STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 14, 2016)

WEST RIVER COMMERCE CENTER ANNEX, LLC, and CORLISS CENTER, LLC	:	
Appellants	:	
	:	
v.	:	**C.A. No. PC-2015-1123**
	:	
MYRTH YORK, Chair, ARTHUR STROTHER, SCOTT WOLF, NURIA CHANTRE, and ENRIQUE MARTINEZ, in their official capacities as Members of The Zoning Board of Appeals of the City of Providence, and VALUE PLACE RHODE ISLAND, LLC, as Owner and COVE ROAD DEVELOPMENT CORP., as Applicant	:	
Appellees	:	
	:	
	:	**consolidated with**
	:	
WEST RIVER COMMERCE CENTER ANNEX, LLC, and CORLISS CENTER, LLC	:	
Appellants	:	
	:	
v.	:	**C.A. No. PC-2015-4546**
	:	
MARC GREENFIELD, Chair, ARTHUR STROTHER, SCOTT WOLF, VICTOR CAPPELLAN, and ENRIQUE MARTINEZ, in their official capacities as Members of The Zoning Board of Appeals of the City of Providence, and VALUE PLACE RHODE ISLAND, LLC, as Owner and COVE ROAD DEVELOPMENT CORP., as Applicant	:	
Appellees	:	

DECISION

LICHT, J. West River Commerce Center Annex, LLC, and Corliss Center, LLC (together, the Neighbors) appeal decisions of the Zoning Board of Review for the City of Providence (the ZBR) approving the Master and Preliminary Plans of applicants Value Place Providence RI, LLC[1] (Value Place) and Cove Road Development Corporation (Cove Road). Jurisdiction is pursuant to G.L. 1956 § 45-23-71.

I

Facts and Travel

Cove Road and Value Place (collectively, the Developers) wish to redevelop the property at 181 Corliss Street in Providence, Rhode Island, constructing what they characterize as an extended-stay hotel (the Project). Accordingly, they submitted an Application for Major Land Development Project on October 23, 2014. A major land development project has three stages of approval: Master Plan, Preliminary Plan, and Final Plan. Sec. 45-23-39. In Providence, each of these plans must be submitted to the City Plan Commission (CPC). Providence Zoning Ordinance § 421.1 (2012) (hereinafter, Zoning Ordinance).[2] On October 31, 2014, the City of Providence's review officer certified the application complete, vesting it under the Zoning Ordinance in effect at the time. Id. at § 1108. The Project is located in an M-1 Industrial District.

[1] As part of a larger rebranding effort to replace or supplement the Value Place brand with WoodSpring Suites, the corporation has changed its name to WoodSpring Suites Providence RI, LLC. Furthermore, in some documents, including the caption of these cases, the corporation at issue is variously referred to as Value Place Providence, LLC, or Value Place Rhode Island, LLC.

[2] Thus, while Providence adopted a new zoning ordinance on November 24, 2014, the zoning ordinance which applies to this application is the one dated June 27, 1994, as amended. Any references to the Zoning Ordinance herein, unless otherwise specified, refer to the older, vested 2012 ordinance.

A

Master Plan

The CPC held a public hearing on the Master Plan for the Project on November 18, 2014, at which the Developers presented an overview of the Project. Representatives from the Developers answered questions about matters not germane to this appeal, including drainage, signage, and vegetation, as well as preliminary questions about the proximity of the hotel to the neighboring industrial uses. CPC Hr'g Tr. 10:4-22, Nov. 18, 2014. After the questions from the CPC members, Providence City Councilman Nicholas J. Narducci registered his support for the Project, excited about the jobs it would create. Id. at 15:21-16:21.

After this testimony, the Neighbors presented their opposition to the Project. The Neighbors, via their expert Edward Pimentel, offered three main arguments against the Project. First, they argued that it was "inconsistent with the Comprehensive Plan" due to the site's location in a Jobs District. Id. at 18:12-13, 20:20-21:7. Second, they further asserted that the Project should be classified under Use Code 15.2 of the Zoning Ordinance, not Use Code 16.2, which the Developers contended applies.[3] Id. at 22:9-16. Uses under Use Code 16.2 are permitted as of right in an M-1 Industrial District, while those under Use Code 15.2 require a special use permit. Zoning Ordinance § 303, Table 1.0. Finally, the Neighbors challenged the characterization of the Project as a hotel, claiming it is more apartment-like in character. In support of that, the Neighbors submitted several printouts from the Internet, including an interview with Value Place founder Jack DeBoer. CPC Hr'g Tr. 22:20-27:1, Nov. 18, 2014.

[3] Use Code 16.2 is titled "Temporary Lodging, more than 30 rooming units," and provides as examples "hotel and motel." Zoning Ordinance App. at A-2 (2012). Use Code 15.2 is titled "Lodging, more than 10 rooming units," and provides as examples "apartment hotel, boarding house, rooming house." Id. at A-1.

In response to these comments, the CPC members asked staff planner Robert Azar about the zoning discrepancies.[4] He contended that the Project qualified under Use Code 16.2, and that the Project was not located in a mapped Jobs District under the Zoning Ordinance. Id. at 27:10-28:9. CPC members also questioned Scott Bixler, an executive with Value Place, who indicated that the Project would be built to hotel standards, not apartment standards, and clarified the staffing requirements of the Project. Id. at 29:15-30:23. Finally, the CPC heard the staff report, which recommended approval of the Master Plan. The CPC voted to approve the Master Plan "subject to the findings of fact of the staff report" and subject to various conditions not relevant to this appeal. Id. at 33:1-2. The CPC issued its decision on November 20, 2014, finding that the Project complied both with the Comprehensive Plan and the Zoning Ordinance. The Neighbors timely appealed the approval to the ZBR.

The ZBR heard the matter on February 4, 2015. The ZBR first struck several submissions from the Neighbors, which had not been presented to the CPC. ZBR Hr'g Tr. 130:24-131-6, Feb. 4, 2015. The Neighbors then argued that the CPC's decision at the November 2014 meeting lacked the required findings of fact and conclusions of law. Id. at 131:22-133:10. They again asserted that the Project should not be characterized as a hotel. Id. at 140:2-140:14. Additionally, for the first time, the Neighbors raised the issue of cooking units in the rooms.[5]

After hearing the Neighbors' arguments, as well as a response from the Developers, the ZBR affirmed the CPC decision and denied the Neighbors' appeal by a vote of 4-1. Id. at 156:25-157:16. The ZBR issued its written decision on March 11, 2015. In this decision, the ZBR found that "[t]he CPC did not commit procedural error by basing its decision on the findings of fact in the Staff report," which were "specifically incorporated . . . as the basis of its

[4] Mr. Azar is erroneously referred to as "Board Member Azar" in the transcript.
[5] Cooking units were not substantially discussed during the CPC Master Plan hearing. The issue of cooking facilities will loom large during the Preliminary Plan discussions.

decision to grant the proposal." R. Ex. MP-13 at 4. They also found that "there is no evidence that the CPC did not hear or consider other testimony," and that there was "competent evidence on the record to support the CPC's decision" that the Project qualified under Use Code 16.2. Id. at 4-5. The Neighbors timely appealed to this Court.

B

Preliminary Plan

While the Master Plan appeal was pending, the Developers continued with the application process. They submitted their Preliminary Plan to the CPC, which held an initial public hearing on February 24, 2015. After initial discussions about drainage, significant trees, and lighting, the Developers introduced a Zoning Determination Letter from Jeffrey Lykins, Director of Inspections and Standards, declaring that the Project fell under Use Code 16.2 and was permitted by right. R. Ex. PP-4a.

Mr. Pimentel again testified that the character of the Project was more consistent with permanent residence than temporary. More specifically, Mr. Pimentel observed that there would be, in each room of the Project, an area with a refrigerator, microwave, two-burner electric cooktop, and sink. See R. Ex. PP-4b, at 11; see also CPC Hr'g Tr. 19:8-12, May 19, 2015 (testimony from Mr. Bixler at a subsequent meeting describing the area in question). He argued that these constituted cooking facilities, and that the presence of cooking facilities in the Project's rooms made the units dwelling units, not rooming units. CPC Hr'g Tr. 43:11-24, Feb. 24, 2015. Therefore, Mr. Pimentel argued, the Project did not comply with Use Code 16.2; instead, he asserted, the Project was an apartment hotel, classifiable under Use Code 15.2. Id. at 45:10-23. Mr. Pimentel further opined that regardless of whether the Project was located in a mapped Jobs District under the Zoning Ordinance, it was located in a Jobs District under the

Comprehensive Plan. Id. at 46:10-16. It was Mr. Pimentel's opinion that the Project was inconsistent with a Jobs District, and thus, the Comprehensive Plan. Id. at 47:6-10. The CPC took no action on the Project at the initial meeting.

The CPC's next meeting about the Project was on April 28, 2015, which focused on the character and zoning of the Project. Joseph Lombardo, a qualified zoning expert, discussed the Project in general terms, although he conceded that he had not performed a comprehensive zoning review. CPC Hr'g Tr. 27:16-28:3, 46:3-20, Apr. 28, 2015. He encouraged the CPC members to view the Project holistically—"[i]s it a hotel or is it not?" Id. After some brief discussion, the CPC decided to continue the matter once again in order to receive more expert testimony, including from Director Lykins. Id. at 67:18-68:5.

At the May 19, 2015 CPC meeting, Mr. Lombardo testified that he had conducted a zoning analysis, and, in his opinion, the Project should indeed be classified under Use Code 16.2, not 15.2 or 14. CPC Hr'g Tr. 8:8-11, 12:11-14:10, May 19, 2015. He also opined that what Mr. Pimentel characterized as a cooking facility in each room should more appropriately be considered a "kitchenette or warmup center." Id. at 16:10. He concluded that the Project was "consistent with and in compliance with both the city zoning ordinance and its comprehensive community plan as a hotel facility." Id. at 17:9-12; R. Ex. PP-13c, at 6.

Next to testify was Ramzi J. Loqa,[6] a zoning expert and former building official for the City of Providence. CPC Hr'g Tr. 24:5-18, May 19, 2015. In his opinion, the Project conformed to the building code and Zoning Ordinance as a hotel and was most appropriately classified under Use Code 16.2. Id. at 25:5-11, 26:14-16. He further argued that the area with the burners should not be considered a "cooking facility" given that it is not a full kitchen and the building

[6] Mr. Loqa is identified as "Ramsey Loqy" in the transcript.

code requires no ventilation system. Id. at 26:17-27:23, 30:16-21. He characterized the area in question as a "warmup area" instead. Id. at 27:24.

Mr. Bixler, an executive with Value Place, then testified that their chain was undergoing a "brand change" to "go after a higher echelon of customer," which included a name change to WoodSpring Suites. Id. at 39:2-19. As such, he was of the opinion that many of the articles that the Neighbors had presented about the business model and character of the company would not be representative of the Project. Id. at 41:17-42:1, 51:3-11. Specifically, he testified that the comments of Mr. DeBoer, founder of the company, were no longer representative, as Mr. DeBoer was no longer a majority shareholder and did not "drive the day-to-day operational process . . . ." Id. at 41:4-10, 42:2-3. Mr. Bixler further observed that the Project was being built as an R-1 use under the building code, not an R-2 use.[7] Id. at 44:5. Construction under section R-1 of the building code is more burdensome, but is required for temporary use, unlike the apartment use of R-2. Id. at 44:5-10, 44:20-45:12. Furthermore, Mr. Bixler stated that they will be paying the same taxes as any other hotel. Id. at 55:17-22. Mr. Bixler was subsequently questioned by the Neighbors, and they clashed over whether the inclusion of glass burners allowed "cooking" where a microwave would not. Id. at 59:16-61:1; see also id. at 62:20-64:4 (CPC member Torrado questioning Mr. Bixler about the same issue).

Director Lykins was the third witness. Notably, six days prior to this meeting, Director Lykins had issued another letter regarding the zoning of the Project. R. Ex. PP-13b. In this letter, Director Lykins stated that his letter of February 24, 2015, "should not be relied upon as an absolute or final determination," and that after further review of the materials presented to the

[7] These building code designations are unrelated to the zoning district types of the same name.

CPC, he believed that the Project fell under Use Code 14.[8] Id. The reason for this is that he believed that each room contained cooking facilities, and that this disqualified them from being rooming units and thus could not be under Use Code 16.2. Id. The letter also stated it was "non-binding and is issued solely to clarify, expand upon, modify, and replace" his previous letter, and that "the question of the appropriateness or permissibility of the [P]roject should be resolved in the approval process for a Major Land Development with the City Plan Commission." Id.

Director Lykins took the opportunity to explain and expand upon this letter. He stated that while he "had trouble finding the definition of cooking in the actual zoning book," he thought that the burners "would be considered cooking." CPC Hr'g Tr. 68:18-23, May 19, 2015. When asked on cross-examination whether that statement was subjective, and not based on the text of the Zoning Ordinance, Director Lykins answered, "I believe so. I believe that is my position and my job." Id. at 72:9-16. When asked whether a permanently-installed microwave oven would constitute a cooking facility, Director Lykins answered that he believed not. Id. at 90:11-91:4. Both Mr. Lombardo and Mr. Loqa also responded to Director Lykins's letter.[9] Mr. Lombardo disagreed with Director Lykins's interpretation, although he conceded that Director Lykins would be a logical person to consult with on the meaning of "cooking facilities." Id. at 21:19-23:11. Mr. Loqa also disagreed with the Director's interpretation based on the temporary nature of the accommodations. Id. at 28:19-29:16.

Mr. Pimentel was the last witness to testify, summarizing a report he also entered into the record. His general contention was that the Project was a "hybrid" that was properly classified as an apartment hotel, and thus under Use Code 15.2. Id. at 108:2-24. Furthermore, he reaffirmed

[8] Use Code 14 is titled "Multi-Family Dwelling, more than 4 units," and provides as an example "multifamily (four units or more) with accessory use and home occupation." Zoning Ordinance at App. A-1.

[9] Their comments on the letter occurred during their testimony, prior to Director Lykins taking the stand. It is presented here for the sake of clarity.

his argument that the Project was located in a Jobs District, and thus not permitted, given that no residential uses were permitted in such a district. Id. at 114:7-21. Mr. Azar disputed both of these assertions, arguing that the classification of apartment hotel was inapposite and that the Jobs District was not mapped on the zoning map. Id. at 115:19-117:15.

After substantial closing arguments and hearing the staff report, the CPC deliberated. Much of their commentary focused on the fact that the Project would "obviously . . . act like a hotel." Id. at 141:21-22; see also id. at 141:4-9, 141:12-15, 141:23-142:3, 142:11-15, 142:23-24, 143:20-24. After deliberations, the CPC voted to approve the Preliminary Plan based on the findings of fact in the staff report and subject to conditions not relevant to this appeal. Id. at 144:2-145:5. The CPC issued its decision on May 20, 2015, again finding that the Project complied both with the Comprehensive Plan and the Zoning Ordinance. The Neighbors timely appealed the approval to the ZBR.

The ZBR heard the matter on September 9, 2015. The Neighbors, the City of Providence, and the Developers all presented lengthy legal arguments, and ultimately the ZBR affirmed the CPC decision and denied the Neighbors' appeal. The ZBR issued its decision on October 1, 2015. Their relevant findings include:

> "9. The CPC did not commit prejudicial procedural error or clear legal error in applying the terms of the Ordinance or in concluding that the project was a hotel/motel and temporary lodging legally permitted in the M-1 Zone by Section 303, Use Code 16.2—and not a residential use as suggested by the objectors/Appellants.
>
> "The CPC members actively questioned the Applicant, received advice from the Administrative Officer and the CPC's counsel, and engaged in substantive discussions of the evidence. The record reflects that the CPC set forth all of the factors it considered in making its determination, and discussed the weight it afforded to the evidence and the factors." R. Ex. PP-20, at 5-6.

The ZBR noted specifically that "[t]he CPC neither 'ignored' nor 'disregarded' evidence of 'cooktops' or of 'cooking facilities'" and that instead they "acknowledged and discussed the issue" and "applied the weight of the evidence to the terms of the Ordinance." Id. at 6. Furthermore, the ZBR noted that although the objectors asserted that the Project was a residence, not a hotel, and that the average length of stay was seventy days, "[t]he weight of the evidence was considered by the CPC and support the CPC's decision." Id.

As to Director Lykins's letter, the ZBR found "that the CPC was not bound by the May 13, 2015 letter," and that "[t]he CPC did not commit prejudicial procedural error, clear error, or make findings contrary to the evidence when . . . it considered the Director's opinion and testimony together with that of other experts, and reached a decision based on its assessment of the weight and credibility of the evidence." Id. Finally, the ZBR found that "[t]he CPC did not commit procedural or legal error in determining that the 'Jobs District Overlay' did not apply so as to preclude the project." Id.

The Neighbors timely appealed to this Court. The cases were consolidated on December 10, 2015.

II

Standard of Review

The Superior Court has jurisdiction to hear appeals from zoning boards of appeal pursuant to § 45-23-71. The statute provides the standard of review for such appeals:

> "The court shall not substitute its judgment for that of the planning board as to the weight of the evidence on questions of fact. The court may affirm the decision of the board of appeal or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions or decisions which are:

> "(1) In violation of constitutional, statutory, ordinance or planning board regulations provisions;
> "(2) In excess of the authority granted to the planning board by statute or ordinance;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error of law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 45-23-71(c).

Thus, the Superior Court reviews "such decisions utilizing the traditional judicial review standard that is applied in administrative-agency actions." Munroe v. Town of E. Greenwich, 733 A.2d 703, 705 (R.I. 1999). The Superior Court's "review is confined to a search of the record to ascertain whether the board's decision rests upon 'competent evidence' or is affected by an error of law." Kirby v. Planning Bd. of Review of Middletown, 634 A.2d 285, 290 (R.I. 1993). "Therefore, the Superior Court does not consider the credibility of witnesses, weigh the evidence, or make its own findings of fact." Munroe, 733 A.2d at 705. "The Superior Court gives deference to the findings of fact of the local planning board." West v. McDonald, 18 A.3d 526, 531 (R.I. 2011).

Unlike questions of fact, however, the Court "reviews issues of statutory interpretation de novo." Pawtucket Transfer Operations, LLC v. City of Pawtucket, 944 A.2d 855, 859 (R.I. 2008) (citation omitted). "It is well settled that the rules of statutory construction apply in the same manner to the construction of an ordinance." West, 18 A.3d at 532. The Court gives the "clear and unambiguous language" of an ordinance its "plain and ordinary meaning." Id. However, when "interpreting the language of an ordinance that is unclear and ambiguous, [the Court] must 'establish[] and effectuate[] the legislative intent behind the enactment.'" Pawtucket Transfer Operations, 944 A.2d at 859 (quoting State v. Fritz, 801 A.2d 679, 682 (R.I. 2002) (citation

omitted)). Thus, looking to the plain meaning of a statute "is not the equivalent of myopic literalism." In re Brown, 903 A.2d 147, 150 (R.I. 2006). "[S]tatutory language should not be viewed in isolation." Id. at 149. Instead, "individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994).

"A planning board's determinations of law, like those of a zoning board or administrative agency, are not binding on the reviewing court; they may be reviewed to determine what the law is and its applicability to the facts." West, 18 A.3d at 532. However, "when the provisions of a statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency, or board, charged with its enforcement is entitled to weight and deference, as long as that construction is not clearly erroneous or unauthorized." Pawtucket Transfer Operations, 944 A.2d at 859-60 (footnote omitted). Reasonable ambiguities in a zoning ordinance should be resolved in favor of the landowner, as zoning ordinances are "in derogation of the common-law right of a property owner to use her land as she wishes[.]" City of Providence v. O'Neill, 445 A.2d 290, 293 (R.I. 1982).

III

Analysis

The Neighbors' arguments are, essentially, that the ZBR clearly erred and acted arbitrarily and capriciously in affirming the CPC for three reasons: (1) Director Lykins's opinion that the Project was classified under Use Code 14 binds the CPC; (2) the Project should not be classified under Use Code 16.2; and (3) the Project is in a Jobs District and thus should be barred. The Neighbors also seek attorneys' fees. The Court will address each argument in turn.

A

The Lykins Letter

The Court must first address Director Lykins's letter.[10] The Neighbors contend that the CPC was bound by the Director's interpretation and lacked the authority to make its own determination. Neighbors' Mem. at 11. By its own terms, however, the letter Director Lykins issued was non-binding. R. Ex. PP-13b ("[M]y opinion as articulated herein is non-binding . . . ."). Furthermore, Director Lykins asserted that "[t]he Department of Inspection and Standards will operate in accordance with the decision rendered by the CPC." Id. The ZBR recognized this in their opinion. R. Ex. PP-20, at 6. Thus, even assuming the Director has the power to bind the CPC, it is clear he did not exercise that power with his letter, possibly due to the "limited information" with which he was provided. R. Ex. PP-13b; see CPC Hr'g Tr. 80:17-81:2, May 19, 2015. Of course, Director Lykins's opinion may carry weight in such matters, see, e.g., Mill Realty Assocs. v. Crowe, 841 A.2d 668, 675 (R.I. 2004), which is why the CPC did not render a decision until after hearing his testimony. See CPC Hr'g Tr. 51:4-7, 55:4-7, 56:12-16, Apr. 28, 2015. However, the CPC was entitled to come to a different conclusion as part of its responsibility to "make positive findings" on the Project's "compliance with the . . . zoning ordinance." Section 45-23-60(a). That statute vests the authority to make those findings with the CPC alone, not with the Director.

[10] The Director's letter can only apply to the approval of the Preliminary Plan, as it had not been written at the time the Master Plan was before the CPC.

B

The Appropriate Use Code

At the outset, the Zoning Ordinance does not have any Use Code called "hotel." However, in Appendix A, which illustrates the range of specific uses for each Use Code, 16.2 is "Temporary Lodging, more than 30 rooming units; hotel and motel." While the term "apartment hotel" appears in Use Codes 15.1 and 15.2; aside from those, the definition of temporary lodging, and Use Codes 16 and 16.1,[11] the term "hotel" appears nowhere else in the Zoning Ordinance. The CPC grappled with what was the appropriate Use Code for the Project. The Neighbors argue that the Project is better classified under other codes. Furthermore, they claim that it cannot qualify under Use Code 16.2—because the Project's rooms contain "cooking facilities," as Director Lykins opined, and because the Project has certain apartment-like characteristics. The Neighbors maintain it was clear error for the CPC to call the Project a hotel under Use Code 16.2.

First, the Neighbors claim the CPC and ZBR erroneously treated the Project as a hotel, ignoring evidence that shows that the Project will be more like an apartment complex. However, the ZBR explicitly found that "[t]he weight of the evidence was considered by the CPC and support the CPC's decision." R. Ex. PP-20, at 6. The record indicates a vigorous back-and-forth between the Neighbors and Developers, with each side presenting evidence—and that the Developers countered the Neighbors' contentions with competent evidence that the information referenced was either out of date or should be discounted. After a thorough review of the record, this Court finds that the CPC had before it reliable, probative, and substantial evidence to characterize the Project as a hotel at both the Master Plan and Preliminary Plan stages. See § 45-23-71(c).

[11] These are like Use Code 16.2, but for fewer units.

Before tackling the appropriateness of Use Code 16.2, the Court must first address the possible alternatives. Mr. Pimentel reasoned that Use Code 15.2 should apply, as he contended the Project was more "apartment hotel." CPC Hr'g Tr. 45:13-23, Feb. 24, 2015. Use Code 15.2 is for "Lodging, more than 10 rooming units." Zoning Ordinance App. A-1. Thus, the main difference between Use Codes 15.2 and 16.2 is that 16.2 is for temporary lodging, while 15.2 is just for lodging. As will be described below, the Project qualifies as temporary lodging, which would slot it into Use Code 16.2 over Use Code 15.2. Furthermore, the Zoning Ordinance defines "apartment hotel" as containing "both rooming and dwelling units," seemingly contemplating a mix of permanent and temporary guests, which is not consistent with the Project.[12] Thus, while Use Code 15.2's illustrative examples include apartment hotel, the Project does not have the characteristics of an apartment hotel.

Use Code 14, as proffered by Director Lykins, is for a "Multi-Family Dwelling, more than 4 units." Zoning Ordinance App. A-1. The definition of "dwelling," however explicitly rules out both hotels and temporary lodging. Zoning Ordinance § 1000. Thus, by the Zoning Ordinance's own terms, the Project cannot qualify under Use Code 14.

There is also Use Code 17, "Other Residential." Id. at App. at A-2. However, the examples given for this use are "mobile home, mobile home park, [and] trailer park." Id. These are all of one kind, and applying ejusdem generis, it is unlikely the council would consider the

[12] The Project seems not to be an apartment hotel under other definitions either. E.g., 40A Am. Jur. 2d Hotels, Motels, Etc. § 7 (2016) ("An apartment hotel is generally defined as a building that contains nonhousekeeping apartments, in which cooking facilities are not provided, but the proprietor maintains a restaurant for the convenience of the guests and furnishes other services to them."); Merriam-Webster's Collegiate Dictionary 53 (Frederick C. Mish et al. eds., 10th ed. 2001) ("[A] building containing apartments as well as accommodations for transients."); Edward H. Ziegler, Jr., Rathkopf's The Law of Zoning and Planning § 86:2 (4th ed. 2016) ("The essential difference between a hotel and an apartment hotel is that the primary business of a hotel is to provide furnished rooms for transient guests while an apartment hotel provides accommodations with kitchen and housekeeping facilities for more permanent guests.").

Project to belong to this classification. Further, "Other Residential" uses are prohibited entirely in the City of Providence, which would prevent the Project from being built anywhere in the City of Providence. Id. After an exhaustive review of the Zoning Ordinance, this Court has found no other Use Code that clearly fits the Project better than Use Code 16.2.

The CPC also concluded Use Code 16.2 was applicable to the Project. Use Code 16.2 is for "Temporary Lodging, more than 30 rooming units." Id. Temporary lodging is defined as "[l]odging typically leased for less than one month increments, as in hotel and motel." Id. at § 1000. The CPC found, and the evidence supports the fact, that the Project will generally lease its rooms in one week intervals, although on occasion it will lease the rooms on a daily basis. CPC Hr'g Tr. 48:13-14, 48:21-49:5, 95:6-13, 108:19-20, May 19, 2015.[13] Since Temporary Lodging in Use Code 16.2 is limited to more than thirty "rooming units," the Neighbors focus their argument on the definition of rooming unit. A rooming unit is defined further as "[a] room or suite of rooms having an independent means of access within a building, with facilities intended for sleeping and living, with or without individual sanitation, and without cooking facilities."[14] Zoning Ordinance § 1000 (emphasis added). The Neighbors claim that the burners in the Project constitute cooking facilities, and because of this, the Project cannot fall under Use Code 16.2.

[13] The Neighbors make much of the interview with Mr. DeBoer and other operation documents that they claim show the average stay length is seventy days and that guests are tasked with cleaning their own rooms. However, this is not the question—the ordinance speaks of rent increments, not average length of stay. Furthermore, the Developers testified that the documents to which the Neighbors referred were outdated and that the average stay is thirty days or less. See CPC Hr'g Tr. 29:11-14, Nov. 18, 2014; CPC Hr'g Tr. 44:7-19, May 19, 2015; see also id. at 85:21-24.

[14] The seeming alternative to a rooming unit is a dwelling unit, which provides "complete, independent living facilities . . . including permanent provisions for living, sleeping, eating, cooking, and sanitation." Zoning Ordinance § 1000.

The Zoning Ordinance does not define "cooking facilities." Id. Terms not defined in the Zoning Ordinance "shall have the meaning customarily assigned to them." Id. What, then, is a cooking facility? In determining the customary meaning of a word or term, "recognized dictionaries are a valuable source to understand a word's approved, common meaning." 2A Norman J. Singer & Shambie Singer, Sutherland Statutory Construction § 47:28 (7th ed. 2014). Cooking is generally defined as "prepar[ing] food for eating by applying heat." The American Heritage Dictionary of the English Language 402 (5th ed. 2011) (hereinafter, AHD5); see also Merriam-Webster's Collegiate Dictionary 254 (Frederick C. Mish et al. eds., 10th ed. 2001) (hereinafter, 10C) (defining cooking as "prepar[ing] food for eating by means of heat"); The Random House Dictionary of the English Language 445 (2d ed. 1987) (hereinafter, RHD2) (defining cooking as "prepar[ing] food by the use of heat"). A "facility" is "[a] building, room, array of equipment, or a number of such things, designed to serve a particular function." AHD5 at 632; see also 10C at 415 (defining a facility as "something . . . that is built, installed, or established to serve a particular purpose"); RHD2 at 690 (defining a facility as "something designed, built, installed, etc., to serve a specific function affording a convenience or service"). Following these definitions, one could conclude that a cooking facility is an appliance or area where food is heated.

In the context of the Zoning Ordinance, this definition is problematic, however. First, a "dwelling unit" is made up of "[o]ne or more rooming units," but also includes "permanent provisions for . . . cooking." Zoning Ordinance § 1000 (emphasis added). If a dwelling unit must have provisions for cooking, it cannot be composed of rooming units, as they cannot contain cooking facilities. Because of this inherent inconsistency or ambiguity, the Court must discern the City Council's intent in enacting the Zoning Ordinance. The Neighbors' literal interpretation

would eliminate staples of many hotels: the microwave oven and coffeemaker.[15] A microwave oven is defined as "[a]n oven in which food is cooked, warmed, or thawed by the heat produced as microwaves cause water molecules in the foodstuff to vibrate." AHD5 at 1113 (emphasis added); see also 10C at 734 (defining "microwave oven" as "an oven in which food is cooked by the heat produced" by microwaves); RHD2 at 1216 (defining "microwave oven" as "an electrically operated oven" using microwaves to excite molecules in the food "to cook it in a very short time"). Cooking, heat, and equipment—a microwave has the characteristics of a "cooking facility."[16] Besides microwaves, of course, are coffeemakers, which heat water and convert coffee grounds or tea leaves to a potable drink, and are also found in many hotel rooms.

The Zoning Ordinance, then, under the Neighbors' interpretation would seem to prohibit microwaves—or even coffee makers—in Use Code 16.2. However, the Zoning Ordinance also uses "hotel and motel" as illustrations of what is covered by that Use Code. Zoning Ordinance App. at A-2. Given that microwaves and coffee makers are common in hotels and motels, neither the CPC nor this Court can interpret "cooking facilities" literally. Doing so would lead to an absurd result; namely, that most, if not all, hotels are prohibited in the City of Providence. That would be a result that the City Council did not anticipate or desire. The CPC was tasked with reconciling the fact that hotels are permitted in Use Code 16.2 with the "cooking facilities"

[15] Testimony in the record supports the notion that many hotels and motels have microwaves in their rooms. CPC Hr'g Tr. 29:20-23, May 19, 2015 (Councilperson Bilodeau remarking that he has "stayed in hotels . . . that have a refrigerator, a microwave, a coffeemaker" and the like.); Id. at 91:3 (Director Lykins acknowledging that microwaves "are in most hotels."); CPC Hr'g Tr. 52:4-5, Apr. 28, 2015 (Chairperson West observing "it's not uncommon to see a hotel with microwaves and even small appliances.").

[16] Some zoning ordinances do define "cooking facilities," and some of them explicitly include microwaves in that definition. See, e.g., Montclair, N.J., Code § 347-2 (2016) (defining "cooking facility" to include microwaves and hot plates); Newport, R.I., Code of Ordinances § 17.08.010 (2016) (defining "cooking facility" to include microwaves, toaster ovens and hot plates (within the definition of "kitchen")); Tillamook County, Ore., Land Use Ordinance § 11.030 (2015) (defining "cooking facility" to include microwaves and hot plates (within the definition of "dwelling unit")).

language that would seem to bar them. Thus, the CPC had to use its "wide discretion to construe an ordinance where terms were not adequately defined." Hein v. Town of Foster Zoning Bd. of Review, 632 A.2d 643, 645-46 (R.I. 1993).

While the CPC came to a conclusion that the Neighbors dislike—that the cooktops are not "cooking facilities" within the meaning of the Zoning Ordinance —this interpretation is supported by the record. The CPC clearly "discussed . . . at length the nature of cooking and ovens," hearing testimony from four experts over three meetings. CPC Hr'g Tr. 88:6-7, May 19, 2015. The transcript indicates that most, if not all, present conceded that a microwave was not a cooking facility, whereas a full oven was. See, e.g., id. at 52:16-53:18 (a board member referring to an oven as a cooking facility); id. at 90:6-91:4 (Director Lykins concluding a microwave would not be a cooking facility). The CPC simply found that the cooktops in the Project more closely resembled and served the same purpose as a microwave, not an oven. E.g. id. at 63:2-64:4, 139:16-17. The Court finds nothing arbitrary, capricious, or contrary to law about this analysis. The CPC made a rational decision supported by competent evidence in the record by classifying the Project under Use Code 16.2. After deferentially considering the opinions of those charged with implementing and administering the ordinance—the CPC, ZBR, and Director Lykins—and after reviewing the record below de novo, and "after giving due deference to the interpretation of the [CPC and] zoning board with respect to the ordinance [they] administer[]," Pawtucket Transfer Operations, 944 A.2d at 860, this Court is satisfied with the CPC's conclusion that the area at issue—call it a kitchen, kitchenette, or warmup area—is not a "cooking facility."

The Neighbors also point this Court to the current zoning ordinance, adopted after the Developers submitted their application, as proof that the Project should not be allowed. Under

the new ordinance, hotels and motels are indeed not allowed in an M-1 district. Of course, "[a] court will not apply an amendment to a zoning ordinance where the amendment would destroy a vested property interest acquired before its enactment." 101A C.J.S. Zoning and Land Planning § 80 (2016); accord § 45-24-44(a); Zoning Ordinance § 1108. That is why, as discussed above, the new ordinance does not apply to this case. Nevertheless, the Court tarries briefly to examine the new ordinance. The new ordinance did not merely exclude Use Code 16.2 from the allowed uses in an M-1 district. Instead, the new ordinance completely changed the way uses work. In place of Use Codes, there is a "Use Matrix" that sheds the concepts of "dwelling units" and "rooming units" entirely. This Use Matrix features a "generic use" approach that lists general uses, such as "hotel/motel" or "car wash." Providence Zoning Ordinance § 1201 (2014); see also Camiros, Re:Zoning Providence: Technical Review & Approaches Report 7 (2013), https://providenceri.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=1321 (explaining the reasoning for the change). The Neighbors' contention that a hotel would not be allowed on the subject parcel today has no relevance, as the Project is vested under the old Zoning Ordinance. If this Court were inclined to look to the new zoning ordinance to interpret the previous one, it might take from the revisions that the City Council is less concerned with a matryoshka doll of pedantic definitions and more interested in the general, holistic nature of the use. See id. (calling Providence's specific use approach "disfavored in modern practice because of its required detail" and criticizing "the requirement that every possible use desired . . . be specifically included in the use list"). Consequently, as the CPC found as fact that the Project has overwhelming hotel characteristics, and the old Zoning Ordinance evinces that hotels are the prime example of what is allowed in Use Code 16.2, the approach of the new ordinance supports the CPC's conclusions.

C

Jobs District

The Neighbors next argue that the Project is located in a Jobs District, see Zoning Ordinance § 508, where no residential uses are allowed. Because the Project is a residential use—regardless of which Use Code applies—the Neighbors maintain that it cannot be allowed, and it was clear error for the CPC and ZBR to approve the Project. As an initial matter, however, the Neighbors have shown no evidence that the subject property was ever located in a Jobs District on the official zoning map. The Jobs District as a classification was first created in the zoning ordinance in 2009. Providence Ordinance 2009-39 (June 19, 2009). However, at that time, no Jobs Districts were created, either mapped or unmapped. There is no evidence that, with respect to the Zoning Ordinance, any Jobs District overlays were ever created, mapped or unmapped. Thus, the Jobs District is inapplicable with respect to the Zoning Ordinance.

Nevertheless, the Project is within a Jobs District in the "Future Land Use" map in Providence's Comprehensive Plan. Providence Tomorrow 111, Map 11.2 (2012). Our Supreme Court has said that "a comprehensive plan . . . establishes a binding framework or blueprint that dictates town and city promulgation of conforming zoning and planning ordinances." Town of E. Greenwich v. Narragansett Elec. Co., 651 A.2d 725, 727 (R.I. 1994); see West, 18 A.3d at 528-29. However, the Rhode Island General Laws also provide that

> "[t]he zoning ordinance and map in effect at the time of plan adoption shall remain in force until amended. In instances where the zoning ordinance is in conflict with an adopted comprehensive plan, the zoning ordinance in effect at the time of the comprehensive plan adoption shall direct municipal land use decisions until such time as the zoning ordinance is amended to achieve consistency with the comprehensive plan and its implementation schedule." Sec. 45-22.2-13(c) (emphasis added).

This section was not in effect at the time of Town of E. Greenwich and West; it was passed just two months after, in the wake of West. P.L. 2011, ch. 313, § 1. Thus, while a municipality "is legally compelled to enact or to amend its zoning ordinance in conformity" with its comprehensive plan, Town of E. Greenwich, 651 A.2d at 728, until the zoning ordinance is changed to conform with the comprehensive plan, the zoning ordinance controls land use decisions. Prior to the 2011 Amendment and under West, once a comprehensive plan was passed, all land use decisions would have to comport with the comprehensive plan. However, the 2011 Amendment also added § 45-22.2-13(e), which provides a mechanism for instituting a one-time moratorium on specified land to protect a future land use where the comprehensive plan has been adopted, but the zoning ordinance has not yet been updated. If the General Assembly intended that the comprehensive plan automatically bind all land use decisions, there would be no need for the moratorium provision and the related hearing and notice it requires. Furthermore, if the municipality fails to amend its zoning ordinance to conform to the comprehensive plan, the statutory result is not that the comprehensive plan takes effect.[17]

At the same time, while the zoning ordinance is the operative document for day-to-day land use decisions, the comprehensive plan is still relevant to approval of Master and Preliminary Plans. However, the comprehensive plan is not inviolate. The CPC was required, upon approving the Plans, to make a positive finding that "[t]he proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies." Section 45-23-60(a)(1) (emphasis added); see CPC Development Review Regulations § 806.1 (2015) (containing identical language). Thus, if the CPC finds that the issue was "satisfactorily addressed," they have the power to approve the Plan. Admittedly, the CPC

[17] All that occurs is that state approval of the plan is denied or rescinded, along with all benefits and incentives that entails. Section 45-22.2-13(g).

did not explicitly exercise that power—they instead believed, based on advice from council, that the Zoning Ordinance trumped the Comprehensive Plan with respect to individual land use decisions. However, the CPC did find overall that the Project was consistent with the Comprehensive Plan. See R. Ex. PP-14, at 1.

Regardless, there is no inconsistency with the Project being located in a Jobs District. It is true that both the Comprehensive Plan and the Zoning Ordinance state in broad terms that no residential uses are permitted in a Jobs District. Zoning Ordinance § 101.7; Providence Tomorrow 114, Table 11.1, 248. What is not evident from a careful analysis of the Comprehensive Plan is what constitutes a residential use. While the Comprehensive Plan provides "[g]eneral efforts and approaches to be taken" to support "[t]he major policies and actions . . . to realize the vision of" the Comprehensive Plan, the strategies therein were not designed to be "providing specific directives or tasks."[18] Providence Tomorrow 14. As the Comprehensive Plan itself states, "[t]he Zoning Ordinance is one of the primary implementation tools for any Comprehensive Plan." Id. at 147. While the Zoning Ordinance groups Use Code 16.2 with residential uses, Zoning Ordinance § 303, Table 1.0; id. App. at A-2, Use Code 16.2 is unlike other "residential" use codes. For instance, it is not allowed in any residential zone (R-1, R-2, R-3, R-G, or R-M).[19] Id. at § 303, Table 1.0. More importantly, the Zoning Ordinance speaks more specifically to what is not allowed in a Jobs District; namely, Use Codes 11, 11.1,

[18] There is other evidence that the Future Land Use map was meant to be a general guide, not absolute or immutable. For instance, there are areas on the map that are in a Jobs District—where purportedly no residential uses are allowed—but whose underlying future zoning, per the same map, is residential. Providence Tomorrow 111, Map 11.2 (2012) (an area between Charles Street and North Main Street south of Orms Street, including the Moshassuck Square Apartments, and an area at the southwest corner of Park and Calverly Streets in Smith Hill).

[19] The other Use Codes not allowed in any of those zones, excepting those uses prohibited throughout Providence, are 14.1 (Residential Mixed Use), 14.2 and 14.3 (Live-Work Spaces), 14.4 (Apartment Dormitory), and 15.8 (Group Quarters, With Medical Treatment). Zoning Ordinance § 303, Table 1.0.

12, 13, 14-14.4, 15-15.9, 16, 16.1, 16.3-16.5, and 17. Id. at § 508. Use Code 16.2 is not included in the excluded uses. In statutory interpretation, "the specific governs the general." Felkner v. Chariho Reg'l Sch. Comm., 968 A.2d 865, 870 (R.I. 2009) (citations omitted).

The Providence City Council thus specifically allowed hotels to exist in a Jobs District. Such an interpretation makes sense "considered in the context of the entire statutory scheme." Sorenson, 650 A.2d at 128. The purpose of the Jobs District is "to support job growth and expansion." Zoning Ordinance § 508. While most residential Use Codes do not create jobs, it is reasonable to believe that the Providence City Council determined that hotels would, and specifically allowed them to exist in a Jobs District. Notably, the Providence Marriott on Orms Street falls within the same Jobs District as the one at issue here. Indeed, Councilman Narducci's interest in the Project was focused on the jobs it would create. Recall that the Comprehensive Plan is "designed to provide a basis for rational decision making regarding the long-term physical development of" Providence. Section 45-22.2-5(a). The Providence City Council, in amending the zoning ordinance, engaged in rational decision-making, guided by the Comprehensive Plan. The Court also is mindful that "in determining restrictions upon an owner's use of his property in instances where doubt exists as to the legislative intent, the ordinance should be interpreted in favor of the property owner." Champagne v. Zoning Bd. of Review of Smithfield, 99 R.I. 283, 286, 207 A.2d 50, 52 (1965).

Given that the CPC determined the Project fell under Use Code 16.2, there was no prejudicial error in their finding that the Project complied with underlying zoning and planning documents, even if the Jobs District were to apply as implemented at the time the application for the Project was submitted, as the Zoning Ordinance applicable to this case did not exclude Use Code 16.2 in a Jobs District.

IV

Conclusion

After reviewing the entire record, this Court finds the decisions of the CPC and ZBR were not arbitrary, capricious, clearly erroneous, or ultra vires, and that any conceivable error did not prejudice the Neighbors' substantial rights. The decisions were supported by the record, the statute, and the Zoning Ordinance. Thus, the Court affirms the decisions of the ZBR. As such, the Neighbors' request for attorneys' fees is denied. Counsel will prepare an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASES:	**West River Commerce Center Annex, LLC v. York, et al.** **consolidated with** **West River Commerce Center Annex, LLC v. Greenfield, et al.**
CASE NOS:	**PC-2015-1123** **consolidated with** **PC-2015-4546**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 14, 2016**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**Stephen A. Izzi, Esq.; Thomas J. Enright, Esq.; Jeffrey H. Gladstone, Esq.; Emily J. Migliaccio, Esq.**
For Defendant:	**Lisa Dinerman, Esq.; Michael A. Calise, Esq.; John J. DeSimone, Esq.**