

Narragansett 2100 v. The Town of Narragansett; et al., No. 21-0448 (November 9, 2022)
<https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/21-0448.pdf>

Holding:

Rhode Island Superior Court found the proposed Narragansett “Three-Student Ordinance” which *provided that no more than three college students shall occupy a dwelling or dwelling unit unless the building is owner occupied is void* because it was not referred to the Planning Board for study and recommendation prior to adoption by the Town Council.

Key Takeaways:

1. Cities and towns are required to refer any proposal for adoption, amendment, or repeal of a zoning ordinance or zoning map to the city or town’s planning board or commission (R.I. Gen. Laws § 45-24-51). This requirement “is an essential component of achieving the essence of the Enabling Act: promoting the intelligent development of land.”
2. Although the Narragansett Planning Board provided a recommendation on the “Three-Student Ordinance” in 2020, *it still needed to do so in 2021 when the Ordinance was reintroduced by the Town Council.*
3. Because the 2021 ordinance was not referred to the Planning Board, the Town’s adoption of the ordinance is void because the court determined the Town did not follow the Zoning Enabling Act’s procedure as outlined in R.I. Gen. Laws § 45-24-51.

Facts:

In 2020 the Narragansett Town Council proposed an ordinance which provided that no more than three college students shall occupy a dwelling or dwelling unit unless the building is owner occupied. The proposed ordinance was reviewed by the Narragansett Planning Board which found the ordinance was inconsistent with the 2017 Narragansett Comprehensive plan, and therefore unanimously voted to provide a recommendation to the Council to disapprove of the 2020 Three-Student Ordinance.

The Town Council adopted the 2020 Three-Student Ordinance in August of 2020. In 2021, Rhode Island superior court declared the Three-Student Ordinance was void *ab initio* for failing to comply with § 45-24-53, as the council meeting was closed before everyone was able to be heard. (R.I. Gen. Laws § 45-24-53 states “at which hearing opportunity shall be given to all persons interested to be heard upon the matter of the proposed ordinance.”)

Two weeks later, the Council scheduled a public hearing on an identical ordinance, the 2021 Three-Student Ordinance. The Council passed the identical 2021 Three-Student Ordinance in September of 2021.

Plaintiff initiated the lawsuit appealing the Three-Student Ordinance seeking a declaration that the 2021 Three-Student Ordinance is void *ab initio* and *ultra vires* because the Town failed to comply with the procedural requirements of the Zoning Enabling Act because the Town did not refer the ordinance to the Planning Board for study and recommendation.

Analysis:

1. Zoning Procedural Requirements – Directory or Mandatory

The Town argued that the Rhode Island Zoning Enabling Act’s provision that “*the officer or agency shall refer the proposal to the city or town council, and to the planning board or commission of the city or town for study and recommendation*” (§ 45-24-51. Adoption — Procedure for adoption or amendment) is directory rather than a mandatory requirement because it does not provide a sanction for non-compliance.

The Court found the plain language of the statute (§ 45-24-51) indicated that the requirement to refer the amended zoning ordinance to the Planning Board is mandatory, noting the use of the word “shall” is generally understood to be mandatory.

2. The Ordinance is Identical to the One Referred to the Planning Board in 2020

The Town argued they substantially complied with the Zoning Enabling Act’s procedural requirements because they referred an identical Three-Student Ordinance to the Planning Board in 2020. The Town argued “*the legislature did not intend to require the ‘Planning Board to review the proposal a second time- as long as it already made findings and recommendations...’*”

The Court disagreed, stating the Zoning Enabling Act is intended to promote the intelligent development of land, and to that end, the Act requires amendments to be referred to the Planning Board “*so that they may aid the Council’s decision-making process by advising them on a proposed ordinance’s consistency with the comprehensive plan and the purposes of zoning.*”

The court stated the referral requirement is an “*integral part of the legislative process in the context of a municipality enacting appropriate zoning ordinances*”, citing to *Maynard v. Beck*, 741 A.2d 866, 871-72 (R.I. 1999). The Court also stated the referral requirement “*is an essential component of achieving the essence of the Enabling Act: promoting the intelligent development of land.*”, and that the statute requires the Planning Board to make findings regarding an ordinance no matter how much time passes between the Board’s original recommendation and the Ordinance’s adoption.

The Town asked the Court to accept that the Planning Board’s 2020 findings and recommendations would have been identical in 2021 because the Planning Board as well as the text of the Comprehensive Plan are unchanged.

The Court decided the Town’s argument fails because “*the Board is charged, not only with determining consistency of the ordinance with the Comprehensive Plan, but also with evaluating the consistency of the ordinance with the purposes of zoning...while the Comprehensive Plan remained untouched, the needs of a town constantly change*” and that the Town’s violation of the referral requirement was not merely technical.

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