STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 19, 2024)

SEA 3 PROVIDENCE, LLC ***Appellant*,** **v.** **THE CITY OF PROVIDENCE, JAMES LOMBARDI, III, in his capacity as Treasurer of the City of Providence, and THE PROVIDENCE CITY COUNCIL** ***Appellees*.**	:	**C.A. No. PC-2022-00707**

DECISION

LANPHEAR, J. Before this Court is Sea 3 Providence, LLC's (Sea 3) appeal of an amendment to the Providence City Code enacting a new ordinance in the City of Providence. The Ordinance banned the "'bulk storage of liquid propane gas' in all zones in the City of Providence." Complaint (quoting Compl. Ex. 2, Providence Ordinance No. 2022-1). Sea 3 leases property located at 25 Fields Point Drive in Providence. The property is a marine terminal which receives, stores, and distributes liquid propane gas. The amended Ordinance renders Sea 3's use of the property a preexisting non-conforming use, as its use was compliant under the original ordinance. Jurisdiction is pursuant to G.L. 1956 § 45-24-71. For the reasons set forth herein, Sea 3's appeal is denied, and the Ordinance is affirmed.

I

Facts and Travel

Sea 3 is a long-term lessee operating a marine propane terminal and storing liquified propane gas on the property. While a marine liquified propane gas terminal has existed at the property since 1975, Sea 3 began operating the terminal located at the property in 2018. The

property is in the W-3 Port/Maritime Industrial Waterfront District, which is "intended to promote maritime industrial and commercial uses within the areas of Providence's waterfront, protect the waterfront as a resource for water-dependent industrial uses, and facilitate the renewed use of a vital waterfront." Providence, R.I. Zoning Ordinance Art. 9 § 900(B) (2014).

Sea 3's use of the property was classified as a "tank farm." Tank farms are defined as facilities using aboveground or belowground containers for storing chemicals, petroleum, ethanol, hazardous materials, and similar substances intended for wholesale distribution. Providence, R.I. Zoning Ordinance Art. 12 § 1204 (2014). Tank farms are permitted in the W-3 zone. Providence, R.I. Zoning Ordinance Art. 12 § 1201 (2014). On January 6, 2022, the Providence City Council amended § 1200(F) of the Zoning Ordinance to prohibit the bulk storage of liquid propane gas in all zoning districts in Providence and amended § 1204 to eliminate "propane products" from the use definition of "tank farm." (R. "Copy of Ordinance 2022-1 No. 1" at 18.) The Ordinance was approved by the City Council, then signed by Mayor Elorza, and became effective on January 13, 2022. The amended Ordinance makes Sea 3's facility a legal preexisting nonconforming use as a tank farm. Providence R.I. Zoning Ordinance Art. 20 § 2001(A) ("A nonconforming use is the use of a structure or land that at one time was an allowed use within a zoning district but because of subsequent amendments to the Ordinance is no longer allowed."); *see* § 45-24-39(a) (providing that zoning ordinances must make provisions for uses lawfully existing at the time of adoption or amendment, but that a zoning ordinance may regulate development which is nonconforming).

Generally, nonconforming uses cannot be expanded. *See* Providence R.I. Zoning Ordinance Art. 20 § 2001. However, Sea 3 applied for a development plan review (DPR) approval for expansion of its facility to include rail service delivery of liquified propane gas and additional

on-site storage on November 3, 2021, before the enactment of the amendment.[1] The City's Department of Planning and Development recommended approval of the Sea 3 application on January 27, 2022, and reported its recommendation to the City Plan Commission. Therefore, Sea 3's proposed expansion plan, as approved, is not precluded by the Ordinance. However, Sea 3 cannot expand in accordance with different or amended plans because those plans would be precluded by the Ordinance. Before Sea 3 can execute its proposed expansion plan, it must obtain approval from the appropriate state and other City of Providence agencies. If any state or City of Providence agency required Sea 3 to amend its proposed expansion plan to receive approval, Sea 3 would be prevented from doing so by the Ordinance. Further, the Ordinance prevents Sea 3 from any future expansion.

Sea 3 appealed the enactment of the Ordinance to the Superior Court on February 4, 2022.

II

Standard of Review

Section 45-24-71(a) grants the Superior Court jurisdiction to review "appeal[s] of an enactment of or an amendment to a zoning ordinance[.]" Section 45-24-71(a). Section 45-24-71 states, in pertinent part:

[1] Since the application was filed before the Ordinance was enacted, the application is subject to the law in effect when the application was submitted. *See* G.L. 1956 § 45-24-44(c) ("[a]ny application considered by a city or town . . . shall be reviewed according to the regulations applicable in the zoning ordinance *in force at the time the application was submitted*") (emphasis added).

> "(a) An appeal of an enactment of or an amendment to a zoning ordinance may be taken to the superior court for the county in which the municipality is situated by filing a complaint within thirty (30) days after the enactment or amendment has become effective. The appeal may be taken by an aggrieved party or by any legal resident or landowner of the municipality or by any group of residents or landowners whether or not incorporated, of the municipality. . .
> "(b) The complaint shall state with specificity the area or areas in which the enactment or amendment does not conform with the comprehensive plan and/or the manner in which it constitutes a taking of private property without just compensation.
> "(c) The review shall be conducted by the court without a jury. The court shall first consider whether the enactment or amendment of the zoning ordinance is in conformance with the comprehensive plan. If the enactment or amendment is not in conformance with the comprehensive plan, then the court shall invalidate the enactment or the amendment, or those parts of the enactment or amendment which are not in conformance with the comprehensive plan. The court shall not revise the ordinance to conform with the comprehensive plan, but may suggest appropriate language as part of the court decision." *Id.*

Our Supreme Court acknowledges that "[i]t is well settled that legislation, including amendments to zoning . . . enjoy a presumption of validity." *Johnson & Wales College v. DiPrete*, 448 A.2d 1271, 1279 (R.I. 1982). "'This presumption of validity includes the presumption that the zoning enactments were in accordance with a comprehensive plan . . .'" *Peter Scotti & Associates, Inc. v. Yurdin*, 276 A.3d 915, 927 (R.I. 2022) (quoting *D'Angelo v. Knights of Columbus Building Association of Bristol, R.I., Inc.*, 89 R.I. 76, 83, 151 A.2d 495, 498-99 (1959). Further, "'actions taken by a city or town council involving the amendment or repeal of zoning ordinances are purely legislative.'" *Id.* (quoting *Maynard v. Beck*, 741 A.2d 866, 872 n.3 (R.I. 1999)). Nevertheless, "[i]t is equally well settled that the authority of a legislative body to enact laws and amendments thereto is limited by the requirement that that body act only in the proper exercise of the police

power. A city or town council, whose responsibility it is to enact local ordinances, is not immune from this restriction." *Johnson & Wales College*, 448 A.2d at 1279.

The General Assembly "specifically direct[ed] the state zoning enabling authority to require 'each city and town to conform its zoning ordinance and zoning map to be consistent with its comprehensive plan' developed under the Comprehensive Planning and Land Use Regulation Act." *Town of East Greenwich v. Narragansett Electric Co.*, 651 A.2d 725, 728 (R.I. 1994) (quoting § 45-24-29(b)(2)). Section 45-24-71 explicitly requires the Court to determine whether an "amendment of the zoning ordinance is in conformance with the comprehensive plan." Section 45-24-71(c). While interpreting § 45-24-3 (a predecessor statute to § 45-24-71), our Supreme Court held "that the requirement set out in § 45-24-3 that the zoning regulations conform to a comprehensive plan is mandatory and that strict compliance therewith is required of a local legislature when it enacts a zoning ordinance." *Cianciarulo v. Tarro*, 92 R.I. 352, 358, 168 A.2d 719, 722 (1961). The intent behind this requirement "is to avoid an arbitrary, unreasonable or capricious exercise of the zoning power, resulting in haphazard or piecemeal zoning." *Id*. at 358-59, 168 A.2d at 722-23 (internal quotation omitted). Thus, "[a]ny amendment which does not . . . conform to a comprehensive plan is illegal." *Barber v. Town of North Kingstown*, 118 R.I. 169, 176, 372 A.2d 1269, 1273 (1977).

The presumption that amendments passed by a city or town council are valid is not absolute. *See Johnson & Wales College*, 448 A.2d at 1279. However, a plaintiff has the burden of proving that an amendment is invalid. *Peter Scotti & Associates, Inc.*, 276 A.3d at 927 (emphasizing that the "'challengers of the amendment, have the burden of proving that it was not made in accordance with a comprehensive plan'") (quoting *Camara v. City of Warwick*, 116 R.I. 395, 407, 358 A.2d 23, 31 (1976)). An appeal of a zoning ordinance "shall not stay the

enforcement of the zoning ordinance, as enacted or amended. . ." Section 45-24-71(a). However, the Court may "grant a stay on appropriate terms, which may include the filing of a bond, and make other orders that it deems necessary for an equitable disposition of the appeal." *Id.*

III

Analysis

A

Standing

Sea 3 claims standing to appeal the enactment of the Ordinance because it is an "aggrieved party" under § 45-24-71. Sea 3 avers it is an "aggrieved party" because its use of the property was lawful prior to the amendment and now any future expansion efforts would be prohibited because its use is considered a preexisting nonconforming use. The City counters that Sea 3 lacks standing to appeal the enactment of the Ordinance because it is not a legal resident or landowner in Providence and could not be considered an "aggrieved party" as defined under the statute. Further, the City suggests an "aggrieved party" under § 45-24-71 must show a concrete and particularized, actual or imminent injury to the property. The City argues that Sea 3's harm is speculative because its November 3, 2021 DPR application for expansion was approved by the City's Plan Commission and any future modernization efforts are hypothetical.

Section 45-24-71(a) provides, "The appeal may be taken by an aggrieved party or by any legal resident or landowner of the municipality or by any group of residents or landowners whether or not incorporated, of the municipality." This specific statute construes who may appeal quite broadly, going beyond the definition of 'aggrieved party' used for other types of land use appeals. The chapter defines "aggrieved party" as

> "(i) Any person, or persons, or entity, or entities, who or that can demonstrate that his, her, or its property will be injured by a decision

> of any officer or agency responsible for administering the zoning ordinance of a city or town; or
> "(ii) Anyone requiring notice pursuant to this chapter." Section 45-24-31(5).

The issue of whether a lessee can be designated as an aggrieved party under § 45-24-71(a) is a novel issue. In other jurisdictions, "[l]essees and even prospective lessees whose interests are at stake are generally deemed to have standing as aggrieved parties" and, thus, qualified to seek judicial review of a zoning ordinance. 8A Eugene McQuillin, *The Law of Municipal Corporations* § 25:423 at 1160-1161 (3d ed. 2020); *see Shell Oil Co. v. City and County of San Francisco*, 139 Cal. App. 3d 917, 921 (Cal. Dist. Ct. App. 1983) (finding lessee was the owner of the right to use the property for purposes of seeking a conditional use permit); *see Frank Hardie Advertising, Inc. v. City of Dubuque Zoning Board of Adjustment*, 501 N.W.2d 521, 524-25 (Iowa 1993) and *Lavere v. Board of Zoning Appeals of City of Syracuse*, 331 N.Y.S.2d 141, 142 (N.Y. 1972).

Here, the Court need not search for the definition of the word "resident." It is not an ambiguous term. *Peerless Insurance Co. v. Luppe*, 118 A.3d 500, 507 (R.I. 2015); *DeBlois v. Clark*, 764 A.2d 727, 731 n.1 (R.I. 2001). Sea 3 is the long-term lessee of the property. (Appellees' Mem. in Opp'n to Appeal (Appellees' Mem.) Ex. H.) It operates in Rhode Island and maintains significant operations in Rhode Island. It is clearly a resident.[2] The Ordinance prevents future expansion or modification of the terminal beyond what was already approved by the City's Plan Commission on January 27, 2022. Thus, it demonstrated injury by passage of the Ordinance and Sea 3 has standing as an "aggrieved party" under § 45-24-71(a). Sea 3's harm as an "aggrieved party" is concrete and particularized, actual or imminent injury, and not speculative because its

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[2] Clearly, Sea 3 has a significant investment and is one of the few entities regulated by the Ordinance directly; however, the Court is not deciding its residency status because of either of these facts.

use of the property has been rendered as a preexisting nonconforming use while it is seeking to expand.[3] While Sea 3's DPR application has been approved by the City Plan Commission, Sea 3 cannot begin the expansion until it seeks approval from the City's Plan Commission and multiple city and state agencies. It is unlikely to receive approval without requiring modifications to the approved DPR application. Thus, Sea 3 has standing to appeal the amendment of the Ordinance as an "aggrieved party."[4]

B

Conformance with the Comprehensive Plan

"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

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[3] This is an appeal from an ordinance, a local legislative act for which the state statute allows an appeal. Aggrieved parties are defined by the statute and are limited. However, in a variety of cases, our high court has allowed lessees to be aggrieved parties for purposes of zoning matters. In one case, our Supreme Court found that a lessee had "a sufficient interest in the leased premises to permit it alone to apply for [a] building permit…" as long as the owner was not opposed. *Ralston Purina Co. v. Zoning Board of Town of Westerly*, 64 R.I. 197, 12 A.2d 219, 220 (1940). *See also Gallagher v. Zoning Board of Review of City of Pawtucket*, 95 R.I. 225, 230, 186 A.2d 325, 328 (1962).

[4] Section 45-24-71 is a curious enactment by our General Assembly. While the Rhode Island Legislature had long empowered our cities and towns with the authority to regulate much of their own land use and zoning, the Legislature found it appropriate to explicitly empower the state's trial courts with the jurisdiction to review enactments of local land ordinances. Consideration of this statutory scheme is deserving of taking three steps back to consider the Legislature's goals as part of the Zoning Enabling Act, G.L. 1956 chapter 24 of title 45.

There are two parts to § 45-24-71 which are quite unique. The most obvious is that the courts are directed to first consider conformity between the new ordinance and the community's comprehensive plan, which is done at length below. Less obvious is the statute's broad scope in who may appeal an ordinance – the definition goes well beyond the statutory definition of 'aggrieved party' set for the remainder of this chapter of the General Laws. In determining who was intended to be an appellant, the Legislature does not appear to open the door completely, but certainly extended it beyond the limits of who may appeal a neighbor's zoning variance. Obviously, access to the courts is an important issue for the Legislature and the judiciary. A long-term lessee operating under a similar use has a stake in the outcome, and the statute should not be read to limit ordinance appeals for those who are intended to be included.

term physical development of the municipality.'" *Peter Scotti & Associates*, *Inc.*, 276 A.3d at 925 (quoting *P.J.C. Realty, Inc. v. Barry*, 811 A.2d 1202, 1204 (R.I. 2002)).[5] Critically, "[a] comprehensive plan is not an 'innocuous general-policy statement,' but rather such a plan [which] 'establishes *a binding framework or blueprint* that dictates town and city promulgation of conforming zoning and planning ordinances.'" *Id.* (quoting *Town of East Greenwich*, 651 A.2d at 727)). Accordingly, "[a] municipality 'is *legally compelled* to enact or to amend its zoning ordinance in conformity' with its comprehensive plan." *Id.* at 925-26 (quoting *Town of East Greenwich*, 651 A.2d at 728) (emphasis added).

"'Amendments to zoning . . . ordinances[] enjoy a presumption of validity.'" *Id.* at 927 (quoting *Johnson & Wales College*, 448 A.2d at 1279). "'This presumption of validity includes the presumption that the zoning enactments were in accordance with a comprehensive plan[.]'" *Id.* (quoting *D'Angelo*, 89 R.I. at 83, 151 A.2d at 498-99). Further, "'a municipality has discretion in choosing options for conforming its ordinances or land use decisions to its comprehensive plan . . .'" *Id.* (quoting *N & M Properties, LLC v. Town of West Warwick ex rel. Moore*, 964 A.2d 1141, 1147 (R.I. 2009)). Ultimately, "the 'challengers of the amendment, have the burden of proving that it was not made in accordance with a comprehensive plan.'" *Id.* (quoting *Camara*, 116 R.I. at 407, 358 A.2d at 31).

Sea 3 alleges numerous reasons why the Ordinance is inconsistent with the City's Comprehensive Plan. In contrast, the City argues that the amended Ordinance is compliant with the City's Comprehensive Plan. Each allegation will be addressed in full below.

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[5] Justice Robinson, writing for our Supreme Court, in *Peter Scotti & Associates, Inc. v. Yurdin*, 276 A.3d 915, 925-33 (R.I. 2022), a recent case, provides great guidance for how this Court should analyze questions of conformity with the City's Comprehensive Plan. The Court has already cited the case in this Decision and will continue to do so.

1

Future Land Use and Land Designations

Sea 3 proffers the Ordinance is inconsistent with the Comprehensive Plan's Future Land Use Map or Map 11.2 designating the property as part of the industrial waterfront. Sea 3 argues that the Comprehensive Plan intends the property to be used for heavy marine industrial and water-dependent uses which include the shipments of petroleum products and other critical energy resources. In response, the City notes the Comprehensive Plan is a dynamic document and numerous sections of the Comprehensive Plan emphasize the importance of a sustainable community. By furthering these policies, the City claims the Ordinance furthers these policies and is therefore consistent with the Comprehensive Plan.

Comprehensive Plans must contain a map "illustrating the desired patterns of development, density, and conservation . . ." Section 45-22.2-6(b)(2)(ii). The Comprehensive Plan further explains that the Future Land Use Map "depicts specific land use designations for each area of the city[.]" (Appellant's Mem. Ex. 4 at 110.) The property is located in the Port of Providence which the Future Land Use Map designates as Waterfront/Port. Table 11.2 further defines the Waterfront/Port land use designation:

> "These areas are intended for waterfront port and maritime uses to promote the Port of Providence and related maritime industrial and commercial uses within the waterfront area. The purpose of this designation is to protect the waterfront as a resource for water dependent industrial uses, and to facilitate the renewed use of a vital waterfront for economic growth and expansion." *Id.* at 120.

Sea 3 has not established that the Ordinance is inconsistent with the Comprehensive Plan's Future Land Use Map or Table 11.2's land use designations. While the Ordinance does prevent the expansion or creation of storage facilities for liquified propane gas in all zoning districts in Providence, it does not change the land use of the Waterfront/Port area. Further, the Ordinance

does not change the Waterfront/Port area – it remains an area for maritime industrial and commercial uses. The fact that the Ordinance prevents the bulk storage of liquified propane gas does not change the character or future use of the area.

2

Future Zoning Change Areas

Sea 3 next claims the Ordinance does not conform with the City's Comprehensive Plan because it eliminates an existing use (the bulk storage of liquified propane gas) while Map 11.3, Future Zoning Change Areas Map, and Table 11.1, Future Zoning Change Areas Table, do not identify the Waterfront/Port area as an area intended to change. The City counters that the Ordinance does not conflict with the Comprehensive Plan because the Future Zoning Change Areas Map and Table list suggested changes to bring the city code into compliance with the Comprehensive Plan and do not prevent the City from enacting ordinances that limit changes to the use of the area during the ten years which the plan is in effect.

An identical argument was posed in *Peter Scotti & Associates*, 276 A.3d at 928. Appellant in that case also suggested the challenges to new ordinances were out of conformity with the Land Use Map and Table 11.3 of the same Providence Comprehensive Plan. Our high court held:

> "Section 45-22.2-6(b)(2)(iii) requires that a comprehensive plan include a map identifying 'discrepancies between future land uses and existing zoning use categories.' It is clear to us that this statutory section refers to Map 11.3, which is entitled 'Future Zoning Change Areas Map.' The Comprehensive Plan itself notes that 'there are inconsistencies between the City's existing zoning ordinance and the proposed future land use,' and it provides that those inconsistencies are identified in Map 11.3. Map 11.3 does designate the subject parcel as D-1-100 and does not include it in a 'proposed zoning map change area[.]'
>
> "After extensive review of the Comprehensive Plan, the two maps in question, and the record in this case, we are of the opinion that the hearing justice did not err in concluding that plaintiffs' assertions with respect to Map 11.3 were not sufficient to rebut the

> presumption of validity of the Amendment. The Comprehensive Plan itself states that Map 11.3 is meant only to illustrate discrepancies between current zoning and proposed future land use; rather, it is Map 11.2 which 'illustrat[es] the desired patterns of development, density, and conservation,' § 45-22.2-6(b)(2)(ii), and is the 'Official Land Use Map.' It does not appear to us, after reviewing the Comprehensive Plan, that Map 11.3 was intended to provide a specific height requirement for all future zoning of the area in question." *Peter Scotti & Associates, Inc.,* 276 A.3d at 928–29.

The Future Land Use Map is intended to show inconsistencies between a new comprehensive plan and existing ordinances, not to establish specific policies of the plan itself which must remain the same for ten years when a new comprehensive plan is approved. The Ordinance challenged at bar does not change the Waterfront/Port area from marine industrial to residential, it only added to the list of prohibited uses within any zoning district in the City. Thus, Sea 3 has failed to meet its burden of proving that the Ordinance conflicts with the Comprehensive Plan in this manner.

3

Objective W4: Promotion of Economic Activity at the Narragansett Bay Waterfront

Sea 3 argues that the challenged Ordinance conflicts with the Comprehensive Plan's Objective W4, promoting Narragansett Bay waterfront economic activity, because the Ordinance discourages the expansion of its business. The City argues the Ordinance does not prevent Sea 3 from continuing to operate its business as a preexisting nonconforming use and that the Ordinance promotes the Comprehensive Plan's "expressed vision, goals, objectives, and strategies" by mitigating the harm caused by Sea 3's business. (Appellees' Mem. at 18.)

Our Supreme Court has emphasized the Comprehensive Plan must be "considered as a whole, taking into account all . . . relevant sections[.]" *Peter Scotti & Associates*, 276 A.3d at 933. Further, "'a municipality has discretion in choosing options for conforming its ordinances or land

use decisions to its comprehensive plan . . .'" *Id.* (quoting *N & M Properties, LLC*, 964 A.2d at 1147). Ultimately, the "'challenger[] of the amendment[] ha[s] the burden of proving that it was not made in accordance with a comprehensive plan.'" *Id.* at 927 (quoting *Camara*, 116 R.I. at 407, 358 A.3d at 31).

Objective W4, titled "Business and Jobs," states that its purpose is to "[p]romote the Narragansett Bay waterfront as an economic engine for the City." (Appellant's Mem. Ex. 4 at 138.) Objective W4 also provides a list of strategies intended to promote economic activity on the waterfront. Sea 3 has not provided sufficient evidence to prove that the Ordinance inhibits economic activity on the Narragansett Bay waterfront. Sea 3 can continue to operate its marine propane terminal and expand the facility as detailed in its previously approved DPR application. Further, Sea 3 failed to provide any evidence that the other businesses located on the waterfront are affected by this Ordinance. Sea 3 asserts it is the only business in the City impacted by the Ordinance since it is the only facility in the City which stores bulk quantities of liquid propane gas. Thus, Sea 3 has not met its burden of proving that the Ordinance conflicts with the Comprehensive Plan's objective to support economic activity on the waterfront.

4

Objective W8: Waterfront Land Use

Sea 3 next contends the Ordinance conflicts with Objective W8 in the Comprehensive Plan which promotes the revitalization of the Narragansett Bay waterfront utilizing both water and non-water dependent uses and emphasizing the importance of economic development and public access to the water. Sea 3 claims the intent of the Ordinance was to prevent the company from expanding its facility on the property to connect to existing rail lines. Further, Sea 3 argues that this intent behind the Ordinance conflicts with Objective 8 of the Comprehensive Plan. Conversely, the City

argues that the Ordinance promotes the purposes of the Comprehensive Plan and zoning regulation, specifically "promoting public health, safety, and general welfare" by prohibiting the bulk storage of liquid propane gas.

Comprehensive plans are too often considered as aspirational. This Court declines to use the term because of the importance of comprehensive plans in the statutory scheme and their high priority in establishing the direction of land use for the locality. Local ordinances, indeed all land use, is urged to adhere to the goals of the comprehensive plans. However, a well-crafted plan must, by its nature, set forth a variety of goals for the community. Some of those goals often can be read to conflict with one another. An example are the common goals of economic growth, protection of the existing environment, and preservation of public health and safety. Each of them are laudable and important goals for the community, but they cannot always conform with one another in a perfect fit. The city or town council and the local land use authorities must continue to work through the duration of the plan to apply the broad and specific goals to specific situations. Of course, no goal should be ignored, but they must be viewed in concert with the other goals of the plan.

Hence, the statutory scheme of the Zoning Enabling Act establishes that the local planning commission or board not only draft the comprehensive plan but that it provide recommendations on all land use ordinances, variances, and special exceptions before action by the town council or zoning board.

Our Supreme Court has emphasized the Comprehensive Plan must be "considered as a whole, taking into account all . . . relevant sections[.]" *Peter Scotti & Associates*, 276 A.3d at 933. Further, '"a municipality has discretion in choosing options for conforming its ordinances or land use decisions to its comprehensive plan . . ."' *Id.* (quoting *N & M Properties, LLC*, 964 A.2d at

1147). And, ultimately, the "'challenger[] of the amendment[] ha[s] the burden of proving that it was not made in accordance with a comprehensive plan."' *Id.* at 927 (quoting *Camara*, 116 R.I. at 407, 358 A.3d at 31).

Sea 3 has not provided sufficient evidence that the Ordinance would contravene the Comprehensive Plan's intent to redevelop the waterfront. The City persuasively argues the Ordinance may further the intent of this objective by promoting public health, safety, and general welfare. Thus, Sea 3 has not met its burden of proving that the Ordinance conflicts with the Comprehensive Plan's objective to revitalize economic activity on the Narragansett Bay waterfront.

5

Objective W9

Sea 3 then argues the Ordinance conflicts with Objective W9 of the Comprehensive Plan, which stresses the importance of coordination between waterfront planning efforts and neighboring communities, because the Ordinance outlaws the bulk storage of liquid propane gas. Sea 3 asserts that the fuel is "an important energy resource used by almost all Rhode Islanders in some fashion, in the Port and City." (Appellant's Mem. at 18.) In opposition, the City notes the Ordinance was created to protect neighboring communities and the overall public health, safety, and general welfare of the community.

As stated *supra*, our Supreme Court has emphasized the Comprehensive Plan must be "considered as a whole, taking into account all . . . relevant sections[.]" *Peter Scotti & Associates*, 276 A.3d at 933. Further, "'a municipality has discretion in choosing options for conforming its ordinances or land use decisions to its comprehensive plan . . .'" *Id.* (quoting *N & M Properties, LLC*, 964 A.2d at 1147). Ultimately, the "'challenger[] of the amendment[] ha[s] the burden of

proving that it was not made in accordance with a comprehensive plan."' *Id.* at 927 (quoting *Camara*, 116 R.I. at 407, 358 A.3d at 31).

Sea 3 has not provided sufficient evidence to prove that the Ordinance conflicts with the Comprehensive Plan's objective to coordinate waterfront planning efforts with neighboring communities. The City is afforded deference in how it interprets the Comprehensive Plan. Sea 3 has not met its burden of proving that the Ordinance conflicts with the Comprehensive Plan's objective to include neighboring communities in development of the waterfront.

6

Comprehensive Plan Statements

Sea 3 then claims the Ordinance conflicts with a number of statements in the Comprehensive Plan. Sea 3 asserts that the Ordinance "ignores the Comprehensive Plan's statement that the Port is home to '[s]everal water dependent utility and energy-related businesses that are essential to the regional economy . . .'" Appellant's Mem. at 17 (quoting Appellant's Mem. Ex. 4 at 134). Further, Sea 3 argues that the Ordinance contravenes the Comprehensive Plan's mandate that the City protect "essential" energy-related businesses. *Id.* Sea 3 also claims that preventing the future expansion of its facility by rendering it a preexisting nonconforming use directly conflicts with the Comprehensive Plan's statement that it is critically important. Sea 3 argues that the Comprehensive Plan emphasizes the importance of using the waterfront to "bring in energy resources" which "specifically includ[e] 'petroleum products' like [liquid propane gas]." *Id.* (quoting Appellant's Mem. Ex. 4 at 135). Finally, it notes that the City Council's decision to amend the Ordinance to ban the bulk storage of liquid propane gas is evidence that the City Council "disagrees with the Comprehensive Plan's entire scheme for regulating future land use in the Port as the Council is ignoring these statements in favor of public sentiment. . ." *Id.* at 18.

The Appellant is claiming, once again, that curtailing (or regulating) future expansion necessarily preempts growth of the facility or port as a whole. This conjecture falls short of acceptable evidence.

Repeating once more, the Rhode Island Supreme Court has emphasized the Comprehensive Plan must be "considered as a whole, taking into account all . . . relevant sections." *Peter Scotti & Associates*, 276 A.3d at 933. Further, "'a municipality has discretion in choosing options for conforming its ordinances or land use decisions to its comprehensive plan . . .'" *Id.* (quoting *N & M Properties, LLC*, 964 A.2d at 1147). Ultimately, the "'challenger[] of the amendment[] ha[s] the burden of proving that it was not made in accordance with a comprehensive plan.'" *Id.* at 927 (quoting *Camara*, 116 R.I. at 407, 358 A.3d at 31). While Sea 3 correctly asserts the Comprehensive Plan emphasizes the importance of using the waterfront for marine industrial use, this fact does not mean the City is prevented from regulating the area or enacting an Ordinance that bans the bulk storage of liquid propane gas. Sea 3 has not provided sufficient evidence to establish that the Ordinance conflicts with the Comprehensive Plan.

C

Enactment Process of the Amendment

Sea 3 notes in its rendition of facts that the enactment process of the Ordinance may be unlawful because it ignored the recommendations of the City Plan Commission and it did not allow Sea 3 to provide testimony at the hearing on November 15, 2021 because there was no notice that there would be testimony at the hearing. (Appellant's Mem. at 5.) Further, the City Council passed the amendment to the Ordinance without providing Sea 3 the opportunity to make its presentation. Finally, Sea 3 argues that the Ordinance does not contain any statements about how it is consistent with the Comprehensive Plan.

Section 45-24-51 requires that the City Plan Commission provide a recommendation to the City Council on all proposed zoning amendments. However, a positive recommendation is not required for the City Council to amend a zoning ordinance. Further, the City must provide notice of the intended amendment to the zoning ordinance to any interested parties, including those whose properties would be rendered preexisting nonconforming uses, so that interested parties may attend the hearing and are given an opportunity to be heard. Section 45-24-53(a). Sea 3 was invited to be heard, but passage of an Ordinance is not a judicial act, it is a legislative act. No specific request for a hearing before the City Plan Commission was referenced. No rule requiring a hearing was referenced. On November 3, 2021, the City Council's Committee on Ordinances heard public testimony about whether the Ordinance should be amended to prohibit the bulk storage of liquid propane gas. Both the City's Department of Planning and Development and Plan Commission submitted recommendations[6] against prohibiting the bulk storage of liquid propane gas and instead that the City Council should amend the zoning ordinance to require special use permits. On December 2, 2021, the amended Ordinance was passed for the first time. On January 6, 2022, the amended Ordinance was passed for the second time. On January 13, 2022, then-Mayor Jorge Elorza signed the Ordinance. The enactment process of the amendment was lawful. *See* § 45-24-51; *see also* § 45-24-53. The City Plan Commission provided its recommendation on the amendment to the Ordinance, and Sea 3 was given notice and opportunity to be heard on its objection to the amendment. While it was prevented from making a presentation at the November 15, 2021 City Council meeting, it was not entitled to be heard on that day. The local council must

[6] The City Plan Commission adopted the City's Department of Planning and Development recommendation.

be afforded some deference in establishing their procedures. Thus, the process for enacting the Ordinance has not been established illegal so as to render the Ordinance invalid.

IV

Conclusion

Sea 3 has failed to meet its burden of proof in establishing that the Ordinance was inconsistent with the Providence Comprehensive Plan. The Court finds that the enactment of the Ordinance was in conformance with the Comprehensive Plan. The Court does not find that the enactment of the Ordinance worked as a taking of property, nor was such a taking established. For the reasons set forth herein, Sea 3's appeal is denied. Providence Ordinance 2022-1 is affirmed per § 45-24-71.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Sea 3 Providence, LLC v. The City of Providence, et al.**
CASE NO:	**PC-2022-00707**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 19, 2024**
JUSTICE/MAGISTRATE:	**Lanphear, J.**
ATTORNEYS:	
For Plaintiff:	**Nicholas J. Hemond, Esq.**
For Defendant:	**Megan K. Disanto, Esq.**