailed in Mr. Kyle's motion.
>
> "4. The Board incorporates the record in full of this proceeding including the verbal motion of Mr. Kyle in this written decision." *Id.* at 1-2.

On August 22, 2023, the Rainaldis appealed the Zoning Board's decision.

III

Standard of Review

The Superior Court's review of a zoning board decision is governed by § 45–24–69(d) which provides:

> "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:
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> "(1) In violation of constitutional, statutory, or ordinance provisions;
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> "(2) In excess of the authority granted to the zoning board of review by statute or ordinance;
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> "(3) Made upon unlawful procedure;
>
> "(4) Affected by other error of law;
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> "(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." Section 45-24-69(d).

Our Supreme Court has opined that "[i]t is the function of the Superior Court to 'examine the whole record to determine whether the findings of the zoning board were supported by substantial evidence."' *Lloyd v. Zoning Board of Review for City of Newport*, 62 A.3d 1078, 1083 (R.I. 2013) (internal quotation omitted). The term "substantial evidence" has been 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 Board of Review of Town of North 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)).

In conducting its review, the trial justice "may 'not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact.'" *Curran v. Church Community Housing Corp.*, 672 A.2d 453, 454 (R.I. 1996) (quoting § 45–24–69(d)). Deference given to a zoning decision is due, in part, to the fact "that a zoning board of review is presumed to have knowledge concerning those matters which are related to an effective administration of the zoning ordinance." *Monforte v. Zoning Board of Review of City of East Providence*, 93 R.I. 447, 449, 176 A.2d 726, 728 (1962).

IV

Analysis

A

Vagueness

The Rainaldis' arguments center on the term "unrelated" which they contend is ambiguous and vague. The Rainaldis aver that there is no definition of the term "unrelated" in the Four Unrelated Ordinance which led to arbitrary enforcement against them, so the ordinance should be construed in favor of the property owners. Alternatively, the Rainaldis suggest that even if this Court finds that "unrelated" is unambiguous, the Zoning Board's definition is too restrictive. The Rainaldis note the Zoning Board did not make a finding to define "unrelated" when discussing the alleged violation; instead, the Zoning Board discussed another alleged violation. The Town counters that it is not required to include a definition of "unrelated" in the ordinance, and the Zoning Board properly relied on the plain and ordinary meaning of the word.

The United States Supreme Court has stated that "[v]agueness challenges to statutes not threatening First Amendment interests are examined in light of the facts of the case at hand; the statute is judged on an as-applied basis." *Maynard v. Cartwright*, 486 U.S. 356, 361 (1988). "[T]he void-for-vagueness [analysis] doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). A vague law "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Finally, "[a] statute is unconstitutionally vague if it compels 'a person of average intelligence to guess and to resort to conjecture as to its meaning and/or as to its supposed mandated application.'" *Moreau v. Flanders*, 15 A.3d 565, 583 (R.I. 2011) (quoting *Trembley v. City of Central Falls*, 480 A.2d 1359, 1365 (R.I. 1984)).

The Four Unrelated Ordinance does not contain a definition of "unrelated." The Rainaldis' counsel questioned the building inspector at the Zoning Board meeting about the definition of "unrelated," and he expressed confusion about it. Tr. 52:16-53:19, May 18, 2023. Similarly, the Zoning Board was perplexed about the definition of "unrelated" and discussed it at the May 18, 2023 meeting. *Id.* at 78:19-82:18. At the July 26, 2023 Zoning Board meeting, the Zoning Board defined "unrelated" as "not related by blood or marriage." (Tr. 19:21-20:2, July 26, 2023.) These are not the words of the ordinance.

The Merriam-Webster Dictionary definition of "unrelated" is that it is a synonym of "not related such as (a) not connected by birth or family; (b) not connected in any way; (c) [or] not told." Dictionary.com defines it as "not connected or associated" or "not connected

by kinship or marriage." Dictionary.com, https://www.dictionary.com/browse/unrelated (last visited July 10, 2024). The Random House Dictionary defines "related" as "associated; connected" or "allied by nature, origin, kinship, marriage, etc." The Random House Dictionary of the English Language 1626 (2d ed. 1987). Each of these three sources give alternative definitions – some requiring blood or marital relationships, some not. There is a lack of consensus on the definition of "unrelated." Simply put, it is difficult to determine what the 1987 town council intended by use of the term.

The Four Unrelated Ordinance also includes the term "family" and does not provide a definition for that term. Merriam-Webster Dictionary's definition of "unrelated" also includes the word "family." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/unrelated (last visited July 10, 2024). The definition of family has drastically changed in the last sixty years.

For the Four Unrelated Ordinance, the use of the word "family" creates a plethora of questions: does the definition of "family" include an unmarried couple, an adopted child, a single parent with a foster child? Whether the Rainaldis' tenants qualify as a "family" within the confines of the Four Unrelated Ordinance is unclear.

The American Heritage Dictionary of the English Language defines "family" as:

> "1. a. A fundamental social group in society typically consistent of one or two parents and their children
>
> b. Two or more people who share goals and values, have long-term commitments to one another, and reside usually in the same dwelling place.
>
> "2. All of the members of a household under one roof.
>
> "3. A group of persons sharing common ancestry." The American Heritage Dictionary of the English Language 638 (4 Ed. 2000).

Illustrative of the transitioning definition and need for clarification is the Rhode Island Domestic Violence Prevention Act which provides an expansive definition of "family or household member" to include:

> "spouses, former spouses, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past three (3) years, and persons who have a child in common regardless of whether they have been married or have lived together, or persons who are, or have been, in a substantive dating or engagement relationship within the past one year which shall be determined by the court's consideration of the following factors:
>
> "(1) The length of time of the relationship;
>
> "(2) The type of the relationship;
>
> "(3) The frequency of the interaction between the parties." G.L. 1956 § 12-29-2.

The use of "unrelated" and "family" within the Four Unrelated Ordinance are ambiguous. This results in confusion for ordinary landlords and renters in Narragansett regarding what household formulations are prohibited. *See Riley v. Narragansett Pension Board*, 275 A.3d 545, 554 (R.I. 2022). Thus, the Four Unrelated Ordinance resulted in arbitrary enforcement against Appellants. Specifically, by failing to define "unrelated" and "family," Narragansett delegated their duties to their Building and Zoning Official to define those terms. *See* Tr. 53:4-19, May 18, 2023. This improperly delegates policy matters to these town officials, precisely what the vagueness doctrine seeks to avoid. *See Grayned*, 408 U.S. at 108.

The Rainaldis also question the amendment of the word "household" within the Four Unrelated Ordinance, but the ordinance does not ban a specific use, and does not use

the word "household" again. The Town notes that the definition pertains to the application of Section 6.2 of the Narragansett Zoning Ordinance which states

> "Notwithstanding any other provision of this section, the following uses shall be permitted uses within all residential zoning use districts within the town of Narragansett and all industrial and commercial zoning use districts except where residential use is prohibited for public health and safety reasons: (1) *Households*; (2) Community residences; (3) Family day care homes." (Emphasis added.)

Thus, the Rainaldis' argument on this point is unpersuasive.

For the reason elucidated previously, the words "family" and "unrelated" as used in the Four Unrelated Ordinance are ambiguous, which led to arbitrary enforcement against Appellants by the Town officials. Therefore, the Four Unrelated Ordinance is unenforceable as it is impermissibly vague.

B

Equal Protection & Substantive Due Process

The Rainaldis contend the Four Unrelated Ordinance does not satisfy rational basis review pursuant to the due process and equal protection clauses of the United States and Rhode Island Constitutions. Namely, the Four Unrelated Ordinance lacks any rational relationship to a legitimate state interest because it is not rationally related to the quality of life and preservation of character of the town; public safety, fire safety, and building safety; and affordable housing for full-time residents. The Rainaldis reference *Federal Hill Capital, LLC v. City of Providence by and through Lombardi*, 227 A.3d 980 (R.I. 2020), *as corrected* (June 20, 2020).

The claim stems from Rhode Island's Equal Protection Clause of the United States Constitution establishing that no person shall be "denied equal protection of the laws[,]" and its federal counterpart. R.I. Const. art. 1, § 2; U.S. Const. amend. XIV. The Due Process Clause of

the Rhode Island Constitution states that "[n]o person shall be deprived of life, liberty or property without due process of law . . ." R.I. Const. art. 1, § 2; *see also* U.S. Const. amend. XIV.

1

Level of Constitutional Review

This Court must first determine the appropriate level of constitutional review to employ for the Four Unrelated Ordinance. There are three levels of constitutional review for an equal protection challenge. The most stringent is strict scrutiny which "is applied to racial and ethnic classifications and requires that in order 'to pass constitutional muster, [the classifications] must be justified by a compelling governmental interest and must be 'necessary . . . to the accomplishment' of their legitimate purpose.'" *Kleczek v. Rhode Island Interscholastic League, Inc.*, 612 A.2d 734, 736 (R.I. 1992) (quoting *Palmore v. Sidoti*, 466 U.S. 429, 432–33 (1984)).

The next level of constitutional review is intermediate scrutiny which applies to gender classifications. *Id.* at 737. Intermediate scrutiny requires '"that classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives"' to be constitutional. *Id.* (quoting *Craig v. Boren*, 429 U.S. 190, 197 (1976)). "Classifications by gender deserve intermediate scrutiny because most, although not all, gender classifications by the state are not justified." *Id.*

The final level of constitutional review, rational basis, is the least rigorous. *See id.* "Under this analysis, if we can conceive of any reasonable basis to justify the classification, we will uphold the statute as constitutional." *Mackie v. State*, 936 A.2d 588, 596 (R.I. 2007) (citing *Kennedy v. State*, 654 A.2d 708, 712–13 (R.I. 1995)). In conducting such a review, this Court will not '"delve into the [Town's] 'motives' for passing legislation."' *Id.* (quoting *Power v. City*

of Providence, 582 A.2d 895, 903 (R.I. 1990). We have held that "[e]ven if the Legislature had a constitutionally improper 'motive' when it passed legislation, the legislation would still hold up to rational basis scrutiny if this [C]ourt could find any legitimate objective." *Id.* (citing *In re Advisory Opinion to the House of Representatives,* 485 A.2d 550, 552 (R.I. 1984)).

Rational basis review applies because the Four Unrelated Ordinance does not classify according to gender, race, or ethnicity. The classification in the Four Unrelated Ordinance targets college students or perhaps unmarried individuals, which are not protected classes. No other classification was established.

2

Is the Four Unrelated Ordinance Rationally Related to a Legitimate Purpose?

The Rainaldis rely on the Superior Court's holding in *DiStefano*, 1994 WL 931006, at *7 to support their assertion that there is no rational basis for the Four Unrelated Ordinance. The Town suggests that the Rhode Island Supreme Court's holding in *Federal Hill Capital, LLC,* 227 A.3d at 993 contends that the same reasoning applies here.

In *DiStefano,* a trial justice of the Rhode Island Superior Court reviewed the constitutionality of the Three Unrelated Ordinance which defined "family" as:

> "One (1) or more persons related by blood, marriage or adoption using the same kitchen facilities and living together in a single dwelling unit as a single housekeeping unit; or no more then [*sic*] three (3) persons not related by blood, marriage or adoption using the same kitchen facilities and living together in a single dwelling unit as a single housekeeping unit. Roomers, boarders or lodgers are considered persons for the purpose of reaching the maximum of three (3) persons." *DiStefano.* 1994 WL 931006, at *1.

The trial justice concluded that "restricting occupancy of single-family housing based generally on the biological or legal relationships between its inhabitants bears no reasonable relationship to

the goals of reducing parking and traffic problems, controlling population density and preventing noise and disturbance." *Id.* at *14.

In *Federal Hill Capital, LLC,* a Providence ordinance prohibited more than three college students from residing together. *Federal Hill Capital, LLC*, 227 A.3d at 982. Applying rational basis review, the Rhode Island Supreme Court concluded that the Providence ordinance did not violate equal protection and due process because the City Council may have concluded that numerous college students residing in single-family homes denigrates the character of the area, or it may benefit the city to limit the number of college students who may rent single-family homes. Ultimately, the Rhode Island Supreme Court held that it would be impossible to discount every rational basis to support the zoning ordinance. *Id.* at 995-96.

In applying rational basis review, "if we can conceive of any reasonable basis to justify the classification, we will uphold the statute as constitutional." *Id.* at 991 (quoting *Cherenzia v. Lynch*, 847 A.2d 818, 825 (R.I. 2004)). Narragansett could have enacted the Four Unrelated Ordinance to protect the character of its neighborhoods by preventing a substantial number of people from residing together in a limited space. There was an appropriate rational basis to enact the Four Unrelated Ordinance. In addition, the Rhode Island Supreme Court's rationale in *Federal Hill Capital, LLC* is directly applicable to the case at hand and controlling.

3

Selective Enforcement and Disparate Treatment

The Rainaldis argue that the Zoning Board and Town of Narragansett treated Appellants differently than other similarly situated property owners that were not issued violations.

A selective-enforcement claimant must show: '"(1) [he or she], compared with others similarly situated, was selectively treated; and (2) that such selective treatment was based on

impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith intent to injure a person.'" *Providence Teachers' Union Local 958, AFL-CIO, AFT v. City Council of City of Providence*, 888 A.2d 948, 954 (R.I. 2005) (quoting *LeClair v. Saunders*, 627 F.2d 606, 609-10 (2d Cir. 1980)).

While the Rainaldis claim they were selectively treated, other violations of the Four Unrelated Ordinance were issued when their violation was issued. *See generally* Tr. Apr. 25, 2023. There is a lack of evidence to show any selective treatment based on impermissible considerations. The Rainaldis do not refer to any evidence to support this assertion. In conclusion, Appellants' contention is without merit.

C

Collateral Estoppel

The Rainaldis next argue that the doctrine of collateral estoppel estops the Town of Narragansett from enforcing the Four Unrelated Ordinance. Namely, they suggest Judge DeCubellis' decision in municipal court was appealed to Superior Court and dismissed resulting in a final adjudication on the merits. The Town replies that the municipal court has limited jurisdiction and, thus, lacks authority to declare an ordinance unconstitutional.[2]

"The doctrine of collateral estoppel makes conclusive in a later action on a different claim the determination of issues that were actually litigated in a prior action." *E.W. Audet & Sons, Inc. v. Fireman's Fund Insurance Co. of Newark, New Jersey*, 635 A.2d 1181, 1186 (R.I. 1994) (citing *Providence Teachers Union, Local 958, American Federation of Teachers, AFL-CIO v. McGovern*, 113 R.I. 169, 172, 319 A.2d 358, 361 (1974). Collateral estoppel '"means simply that when an issue of ultimate fact has once been determined by a valid and final

[2] The municipal court did not declare the ordinance unconstitutional but unenforceable in the case at bar.

judgment, that issue cannot again be litigated between the same parties in any future lawsuit.'" *Id.* (quoting *Ashe v. Swenson*, 397 U.S. 436, 443 (1970)). "Under the doctrine of collateral estoppel, 'an issue of ultimate fact that has been actually litigated and determined cannot be re-litigated between the same parties or their privies in future proceedings.'" *Paolino v. Commonwealth Engineers & Consulting, Inc.*, 318 A.3d 209, 215 (R.I. 2024) (quoting *Commercial Union Insurance Company v. Pelchat*, 727 A.2d 676, 680 (R.I. 1999)).

The parties are not identical, and some six years later, the facts are likely to be quite different.

The Narragansett Municipal Court possesses statutory original jurisdiction to hear cases concerning the violation of an ordinance. G.L. 1956 § 45-2-30. The Narragansett Municipal Court's jurisdiction is limited to ordinance violations. *See id.* Thus, the Narragansett Municipal Court does not possess jurisdiction to declare the declaratory relief sought regarding the constitutionality of a Narragansett ordinance. As a result, this Court cannot employ the doctrine of collateral estoppel to Judge DeCubellis' municipal court decision. The doctrine of collateral estoppel does not apply to Judge DeCubellis' decision.

The Rainaldis are not collaterally estopped from seeking declaratory relief in the case at bar.

D

Appellants Additional Arguments

The Rainaldis raise other concerns. They suggest the Zoning Board improperly relied on the Second Amended Complaint, and there is a lack of evidence to support the Zoning Board's decision. The Court need not weigh the evidence given its prior rulings herein.

The Rainaldis argue that the Four Unrelated Ordinance fails to accommodate nonconforming uses and is void at its inception. A nonconformance is defined as "[a] building, structure, or parcel of land, or use thereof, lawfully existing at the time of the adoption or amendment of a zoning ordinance and not in conformity with the provisions of that ordinance or amendment." Section 45-24-31(53). Section 45-24-39(a) requires that "[a]ny city or town adopting or amending a zoning ordinance under this chapter shall make provision for any use . . . lawfully existing at the time of the adoption or amendment of the zoning ordinance, but which is nonconforming by use or nonconforming by dimension." Narragansett has an ordinance zoning provision which applies for all prior nonconforming uses with the requirement set out in § 45-24-39(a). Appendix A, Zoning, Sections 9, 9.1(2) of the Narragansett Ordinance provides for the continuance of nonconforming uses.[3] Hence the argument is unavailing.

Finally, the Town makes a procedural argument that this Court mandated that the parties file their briefs at the same time placing an "undue burden" on the parties. Appellees' Mem. at 1-2. In August 2023, the Zoning Board issued its decision, and the Town was served with the appeal. In February 2024, the Rainaldis filed their reasons for appeal – designed to give the Town explicit notice of what arguments would be made. Having already proceeded through one layer of appeal and knowing what issues would be raised, the Town has shown no prejudice from this Court's prompt, but reasonable deadlines.

[3] Appendix A, Zoning, Sections 9, 9.1(2) of the Narragansett Ordinance states in pertinent part "[t]he nonconforming use of a building or structure may be continued, provided that the building or structure is not enlarged, extended or reconstructed without the grant of a special use permit, except for such alteration, maintenance and repair work as is required to keep said building or structure in a safe condition or constitutes remodeling of the existing building or structure without substantial structural alterations."

Moreover, our General Assembly has clearly demonstrated its concern to move cases on the Land Use Calendar along. Cases on the Land Use Calendar, such as this one, face additional directives concerning timing.

> "All matters assigned to the land use calendar shall be expedited. All memoranda from all interested parties in an appeal assigned to the calendar shall be completed within sixty (60) days of the filing of the certified record. No continuances or postponements shall be granted except for good cause shown. Such continuances as are necessary shall be granted for the shortest practicable time." G.L. 1956 § 8-2-40(d).

The Court cannot conclude that the Town was prejudiced.

V

Conclusion

For the reasons stated herein, this Court reverses the decision of the Narragansett Zoning Board and declares the Four Unrelated Ordinance vague and unconstitutional. The Rainaldis' counsel shall submit the appropriate order for entry. Any request for additional relief shall be made within fifteen days of the date of the entry of this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**John M. Rainaldi and Sandra L. Rainaldi v. The Town of Narragansett Zoning and Platting Board of Review, et al.**
CASE NO:	**WC-2023-0366**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**September 18, 2024**
JUSTICE/MAGISTRATE:	**Lanphear, J.**
ATTORNEYS:	
For Plaintiff:	**Joelle C. Rocha, Esq.**
For Defendant:	**Marc Desisto, Esq.** **Ryan D. Stys, Esq.**