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Town of Exeter v. State, 226 A.3d 696 (R.I. 2020)

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Property Law. *Town of Exeter v. State*, 226 A.3d 696 (R.I. 2020). When a zoning dispute arises between the state and a municipality over local land-use and zoning ordinances, the state must first present the project to the State Planning Council to determine compliance with the town’s comprehensive plan. If the project garners approval, the state must then apply to the town’s zoning board. From there if the parties continue to be in disagreement then either party may file suit to in the Rhode Island Superior Court to resolve the matter. The Superior Court uses the record from the prior steps and applies a balancing test that examines the function and effect of the land-use regulations.

FACTS AND TRAVEL

In 2018, a zoning dispute arose between the towns of Exeter and Richmond (Towns) and the State of Rhode Island (State) over altering plans for the Arcadia Natural Resources and Visitors Center (Visitors Center).¹ From 2012 through 2018, the State approve funding for the project as part of the annual state budget.² Because of its intent to use public funds for the project, the Department of Environmental Management (DEM) began planning to construct the Visitors Center in 2014.³ The detailed plans were posted publicly for bidding from January 2016 to November 2016, with a bid accepted in early 2017.⁴ The new building was set to be in an area zoned for residential use in the Town of Richmond, with the parking lot and other utilities in the Town of Exeter, where the land was zoned for open-space public land.⁵

The State of Rhode Island argued that the towns were notified of the project between 2014 and 2015, though Exeter disputes this,

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1. *Town of Exeter v. State*, 226 A.3d 696, 698 (R.I. 2020).
 2. *Id.*
 3. *Id.*
 4. *Id.*
 5. *Id.* at 699.

arguing it was not notified until 2017.⁶ Twice in 2017 DEM officials presented the project to the Town of Richmond and allowed for public comment.⁷ It was here that the State made it clear that it would not agree to change the project plans.⁸

On February 16, 2017, Exeter sent a cease and desist letter to DEM, among others, asking that the project stop until the project had proper permits and an administrative review had concluded.⁹ Two months later on April 6, 2017, Exeter filed a petition to the Rhode Island Superior Court seeking a declaration that “(1) the project was subject to development plan review by the town; (2) the project required town planning board and zoning board review and approval; (3) the project violated environmental quality standards; and (4) the state failed to obtain permitting for earth removal, soil erosion, and drainage.”¹⁰ Richmond filed a similar action, which was later consolidated with the Exeter complaint, and sought a declaration that the State must work within the “town’s zoning ordinance, comprehensive plan, and subdivision regulations.”¹¹

On December 15, 2017, the first hearing justice found that the State had immunity from the Towns’ zoning ordinances, thus denying the Towns’ motion for a preliminary injunction.¹² The parties then filed cross-motions for summary judgment on the Towns’ requests for a declaratory judgment.¹³ The second hearing justice found that the State need not attain municipal permits or approval for the project and that section 45-22.2-10(g) of the Rhode Island Planning and Land Use Act (the Act) was the proper method to resolve land issues between towns and the state.¹⁴ The second hearing justice further explained that the Towns should adapt its zoning requirements to the larger project plan.¹⁵ The Superior Court granted summary judgment in the State’s favor and also

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 699–700.

15. *Id.* at 700.

denied the Towns' requests for declaratory judgment and a permanent injunction.¹⁶ Both towns filed appeals to the Rhode Island Supreme Court soon after the decision.¹⁷ The Towns contended that the Act should not be the proper remedy to resolve land-use disputes between the state and towns, but, rather, the test in *Blackstone Park*¹⁸ was more applicable because the Act applies only to "comprehensive-planning conflicts" while the *Blackstone Park* test governs zoning conflicts.¹⁹ The Towns also argued that "an outdated comprehensive plan does not invalidate local zoning ordinances or the ordinances' applicability to the state and its agencies."²⁰ Conversely, the State argued that the Act was applicable here because neither town has an approved comprehensive plan, as both towns had plans that expired prior to June 2017, and that the Act "controls all intergovernmental land-use disputes."²¹ The State argued that because of this, the state is immune from the Towns' zoning ordinances.²²

ANALYSIS AND HOLDING

Under *Blackstone Park*, the hearing court must weigh: "(1) the nature and scope of the instrumentality seeking immunity, (2) the kind of function or land use involved, (3) the extent of the public interest to be served, (4) the effect local land-use regulation would have upon the enterprise concerned and (5) the impact upon legitimate local interest."²³ The party whose interests outweigh the other's is victorious.²⁴ The State argued that the Act trumps the balancing test from *Blackstone Park* because the Act provides the proper method to resolve land-use issues between the state and

16. *Id.*

17. *Id.*

18. *Blackstone Park Improvement Ass'n v. State Bd. of Standards & Appeals*, 448 A.2d 1233 (1982).

19. *Town of Exeter*, 226 A.3d at 700. "This Court adopted the balancing-of-interests test to determine whether the state was immune from Providence's zoning ordinance and, after applying that test, found in favor of the state." (citing *Blackstone Park*, 448 A.2d at 1239-40). *Id.* at 701.

20. *Id.* at 700.

21. *Id.* at 700-01.

22. *Id.* at 701.

23. *Id.* (citing *Blackstone Park*, 448 A.2d at 1239).

24. *Id.*

towns.²⁵ The State argued that zoning must reflect comprehensive planning as zoning and comprehensive planning are “inextricably intertwined,” and thus, the Act should govern.²⁶ The Court disagreed with the State’s argument.²⁷

In rejecting the State’s argument, the Court relied on *West v. McDonald*, which established that zoning and comprehensive planning are separate schemes that address different issues that “may contain different, yet non-conflicting requirements.”²⁸ The Court in *West* reasoned that “a municipality’s failure to conform its zoning ordinances to its comprehensive plan does not automatically invalidate the zoning ordinances.”²⁹ The Court also stated that a plain reading of the Act does not create immunity for the state from a town’s zoning ordinance because the section at issue provides only a procedure for comprehensive planning disputes and it purposefully does not mention the word “zoning,” though other sections of the Act do.³⁰ The Court reasoned that if the legislature had intended for the Act to cover comprehensive planning issues as well as zoning issues, zoning would have been explicitly mentioned in the language, thus giving deference to the statute drafter’s chosen words.³¹ Furthermore, in *Town of Smithfield v. Fanning*, the most recent case on point, the Court chose to utilize a balancing-of-interests test as the mechanism for deciding such zoning disputes rather than rely on the Act.³² The Court relied on *Fanning* to support its conclusion that the Act did not supersede the *Blackstone Park* test.³³

The Court also looked at comparable law of other states and determined that Rhode Island is “not an outlier” in utilizing the balancing test for intergovernmental zoning conflicts.³⁴ As of 2020, there are at least fifteen states that resolve intergovernmental

25. *Id.*

26. *Id.* at 702.

27. *Id.*

28. *Id.* (citing *West v. McDonald*, 18 A.3d 526, 541 (R.I. 2011)).

29. *Id.* (citation omitted).

30. *Id.*

31. *Id.* at 702–03.

32. *Id.* at 703.

33. *Id.*

34. *Id.*

zoning conflicts via a balancing test.³⁵ The Court specified that when the state is planning a project in a town, it must first obtain approval from the State Planning Council on whether the state's project complies with the town's comprehensive plan, subject to the guidelines in the Act.³⁶ This is only required when a town has an approved comprehensive plan "at the time the state begins the project."³⁷ In the context of this dispute, the State began planning the project construction in 2014 during which Richmond already had approved a comprehensive plan that expired in June 2017.³⁸ When the State began to accept bids, Richmond had an approved comprehensive plan.³⁹ The Court then specified that "the town was in compliance at the time the state should have brought the issue before the State Planning Council."⁴⁰ The Court held that the State must compare the proposed project's compliance with Richmond's comprehensive plan as it existed at the date of suit (April 12, 2017) for review under the process within the Act.⁴¹ The Court also held that although Exeter did not have a comprehensive plan, because of the circumstances of this case, the State must bring the issue of the proposed project's compliance with Exeter's comprehensive plan as it existed when Exeter filed suit for review under the procedure set forth in the Act.⁴²

The Towns further argued that the state must apply to the town zoning board before bringing an action in Superior Court so that the trial justice can employ a balancing test of the interests of the state against that of the town.⁴³ In *Blackstone Park*, the Court held that the state should "consult with" and "sympathetically listen" to the town to avoid conflict.⁴⁴ In the Court's view, this is

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 704.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* (citing *Blackstone Park Improvement Ass'n v. State Bd. of Standards & Appeals*, 448 A.2d 1233, 1239 (1982)).

best done through following the town's zoning ordinance.⁴⁵ This method has been adopted by the majority of jurisdictions that use the balancing test to resolve these disputes, which also ensures these disputes are resolved as cost-efficiently as possible.⁴⁶

Thus, the Court held that when a conflict arises between a state and a municipality on local land-use and zoning ordinances, the state must first present the project to the State Planning Council to determine compliance with the town's comprehensive plan.⁴⁷ If the project is approved, the state is required to apply to the town's zoning board for "zoning relief and act in conformity with the procedures set forth in the Zoning Enabling Act."⁴⁸ Only then, if the parties remain in disagreement, can either party file suit in the Superior Court, which will then use the record from both prior procedural steps and apply *Blackstone Park's* balancing test to "resolve the matter."⁴⁹

COMMENTARY

In deciding this case, the Court carefully analyzed the plain language of the Act to note that it did not supersede the balancing test. The absence of the word "zoning" in the referenced section of the Act is significant when the rest of the Act uses the word where necessary.⁵⁰ It is generally important to note where the legislature purposefully omitted a word, compared to where the legislature explicitly and purposefully included a word. Interestingly, the Court opted to uphold a balancing test rather than hold that the Act confers immunity on the state from municipal zoning ordinances.⁵¹

The Court also looked at the law in other states to determine if the *Blackstone Park* balancing test was unique. While states may have different rules and regulations, the Court found that at least fifteen other states use a balancing test to resolve

45. *Id.* (citation omitted).

46. *Id.* at 704–05 (quoting *Brown v. Kansas Forestry, Fish, & Game Comm'n*, 675 P.2d 230, 236 (Kan. 1978)).

47. *Id.* at 705.

48. *Id.* at 705–06.

49. *Id.* at 706.

50. *See id.* at 702.

51. *See id.* at 706.

intergovernmental zoning conflicts.⁵² Intergovernmental zoning disputes are not unique to Rhode Island.⁵³ The Court's survey of other state laws and practices helped support the decision to utilize a balancing test.⁵⁴

In determining the test for future disputes, the Court created a precedent for future zoning disagreements, which will undoubtedly increase judicial efficiency.⁵⁵ The holding in this case also serves an evidentiary function, as it creates a record of the interactions of the parties for the reviewing justices to consider. The process set out by the Court will then streamline the proceedings and increase predictability and uniformity among disputes of this nature. In the future, similar disputes will be subject to the holding in this case, and the precedent created here provides a clear rule as to how the courts should resolve such disputes.

CONCLUSION

The Court held that the plain language of section 45-22.2-10(g) of the Act does not outline the method for "intergovernmental tension and comprehensive planning to zoning disputes."⁵⁶ The Court also outlined the manner in which disputes should be resolved.⁵⁷ The Court remanded the case to the State Planning Council to "without delay, conduct the formal administrative hearing concerning the state's compliance with the towns' comprehensive plans, as the plans existed at the time each town filed suit in Superior Court."⁵⁸

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52. *Id.* at 703.

53. *Id.* 706.

54. *Id.*

55. *See id.* at 705-06.

56. *Id.*

57. *Id.* at 706.

58. *Id.*