STATE OF RHODE ISLAND **MUNICIPAL COURT**
TOWN OF NARRAGANSETT

TOWN OF NARRAGANSETT

vs.

JOSEPH MOLLICONE, III:	**Municipal Court No.: 16100054**
EDWARD W RICCI, II	**16100056**
GREEN ACRES	**16100046**
MANUEL ASTIASARAN	**16100047**
JOCELYN LECLERC	**16100051**
ROBIN LECLERC	**16100052**
JOHN MAZZOCCA	**16100053**
GERARD MOOR	**16100055**
EDWARD W RICCI, II	**16100056**
JOHN RUSSO	**16100058**
PAULA TYCIENSKI	**16100059**
GSR PROPERTIES	**16100061**
JOAN KRETZMER	**16100064**
RICHARD KRETZMER	**16100065**
PALAZZESI RI PROPERTIES LLC	**17010001**
KELLI-ANN ARMSTRONG	**17030004**
KENNETH DANIELE	**17030005**
THERESA DANIELE	**17030006**
GRAMMATIKOS LAMBRAKIS	**17030010**
HELENA LAMBRAKIS	**17030011**
LAURA LUTH	**17030012**
RICHARD LUTH	**17030013**
EUGENE MA	**17030014**
WEI-LA MA	**17030015**
CAROL NONIS	**17030018**
GEORGE NONIS	**17030019**
PALAZZESI RI F	**17030020**
PALAZZESI RI F	**17030021**
JEAN POSK	**17030022**
JOSEPH POSK	**17030023**
DEBRA QUARANTO	**17030024**
ROBERT QUARANTO	**17030025**
JOSEPH VINGI	**17030026**
MARY VINGI	**17030027**

OPINION

DeCUBELLIS, J.

The Town of Narragansett (the "Town") has charged the above-named Defendants (hereinafter collectively referred to as the "Defendants"), with violating certain provisions of the Town of Narragansett Zoning Ordinances. More particularly, the Town charges that the Defendants violated Chapter 731, Section 2.2, "Households. A person or group of unrelated persons living together. The maximum number shall be four persons." In other words, the Town alleges that Defendants violated the ordinance by permitting more than four (4), unrelated persons to reside at their respective properties.

The Defendants all entered pleas of not guilty and thereafter, collectively filed "Motions to Dismiss" the Complaints. The Defendants claim that this particular ordinance is unconstitutional on its face and as applied to them, based on their due process and equal protection rights set forth in Article 1, Section 2, of the Rhode Island Constitution. The parties each submitted briefs outlining the issues and setting forth their respective arguments. After reviewing all submissions, supporting documentation, and pertinent statutes and case law, this Court determines as follows:

FACTS

The relevant and material facts in this matter are essentially not dispute. It is certainly no secret that there has been an ongoing battle between the Town, landlords and tenants, and the residents of Narragansett regarding issues arising from the vast number of rental properties, especially those involving student renters attending the University of Rhode Island.

On November 16, 1987, the Town initially addressed these disputes by adopting Section 17.2 of the Town of Narragansett Zoning Ordinances. Section 17.2 defined "Family" as:

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

(Emphasis added).

During its 1991 session, the Rhode Island legislature enacted the "Rhode Island State Zoning Enabling Act of 1991".[1] R.I.G.L. § 45-24-31 (26) defines "Family" as "[a] person or persons related by blood, marriage, or other legal means. See also 'household'." Additionally, § 45-24-31 (35) defines "household" as

> *Household*. One or more persons living together in a single-dwelling unit, with common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit. The term "household unit" is synonymous with the term "dwelling unit" for determining the number of units allowed within any structure on any lot in a zoning district. An individual household shall consist of any one of the following:
>
> (i) A family, which may also include servants and employees living with the family; or
>
> (ii) A person or group of unrelated persons living together**.** The maximum number may be set by local ordinance, but this maximum shall not be less than three (3).

Pursuant to 45 – 24 – 28 (a),

> "[a]ny zoning ordinance or amendment of the ordinance enacted after January 1, 1992, shall conform to the provisions of this chapter. ***All lawfully adopted zoning ordinances shall be brought into conformance with this chapter by December 31, 1994***. Each city and town shall review its zoning ordinance and make amendments or revisions that are necessary to bring it into conformance with this chapter.

(Emphasis added).

[1] See, R.I.G.L. §§ 45-24-27 through 45-24-72.

Thus, zoning ordinances in all towns and cities were required to comply with the new Zoning Enabling Act on or before December 31, 1994.

In December 1991, the Town charged multiple defendants with violating Section 17.2, and alleged that they rented their single-family dwellings to more than three (3) unrelated persons. As a result, in the case entitled, *DiStefano v. Haxton*, 1994 WL 931006, several defendants collectively filed a Declaratory Judgment action against the Town in the Superior Court.

While the *DiStefano* decision was still pending, on or about June 20, 1994, in response to the Zoning Enabling Act, the Town replaced Section 17.2 of its Zoning Ordinances with the enactment of Section 2.2. More specifically, Section 2.2 mirrored the new Zoning Enabling Act and redefined "family" as "[a] person or persons related by blood, marriage, or other legal means. See also 'Household'." Section 2.2 further added a definition of "Household"; to wit,

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

(Emphasis added).

On December 12, 1994, after the Town's enactment of Section 2.2, *DiStefano* was decided. The Superior Court invalidated Section 17.2 of the Town of Narragansett Zoning Ordinances and determined that it was unconstitutional and unenforceable. The Town did not appeal *DiStefano* and consequently, that decision became a final judgment and remains good law today. Furthermore, for the ensuing twenty-one (21) plus years, the Town opted not to pursue and/or enact any other restrictions limiting the number of unrelated persons living together.

However, "[i]n response to extensive community concerns over quality of life issues reported by residents in various Town neighborhoods," the Town Council established an Ad Hoc Commission on Student Rental Issues in 2014".[2] The Ad Hoc Commission issued a report "… laying out a of series of findings and recommendations to alleviate various quality of life and safety issues attendant to the high concentration of student rentals in certain Narragansett neighborhoods."[3] One of the Ad Hoc Commission's recommendations was that "the town should enact and enforce an ordinance which prohibits more than 4 unrelated persons from occupying a single household."[4]

The Town "reached a consensus that increasing the limit of unrelated persons from three to four would be the most appropriate method of lessening the intensity of use that had been created by [a] proliferation of student rental properties in excess of 4 unrelated persons."[5] As a result, on May 16, 2016, the Town amended its definition of "Household" under Section 2.2 (b) by increasing the maximum number of unrelated persons permitted to live together from three (3) to four (4).

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2 *See*, "Council Communication" dated December 30, 2060 from Dawson Hodgson to Town Council ("Council Communication") regarding "Proposed Amendment to Zoning Ordinance - Unrelated Persons".

3 *Id.* It is not clear from the record when the Commission, which was apparently formed in 2014, actually issued its report.

4 *Id.*

5 *Id.*

Thereafter, in September and October 2016, the Town issued Summonses and Complaints against the Defendants charging that they violated the newly amended ordinance by permitting more than four (4), unrelated persons to reside at their respective properties. Once again, the Defendants claim that this newly amended ordinance is unconstitutional on its face and as applied to them, based on their due process and equal protection rights set forth in Article 1, Section 2, of the Rhode Island Constitution. Some of the Defendants also assert that, even if the newly amended Section 2.2 is constitutional, they should be allowed to continue renting to more than four (4) unrelated persons as legal non-conforming uses under the Town of Narragansett Zoning Ordinances and/or pursuant to the Doctrine of Municipal Estoppel.

The Town counters that *DiStefano* is irrelevant and inapplicable to the present cases. More specifically, the Town claims that *DiStefano* is entirely distinguishable from the facts and circumstances of these cases, as are the challenged ordinances, and that Section 2.2 is constitutional and legally enforceable. The Town further contends that the Defendants' claims of non-conforming uses under the Town of Narragansett Zoning Ordinances and/or the application of the Doctrine of Municipal Estoppel are without merit.

ISSUES PRESENTED

1. Whether, under the doctrine of *stare decisis*, *DiStefano* is relevant and applicable to this Court's determination of the Defendants' claimed constitutional infirmities of Chapter 731, Section 2.2, of the Town of Narragansett Zoning Ordinances?

2. If so, is *DiStefano* dispositive in determining the constitutionality of Chapter 731, Section 2.2, of the Town of Narragansett Zoning Ordinances?

3. If the doctrine of *stare decisis* and *DiStefano* are not relevant and dispositive, whether Chapter 731, Section 2.2, of the Town of Narragansett Zoning Ordinances is constitutional and thereby, enforceable against the Defendants?

4. If Chapter 731, Section 2.2, of the Town of Narragansett Zoning Ordinances is constitutional and enforceable, are some of the Defendants, nevertheless, permitted to continue renting to more than four (4) unrelated persons as legal non-conforming uses under the Town of Narragansett Zoning Ordinances and/or pursuant to the Doctrine of Municipal Estoppel?

DECISION

The threshold issues to be addressed by this Court is whether the principle of *stare decisis* is relevant to this case and, if so, is *DiStefano* dispositive in determining the constitutionality of Section 2.2 of the Town of Narragansett Zoning Ordinances.

1. Is the Doctrine Of Stare Decisis And Thereby, DiStefano Relevant And Applicable To This Court's Determination Of The Defendants' Claimed Constitutional Infirmities Of Chapter 731, Section 2.2, Of The Town Of Narragansett Zoning Ordinances?

Doctrine of Stare decisis

The doctrine of *stare decisis* "… requires courts to reach the same result when presented with the same or substantially similar issues in another case with different parties. The identity of the questions presented is determined by a review of the facts and issues. ***Unless the facts are essentially different, [s]tare decisis will apply to provide the necessary uniformity, predictability, and stability of the legal process.***" (Emphasis added). *Topps-Toeller, Inc. v. City of Lansing*, 209 N.W.2d 843, 848 (1973).[6]

[6] *See*, Breckon v. Franklin Fuel Co., 174 N.W.2d 836 (1970).

> [***Stare decisis***] **…** ***compels a court to follow strictly the decisions rendered by a higher court***. *See Jaffree v. Board of School Comm'rs,* 459 U.S. 1314, 1316, 103 S.Ct. 842, 843, 74 L.Ed.2d 924 (Powell, Circuit Justice 1983); *In re Marriage of Thorlin*, 155 Ariz. 357, 362, 746 P.2d 929, 934 (Ct.App.1987). Under this mandate, ***lower courts are obliged to follow the holding of a higher court, as well as any "judicial dicta" that may be announced by the higher court***.

State v. Menzies, 889 P.2d 393,399 (FN 3) (Utah 1994). (Emphasis added).[7] Furthermore, those seeking to overturn prior precedent have a substantial burden of persuasion. *Id*. at 398.[8]

A lower court is bound to follow decisions of a higher court, whether it agrees with the prior decision or not. *State v. Dwyer*, 332 So.2d. 333, 335 (1976). (Emphasis added). Lower courts receive interpretations of the law from higher courts "… agreeing with some, disagreeing with some, ***following all***…." *Id*. (Emphasis added). "The reasons underlying the judiciary's commitment to *stare decisis* are readily apparent and are absolutely essential to our jurisprudence. Clearly, predictability and the rule of law would be undermined if lower courts could simply contravene established precedent, even for what appear to be good reasons. As explained in a recent law review article:

> Serious rule of law costs would follow if lower courts were free to ignore precedent established by a higher court of appeal. At the same time, ***the appellate process itself substantially mitigates the costs of adhering to an erroneous precedent, because it can always be addressed by the court of last resort***. Thus, maintaining … *stare decisis* imposes few costs in terms of popular sovereignty and provides maximal rule of law benefits.[9]
>
> Moreover, ***to ignore the rule of stare decisis would inevitably grant to all lower courts***, including trial courts, the authority to circumvent higher ***court rulings under the guise of anticipating that the higher court will change its position***. This is a very dangerous, slippery slope.

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[7] *See*, *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 43-44 (2007) (holding that lower courts generally cannot overrule decisions of higher courts).*See also*, *Lewis v. Sava*, 602 F.Supp. 571, 573 (D.C.N.Y.1984); *Fogerty v. State*, 187 Cal.App.3d 224, 231 Cal.Rptr. 810, 815 (1986); *Ex parte Harrison*, 741 S.W.2d 607, 608-09 (Tex.Ct.App.1987). *See generally* Robert E. Keeton, *Venturing To Do Justice: Reforming Private Law* 25-38 (1969); 21 C.J.S. *Courts* § 142, at 169-70 (1990).

[8] *See*, *State v. Hansen*, 734 P.2d 421, 427 (Utah 1986).

[9] Citing Lash, Originalism, popular sovereignty, and reverse s*tare decisis*, 93 Va. L. R. 1437, 1454 (2007).

In re Nestorovski Estate, 769 N.W.2d 720, 739 (2009). (Emphasis added).

After discussing the doctrine of *stare decisis*, *supra*, this Court must now consider whether those principles are relevant and applicable to *DiStefano*, and the facts and circumstances of the instant cases. For *stare decisis* to apply, this Court must be "presented with the same or substantially similar issues" as in that prior case.[10] Unless the facts here are "essentially different" than those in *DiStefano*, this Court is compelled to follow that prior Superior Court decision, even if it believes that decision is flawed, erroneous, irrational and/or is ripe for reversal by the Superior or Supreme Courts.

In its Memorandum of Law, the Town cites *Forte Bros., Inc. v. State, Dept. of Transp.*, 541 A.2d 1194 (R.I. 1988), in support of its conclusion that the doctrine of *stare decisis* does not apply to *DiStefano*. More particularly, the Town argues that *Forte Bros.* stands for the proposition that only Supreme Court decisions are binding on all other Rhode Island courts and therefore, the doctrine of *stare decisis* and *DiStefano* are inapplicable to the pending cases.[11] However, that conclusion views *Forte Bros.* completely out of context and disingenuous.

In *Forte Bros.*, our Supreme Court was faced with the issue of having two inconsistent Superior Court decisions. In other words, the case involved conflicting decisions within the same court. The court reasoned that

> It is true that we have adopted a general rule of convenience that in a particular case a ***decision made by one judge of coordinate jurisdiction*** should not in the absence of special circumstances be set aside by another justice passing upon the identical question in the same case. [Citations omitted].
>
> However, ***we shall not extend the doctrine of law of the case to provide a rule of stare decisis regarding decisions of trial courts as having binding effects upon other members of the same or coordinate trial courts***. Obviously, a well-reasoned decision of a trial justice of ***coordinate***

[10] *See*, *Topps-Toeller, Inc.* 209 N.W.2d at 848.

[11] *See*, Town's Memorandum of Law at pp. 9-10.

> ***jurisdiction*** may have a persuasive effect upon another justice of a trial court. ***However, only the decisions of this court are of binding effect upon all justices of trial courts of this state***.

Id. at 1196. (Emphasis added).

It is extremely clear to this Court that the holding in *Forte Bros.*, exclusively relates to prior decisions and precedent within ***the "same or coordinate trial courts"***, and is not relevant and/or applicable to lower courts. Instead, as previously discussed above, if "presented with the same or substantially similar issues", lower courts are obliged to follow the holding of a higher court, as well as any "judicial dicta" that may be announced by the higher court.[12] Having determined that the principles of *stare decisis* would apply to a similar case, this Court must next determine whether *DiStefano* and the instant cases involve the same or substantially similar issues or if they are distinguishable.

In *DiStefano*, the Court determined that the Town's enactment of Section 17.2 of the Town of Narragansett Zoning Ordinances, limiting the occupancy of single dwellings to no more than three (3) unrelated persons, was ***in response to numerous complaints*** about loud parties, littering, abusive language, speeding vehicles, garbage, parking, urinating in public and disorderly conduct. *DiStefano* at p. 3. (Emphasis added).

Here, the Town's adoption and amendment to Section 2.2 of the Town of Narragansett Zoning Ordinances, limiting the occupancy of single dwellings to no more than four (4) unrelated persons, was ***in response to extensive community concerns*** over "… quality of life and safety issues attendant to the high concentration of student rentals in certain Narragansett neighborhoods", and "… to lessen the intensity of use that has been created by [a] proliferation of student rental properties in excess of 4 unrelated persons".[13] In its Memorandum, the Town

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12 *State v. Menzies*, 889 P.2d at 399.

13 *See*, Council Communication.

elaborated more on the objectives of Section 2.2; to wit, "controlling the intensity of land use by restricting the amount of occupants in an ordinary residential dwelling, and ensuring that those residential dwelling units which are utilized for high occupancy human habitation are properly regulated for fire and building safety."[14] As evidenced by the Council Communication, there is no dispute that the current Section 2.2 of the Town of Narragansett Zoning Ordinances was enacted predominantly to address issues relating to student renters. In fact, it was the ***Ad Hoc Commission on Student Rental Issues***, established in 2014, that actually, recommended to the Town Council some two years later that it "… should enact and enforce an ordinance which prohibits more than 4 unrelated persons from occupying a single household."[15]

The Town points out that, in 1991, the General Assembly conducted a substantial revision of the State's zoning enabling laws in enacting the Zoning Enabling Act, and required all towns and cities to bring their zoning ordinances in compliance. The Town further asserts that its amendment of Section 2.2 was done pursuant to that legislative mandate. In fact, the Town argues that Section 2.2 is "substantively identical to the enabling legislation". The Court recognizes and agrees with these assertions. However, the Town then concludes that because these Section 2.2 reflects the language of the enabling act it is a proper exercise of its police power, thereby, distinguishing it from *DiStefano*.

Unfortunately, the Town appears to lose sight of the difference between having the legislative authority to exercise its police powers, including limiting the maximum occupants within a single-family dwelling, and exercising those powers in a manner that would pass constitutional muster. None of the Defendants in either *DiStefano* or the pending cases have

[14] *See*, Town's Memorandum of Law at p. 12. Although the Town's statements in its Memorandum are not generally, considered "evidence", for purposes of the Defendants' Motions to Dismiss, this Court will give the benefit of the doubt to the Town in considering the stated objectives. Unfortunately, unlike the court in *Distefano*, this Court does not have the benefit of sworn testimony from agents of the Town as part of the record.

challenged the Town's ability to enact ordinances restricting the use and occupancy of properties within the Town to protect the public health and general welfare of its residents. Instead, in both instances, the defendants' constitutional challenges to the respective zoning ordinances are predicated upon the Town's ***restricting the number of occupants*** in single family households to no more than four (4) ***for only those persons not related by blood, marriage, or other legal means, or their live-in servants and employees***. In other words, the Defendants have challenged the constitutionality of the Town's application and enforcement of Section 2.2, rather than its ability to enact such restrictions under the Zoning Enabling Act. As the court recognized in *DiStefano*,

> [n]o one would question the right of a municipality to use the police power to address problems of disorderly conduct, parking, noise, littering and similar threats to public safety and welfare. ***The issue in this matter, however, is whether Narragansett may seek to curb or eliminate behavior it considers offensive by limiting not the number of persons who may occupy a particular dwelling but by delineating the type of relationship that must exist among the occupants of a unit in order for them to lawfully reside within it***.

Distefano at p.3. (Emphasis added).

The Defendants correctly assert that nothing in the Zoning Enabling Act prohibits the challenge of a properly-enacted zoning ordinance on constitutional grounds.

> It is well settled that legislation, including amendments to zoning and minimum-housing ordinances, enjoy a presumption of validity. [Citation omitted]. The authority of cities and towns to enact zoning and minimum-housing ordinances is granted by the zoning-ordinance enabling act … and the minimum-housing-standards enabling act…. ***It 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***. See Atlantic Tubing and Rubber Co. v. City Council of Cranston, 105 R.I. 584, 254 A.2d 92 (1969).

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[15] *See*, Council Communication.

Johnson & Wales College v. DiPrete, 448 A.2d 1271, 1279 (R.I. 1982). (Emphasis added).

The fact that the Legislature enacted the Zoning Enabling Act and the Town adopted Section 2.2 and thereby, had the authority to utilize its police power to address threats to public safety and welfare, is irrelevant to this Court's determination of whether the issues in *DiStefano* are the "same or substantially similar" to those in the instant cases. To hold otherwise would make a mockery of the judicial and legislative processes because whenever a statute or ordinance was struck down by a court on constitutional grounds, the governmental body could simply enact a new law with immaterial differences, circumventing prior judicial decisions and entirely undermining the principles of *stare decisis*. Just because we are now dealing with "new laws" does not mean that we are automatically dealing with "essentially different" facts and issues. To the contrary, the facts and issues in *DiStefano* are substantially similar, if not identical, to the instant cases.

The *DiStefano* court considered defendants' similar claims that a properly enacted zoning ordinance was being applied and enforced in an unconstitutional manner. Thus, notwithstanding the "new laws", the constitutional challenges in *DiStefano* mirror those involved here -- whether Section 2.2, which was properly enacted under the Zoning Enabling Act, is nevertheless, unconstitutional due to the way it is being applied and enforced. Consequently, the mere enactment of the Zoning Enabling Act and 2016 amendment of Section 2.2 did not cure the constitutional infirmities recognized in *DiStefano*.[16] Defendants are correct that compliance with

[16] It should be noted that the legislature adopted the Zoning Enabling Act in 1991, prior to the *DiStefano* decision. Although the new law did not go into effect until shortly after *Distefano* was decided, the court was certainly aware of the new enabling act, which did not affect its decision in that case. Furthermore, the *DiStefano* court had before it as part of its record a July 20, 1992 transcript of a public hearing conducted by the Narragansett Town Council regarding an attempt to increase the number of unrelated persons who may live together from three to four. *Distefano* at p. 2. So, it was also aware that the Town was contemplating changes to the ordinance even back

the Zoning Enabling Act, both here and in *DiStefano*, does not exempt the Town from constitutional challenges. The Town's argument that the "new laws" somehow remove Section 2.2 from the purview of *DiStefano* is simply a red herring that this Court summarily dismisses under the principles of *stare decisis.*

In its attempt to distinguish *DiStefano*, the Town also relies upon the fact that "… unlike the ordinance which was stricken down, the now-existing ordinance does not prescribe a limit of no more than four as to roomers, boarders, and lodgers."[17] It reasons that instead, other current ordinances "… allow for accommodation of more than for unrelated persons" (e.g. "bed and breakfast/guest house", "community residence," and "halfway house").[18] Consequently, it concludes that "[w]ith valid regulated outlets available to accommodate Defendant [*sic*] desire to occupy their residential dwelling units with large numbers of people, the strict provisions identified by Judge Fortunato in the old ordinance is not present today".[19] The Town's reasoning entirely misses the mark because *DiStefano* did not focus at all upon these so-called "strict provisions", and, in fact, Judge Fortunato never even discussed them.[20] The only reference to roomers, boarders, and lodgers throughout the entire decision is when the court quotes the language of Section 17.2 of the Narragansett Zoning Ordinance.[21] A thorough review of *DiStefano* makes it clear that the ultimate decision by the court was not affected in any way by the "strict provisions" claim of the Town. Furthermore, as pointed out by the Defendants, the

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then.

17 *See*, Town's Memorandum of Law at p. 4.

18 *Id*. at 5.

19 *Id*. at 6.

20 It should be noted that in support of its "strict prohibition" argument, the Town inaccurately quotes *Distefano*. More particularly, the Town claims that the *DiStefano* court determined that Section 17.2 constituted a "***strict*** prohibition in the Narragansett Zoning Ordinance forbidding occupancy of otherwise suitable residential units by more than three persons not related by blood, marriage, or adoption". ***The quoted portion in Distefano does not actually use the word "strict" anywhere.***

1987, 1994 and 2016 Town of Narragansett Zoning Ordinances all contained different options for boarders, bed-and-breakfasts and group homes in their respective use regulations. Hence, those options essentially remain unchanged.

Also, the changes in the definition of family and/or the location of the unrelated persons' occupancy restrictions within the zoning ordinances does not materially distinguish these cases from *DiStefano*. In *DiStefano,* the court did not base its determination on the fact the occupancy restrictions under Section 17.2 were codified within the definition of "family". Instead, the court focused upon the ordinance's prohibition of more than three (3) "unrelated persons" living together. In fact, that court specifically focused its inquiry on "… whether a fundamental right allows otherwise competent adults to reside together in groups larger than three even though they are unrelated". *Distefano* at p. 4. Thus, the exact location of the occupancy restrictions for unrelated persons within the zoning ordinances is irrelevant to this Court's inquiry. Instead, this Court's focus must be upon the restrictions themselves.

Nevertheless, although the prohibition against more than four (4) unrelated persons living together is not specifically contained within the definition of "family", included within the definition of family is "See also 'Household'". Consequently, Section 2.2 thereby, incorporates the definition of "household" as part of its definition of "family". Although the specific placement of the unrelated persons' restriction in Section 2.2 appears to be different than that of Section 17.2, it is essentially similar. Likewise, the ultimate issues facing the *Distefano* court and this Court are fundamentally the same -- whether Section 2.2 passes constitutional muster as a legitimate exercise of the Town's police powers under the Zoning Enabling Act.

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[21] *See*, *Distefano* at p. 1.

In *DiStefano* and here, the courts are called upon to determine whether the maximum number restrictions of "unrelated persons" living together under the respective ordinances, are unconstitutional and violate the defendants' due process and equal protection rights set forth in Article 1, Section 2, of the Rhode Island Constitution. Therefore, in identifying and comparing the issues in the present cases with those in *DiStefano*, this Court concludes that the issues in both instances are "the same or substantially similar", and, under the principles of *stare decisis*, it is compelled to follow and apply the reasoning and principles of law articulated in *DiStefano* in determining the constitutionality of Section 2.2.

2. What Is The Impact And Effect Of The Doctrine Of Stare Decisis And DiStefano On Determining The Constitutionality Of Chapter 731, Section 2.2, Of The Town Of Narragansett Zoning Ordinances.

Now that this Court has determined that the principles of *stare decisis* are applicable to the present situation, and concluded that it is compelled to follow *DiStefano* in adjudicating the Defendants' constitutional challenges, its next step is to employ the reasoning and principles of law articulated in *DiStefano* to the underlying facts and circumstances of these cases. As previously discussed, there is no dispute that the Town adopted the maximum unrelated persons' restrictions under Section 2.2 in response to "extensive community concerns" due to a high concentration of student rentals in certain Narragansett neighborhoods. In adopting Section 2.2, the Town sought to curtail "quality of life and safety issues". More specifically, its objectives were to "… lessen the intensity of use that has been created by [a] proliferation of student rental properties in excess of 4 unrelated persons",[22] to control "… the intensity of land use by restricting the amount of occupants in an ordinary residential dwelling",[23] and to ensure "… that

[22] *See*, Council Communication.
[23] *See*, Town's Memorandum of Law at p. 12.

those residential dwelling units which are utilized for high occupancy human habitation are properly regulated for fire and building safety."[24] Certainly, it is within the Town's purview to enact ordinances like Section 2.2 to protect the public health and general welfare of its residents, and such ordinances enjoy a presumption of constitutionality.

However, as stated in *DiStefano*, … the presumption of constitutionality generally afforded legislative enactments gives way '[w]here the legislation infringes upon explicit constitutional rights, such as those guaranteed by the First Amendment, or upon interests fundamental to our society of ordered liberty...' [citation omitted]. In such situations, the Court will apply a standard of 'much stricter scrutiny' and will require that the 'legislative enactments ... be narrowly drawn to express only a compelling state interest.' *Distefano* at pp. 5-6. (Quoting I*n re Advisory Opinion to House of Rep. Bill*, 519 A.2d 578, 582 (R.I. 1987).

In considering the defendants' ***substantive due process*** arguments, the *Distefano* court reasoned that the plaintiffs had "… a liberty interest which permits the landlord plaintiffs to allow occupancy of their single units by more than three unrelated individuals and the tenant plaintiffs have a concomitant liberty interest to come together in groups larger than three to rent and occupy such units". *Distefano* at p. 7. The court found that "[i]t is clear that liberty of choice in such matters is a fundamental right protected by the due process clause of the Rhode Island Constitution". *Id*. at 8. The court further determined that otherwise competent adults have a fundamental right to reside together in groups larger than three even though they are unrelated and therefore, applied a standard of 'much stricter scrutiny', requiring the Town to show a compelling reason to interfere with this right. *Id*. at 4. It ultimately concluded that "Narragansett has no rational reason, let alone a compelling one, to curtail such living arrangements…." *Id*. at 7.

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24. *Id*.

Regarding the defendants' ***equal protection*** arguments, the *Distefano* court reasoned that

> Narragansett has selected consanguinity as one criteria permitting occupancy by more than three people in a unit located in a residential zone. Relationship by blood is every bit as irrelevant as connection to others by way of skin pigmentation or ancestry traceable to a common location when matters such as jobs, education or housing opportunities are concerned.

Id. at 9. The court further determined that

> Just as Narragansett could not lawfully pass an ordinance designed to set aside a particular residential zone for the members of one ethnic group - even if substantial numbers of that group thought the concept a benign or salubrious one - the town cannot, in effect, set aside its residential zones for use only by people who have the good fortune to be related by blood. ***Accordingly, this Court concludes that it is permitted to use strict scrutiny regarding the consanguinity classification***; ….

(Emphasis added).

After making these findings, the *Distefano* court next applied the "strict scrutiny" standards to the defendants' substantive due process and equal protection challenges. The court indicated that in examining controverted legislation, a court "… may certainly employ 'common sense' in determining whether an ordinance is reasonably related to the attainment of a permissible state objective …." *Id*. at 10. It also recognized that "… the Town of Narragansett seeks to regulate not the use to which parcels of land are put but the behavior of occupants of residential dwellings by defining the nature of the relationship among people occupying single units …." *Id*. at 11.

The court further reasoned that

> [m]anifestly, restricting occupancy of single-family housing based generally on the biological or legal relationships between its inhabitants ***bears no reasonable relationship to the goals of reducing parking and traffic problems, controlling population density and preventing noise and disturbance***. [Citations omitted].

Id. at 14. (Emphasis added). (Quoting *Court of Appeals of New York in* McMinn *v. Town of Oyster Bay*, 488 N.E.2d 1240, 1243 (N.Y. 1985).

The Distefano court ultimately declared that

> the prohibition in the Narragansett Zoning Ordinance ***forbidding occupancy of otherwise suitable residential units by more than three persons not related by blood, marriage, or adoption is violative of the mandates of the due process and equal protection clauses of Article 1, Section 2 of the Rhode Island Constitution***. The prohibition bears no reasonable relationship to the stated goals of the town regarding public safety, noise abatement, parking or density. ***The Ordinance unlawfully burdens the fundamental right of otherwise competent adults to live with whom they choose; and additionally, the category relative to blood relations is an invidious classification***.

Id. at 15. (Emphasis added).

Because, in this Court's opinion, the doctrine of *stare decisis* does not provide it with the freedom or autonomy to depart from *Distefano*, it is compelled to apply the same legal reasoning and determinations to the existing cases. In *DiStefano*, notwithstanding the arguments advanced by both the Town and defendants, the court ultimately focused upon the basic premise of whether "… the absence of a relationship by way of marriage, adoption or consanguinity reasonably demonstrate that a person has such a propensity to engage in the antisocial conduct that is of concern to the town of Narragansett that the town may interpose a bar that prohibits more than three unrelated persons from occupying a dwelling unit?" *Id*. at 15. The court answered this question in the negative concluding that "… the challenged portion of the Zoning Ordinance offends the mandates of the due process and equal protection clauses of Article 1, Section 2 of the Rhode Island Constitution." *Id*. at 3.

Once again, *Distefano* did not scrutinize whether the objectives of Section 17.2 were legitimate and/or genuine. To the contrary, it solely considered whether the application and enforcement of the occupancy restrictions based upon marriage, adoption or consanguinity was a legitimate and constitutionally firm use of the Town's police power in furtherance of those objectives. The roles of both the *Distefano* court and this Court are essentially identical, with the only exception being that in *Distefano*, that court had free reign to decide the case and here, this Court is precluded from an independent review of the issues and must, instead, adhere to *Distefano*.

In applying *Distefano* to the facts and circumstances of these cases, and in particular to the constitutional challenges of Section 2.2, this Court is compelled to follow *Distefano* and similarly determine that "[the Town] has no rational reason, let alone a compelling one, to curtail such living arrangements.…" *See*, *Id*. at 9. Furthermore, upon applying the strict scrutiny standard to the instant cases as required by *Distefano*, this Court must conclude that the consanguinity classification in Section 2.2 of the Town of Narragansett Zoning Ordinances is invalid and in derogation of the equal protection clause of Article 1, Section 2 of the Rhode Island Constitution. *See, Id*.

In Distefano, the court reasoned that

> There is nothing on this record to suggest that teenagers living with their parents will play their Metallica or their Beethoven at lower decibel levels in the wee hours of the morning than would four unrelated monks (or nuns) - or unrelated widows (or widowers) or four unrelated Navy lieutenants. It is a strange - and unconstitutional - ordinance indeed that would permit the Hatfields and the McCoys to live in a residential zone while barring four scholars from the University of Rhode Island from sharing an apartment on the same street.

Id. at 11.

Similar to the court's dicta in *Distefano*, there is nothing on the record before this Court to suggest that single-family dwellings with four (4) or more occupants related by blood, marriage, or other legal means, or their live-in servants and employees, are less likely to contribute to the so-called "quality of life and safety issues," "the intensity of land use" and/or have less concerns relating to "fire and building safety", than four (4) or more unrelated persons. In other words, as in *Distefano*, there is no reasonable or rational basis to infer that the articulated quality of life and safety issues and concerns regarding the intensity of land use, and fire and building safety that may exist in single-family dwelling units occupied by more than 4 unrelated persons, somehow dissipate when similar dwellings are occupied by the same number or more persons, who happen to be fortunate enough to be related by blood, marriage, or other legal means, or their live-in servants and employees. It is more logical that any adverse health and safety issues or concerns prevalent in single-family dwellings housing more than four (4) persons would continue to exist regardless of the relationship between those individuals residing within those households.

In applying this *Distefano* rationalization to the instant cases, this Court is similarly forced to conclude that "[t]he record contains no evidence that establishes any sort of rational basis for these distinctions." *Id*. at 12. In fact, "'the relationship of the classification to its goal is ... so attenuated as to render the distinction arbitrary [and] irrational.'" *Id*. at 11. (Quoting Nordlinger v. Hahn, 505 U.S. ___, 112 S.Ct. 2326, 2332, 120 L.Ed.2d 1, 13 (1992).

CONCLUSION

Consistent with the mandates expressed in *Distefano*, as in that case, this Court is compelled to declare that the prohibition in the Narragansett Zoning Ordinance forbidding occupancy of otherwise suitable residential units by more than four (4) persons not related by

blood, marriage, or other legal means, or their servants and employees, is violative of the mandates of the due process and equal protection clauses of Article 1, Section 2 of the Rhode Island Constitution. The prohibition bears no reasonable relationship to the stated goals of the Town regarding "quality of life and safety issues," "the intensity of land use" and/or other concerns relating to "fire and building safety". Section 2.2 unlawfully burdens the fundamental right of otherwise competent adults to live with whom they choose; and additionally, the category relative to blood relations is an invidious classification. *See, Distefano*, at 14.

It is important to note that the Court's opinion is based entirely upon the principles of *stare decisis* and the legal precedents established in *Distefano*, which prohibit an independent review and decision in these cases. Furthermore, the Court offers no judgment or commentary on whether it believes that *Distefano* was decided correctly. Once again, this Court is bound to follow *Distefano*, even if it believes that the prior decision was flawed, erroneous, irrational and/or is ripe for reversal by the Superior or Supreme Courts.[25]

In light of this Court's holding, it need not address the remaining issues briefly discussed, *supra*, including those relating to legal non-conforming uses under the Town of Narragansett Zoning Ordinances and/or the Doctrine of Municipal Estoppel.

[25] The Court is mindful of the fact that the Town may appeal its decision in these cases. If so, and a higher court ultimately determines that Section 2.2 is constitutional and enforceable, the Court feels obliged to further comment about one of the provisions of Section 2.2 -- the exemption of live-in servants and employees from the restrictions on unrelated persons living in single-family dwellings. Although said provision mirrors the precise language of the Zoning Enabling Act, it creates a potential enforcement nightmare for the Town. Section 2.2 does not define servants or employees. Therefore, there is a potential for unrelated individuals living together beyond the four-person limit in single households to claim that they are servants or employees of the other residents within the dwellings. In other words, it is to be anticipated that many such residents might claim to be the live-in maids, butlers, cooks, drivers, gardeners, caretakers etc. Under such circumstances, it may become extremely difficult for the Town to determine illegitimate claims from those designed to circumvent the occupancy limit, especially when there is no established definition of servant or employee. Therefore, even though the enabling legislation provides for exempting such servants and employees from the occupancy restrictions for unrelated persons, it appears to be a potential slippery slope for future enforcement.

In accordance with this decision, the Defendants' Motions to Dismiss are hereby GRANTED.

Dated: August 15, 2017

ENTER: BY ORDER: