STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE
BUILDINGS 68 AND 69
CRANSTON, RI 02920

IN THE MATTER OF:	
SHORELINE REALTY CO., INC., d/b/a WAKAMO PARK,	DBR No. 10-L-0139
RESPONDENT.	

STIPULATION AND FINAL ORDER

The parties agree to resolve this matter for the following reasons:

1. This administrative proceeding was initiated to enforce the Department's Decision *In the Matter of: Wakamo Park Homeowner's Association, Petitioner, and Shoreline Realty Co., Inc. d/b/a Wakamo Park, Respondent (Request for Declaratory Ruling)* ("Decision") dated May 18, 2010, in which Respondent Shoreline Realty Co., d/b/a Wakamo Park ("Respondent") was ordered to comply with certain mandates requiring Respondent to obtain a mobile home park license pursuant to R.I. Gen. Laws § 31-44-1 *et seq.* (see pages 16-17 of the Decision attached hereto and incorporated herein as Exhibit 1).[1]
2. After participating in several status conferences with the Hearing Officer and conference calls involving counsel for the parties, and the residents of Wakamo Park, the parties

[1] In a decision issued June 29, 2011, the Rhode Island Superior Court affirmed the Department's May 18, 2010 Decision (Exhibit 2).

agree that the terms in the Lease, Rules & Regulations comply with R.I. Gen. Laws § 31-44-1 *et seq.* [2]

3. With the exception of the conditions indicated herein, the Department has confirmed that the Respondent has filed a complete and sufficient application for obtaining a mobile home park license pursuant to R.I. Gen. Laws § 31-44-1 *et seq.*

4. Respondent's counsel represents that it is actively seeking and working with the Department of Environmental Management to obtain approval to install an ISDS system (in 6 phases over five years); phase 1 has been installed and phase 2-6 are due to begin installation as soon as Department of Environmental Management approval is obtained.

5. The undersigned parties agree that the Respondent may be licensed subject to the following terms:

   A. Respondent will provide a schedule of anticipated construction dates to the Residents to allow Residents with as much advance notice as possible of construction schedules and areas affected. For Residents, who are without water or other utilities, the Respondent will consider offering the Resident relief/consideration.

   B. Respondent will pay for all septic hook-up fees pursuant R.I. Gen. Laws § 31-44-7 (vii) and as indicated in the Lease and Rules and Regulations.

   C. Respondent will provide monthly reports to the Department and the Residents indicating the progress of the interaction with the Department of Environmental Management, septic construction, and indicate the schedule and anticipated date of completion until the completion of the construction and final approval by all applicable state and local officials. To the extent that there are any delays and/or

[2] The agreed upon Lease, Rules & Regulations, and Fee Schedule are attached as Exhibit 3, 4, and 5, respectively.

issues, the Respondent will provide a detailed written explain to the Department and the Residents.

D. Respondent will continue to comply with all statutory and regulatory requirements.

As agreed upon by:

Date: 12/4/12

Neena Sinha Savage, Esq.
On behalf of the DBR

Date: 12/4/12

George A. Comolli, Esq.
On behalf of Respondent

Date: Dec 4 2012.

Charles D. Wick, Esq.
On behalf of the Residents of Wakamo Park

Date: 12/4/12

Kris R. Marotti, Esq.
On behalf of the Residents of Wakamo Park

RECOMMENDED BY:

Date: 12/4/12

Catherine R. Warren, Esq.
Hearing Officer

ORDER

I hereby ✓ approve _____ reject the Consent Order as agreed to by and between the parties in the above entitled matter.

Order Number: 12-068

Paul McGreevy, Director

Date: 12-04-2012

THIS CONSENT ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO RHODE ISLAND GENERAL LAWS TITLE 42, CHAPTER 35. AS SUCH, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW OF SAID COURT. HOWEVER, RESPONDENT UNDERSTANDS THAT BY WAIVING ITS RIGHT TO A COMPLETE HEARING AND AGREEING TO THIS CONSENT ORDER, THE ABOVE RIGHTS ARE WAIVED AND IF ANY TERMS OF THIS CONSENT ORDER ARE VIOLATED, RESPONDENT'S LICENSE SHALL BE SUBJECT TO SUSPENSION OR REVOCATION.

EXHIBIT 1

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920

IN THE MATTER OF:	
WAKAMO PARK HOMEOWNERS ASSOC., PETITIONER, AND	DBR No. 09-L-0090
SHORELINE REALTY CO., INC., d/b/a WAKAMO PARK, RESPONDENT.	
REQUEST FOR DECLARATORY RULING	

DECISION

Hearing Officer: Richard Berstein, Esq.

Hearing Held: July 23, 2009

Appearances:

For Petitioner: Charles D. Wick, Esq.

For Respondent: George A. Comolli, Esq.

I. INTRODUCTION

This matter came before the Department of Business Regulation ("Department") as the result of a petition filed by the Wakamo Park Homeowners Association ("Petitioner[s]"), requesting a declaration that Shoreline Realty d/b/a Wakamo Park ("Respondent" or "Wakamo Park") is operating a mobile home park for which licensing and regulation is required under R.I. Gen. Laws §§ 31-44-1 and 31-44.1-1 *et seq.*

(Petitioner's Petition dated May 7, 2009, page 1). The Department's Director accepted the petition under the provisions of R.I. Gen. Laws § 42-35-8 and the Department's Central Management Regulation ("CMR") 3, entitled *Declaratory Rulings and Petitions*.

II. JURISDICTION OF THE DEPARTMENT

The Department has jurisdiction in this matter pursuant to R.I. Gen. Laws § 42-35-8, which provides, in pertinent part, that each administrative agency shall have a procedure for issuing a declaratory ruling regarding statutes within that agency's jurisdiction. The Department's CMR 3 provides the process for petitioning the Department for a declaratory ruling.

The Department also has jurisdiction to interpret R.I. Gen. Laws § 31-44-1 *et seq.* granted expressly by the Rhode Island General Assembly ("Legislature") in R.I. Gen. Laws §§ 31-44-1.4(a)(1), which provides that "the Department may: [i]nterpret and implement the provisions of this Chapter and the applicable provisions of Chapter 44.1 of this Title." The Legislature also provided in R.I. Gen. Laws § 31-44-16(a) that the Department has jurisdiction to "hear matters involving mobile and manufactured housing park rules, excluding only "issues relative to rent increases or... evictions." In light of the preceding, the present matter is properly before the Department to determine the meaning of R.I. Gen. Laws § 31-44-1(9) and to issue a declaratory ruling in accordance therewith.

III. FACTS & TRAVEL

Wakamo Park, an area currently occupied by twenty-nine (29) manufactured mobile homes, is located at 697 Succotash Road, South Kingstown, Rhode Island, as stated in Petitioner's brief. The property is currently zoned as commercial waterfront, the

designation of which prohibits mobile home parks. Wakamo Park, however, has an allowance for a nonconforming use, permitting Respondent to operate Wakamo Park (License No. 11,983; "for purpose of: Trailer Parks 30 Spaces," issued by the town of South Kingstown on July 9, 2009). Petitioner's brief contains affidavits from twenty-one (21) mobile and manufactured home owners who are Wakamo Park lessees, of which twelve (12) affidavits are from lessees with stick-built mobile homes. The affidavits also contain lease agreements, entered into by the affiants and Respondent, the specifics of which are not at issue. However, it is relevant to note that some lease agreements evidence Wakamo Park being described as a "mobile home park" by Respondent. Although noteworthy of its own accord, what Respondent wishes to label Wakamo Park is neither at issue, nor is it relevant to the ultimate determination of this matter. Rather, it is sufficient for the matter at bar to note that the executed leases are representative of permission granted by Respondent, to the affiants, to occupy the property.

The affidavits contained within Petitioner's Brief, Exhibit A, provide that their respective mobile and manufactured homes are designed for long term occupancy and that some owners have resided, at least seasonally, in their mobile and manufactured homes from two (2) to fifteen (15) years. The affidavits also establish that the homes meet the statutory definition of a "mobile and manufactured home" as defined by R.I. Gen. Laws § 31-44-1(8). This statutory provision will be discussed in Section VII below. Petitioner's Brief provides on page 5 that "many of their homes were transported to Wakamo [Park] on their own wheels or flatbed trucks from Auto Showcase, Inc., d/b/a Allstate Showcase of Homes in Norwich, Connecticut; which is owned and operated by the principals of [Respondent]." Petitioner's affidavits finally provide that their

respective mobile and manufactured homes can be moved, complete and ready for occupancy, to a pad, piers, or blocks with tie-down.

IV. ISSUE PRESENTED

The issue presented is whether a seasonally occupied mobile and manufactured home, located within a seasonally operated park, falls within the statutory definition of "mobile and manufactured home park" contained in R.I. Gen. Laws § 31-44-1(9). To be a "park" within the statutory definition of "mobile and manufactured home park, Respondent must maintain: (1) a plot of ground; (2) upon which four or more mobile or manufactured homes are located; and (3) are occupied for residential purposes. These three (3) requirements will be discussed below. All parties agree that Respondent is currently not licensed as a mobile home park pursuant to Rhode Island statutes and regulations.

There is no dispute that the Respondent owns a plot of ground. In addition, four (4) or more mobile or manufactured homes are located therein. Thus, the key issue is whether these manufactured homes located on Respondent's land are occupied for residential purposes.

V. STANDARD OF REVIEW

As the present matter is before the Department in a statute that is silent as to whether a mobile home park includes seasonal residential occupation, the Department must necessarily turn to the rules of statutory construction in determining the meaning of R.I. Gen. Laws § 31-44-1(9).

In construing statutes, the Department must "...examine[s] the entire statute to ascertain the intent and purpose of the Legislature." *Cummings v. Shorey*, 761 A.2d 680,

684 (R.I. 2000). The statute should be interpreted "...as a whole, making every effort to effectuate the legislative intent." *Smiler v. Napolitano*, 911 A.2d 1035 (R.I. 2006). In construing the intent of the Legislature, the enactment must be considered "...in its entirety and by viewing it in light of circumstances and purposes that motivated its passage." *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987). The statute should not be construed to "render sentences, clauses, or words surplusage." *State v. Gonsalves*, 476 A.2d 108, 110-11 (R.I. 1984). Accordingly, the rules of statutory construction, as explained in the aforementioned cases, will be used to determine whether the regulation of mobile home parks excludes parks that provide only seasonal residential occupation.

VI. INTENT OF THE LEGISLATURE

Applying these principles to R.I. Gen. Laws § 31-44-1(9), we begin with the plain language of the statute to determine the legislative intent behind its enactment. At the crux of the matter is the definition and use of "for residential purposes". *Black's Law Dictionary* (Seventh Edition, 1999) defines "residence" to "usually just mean bodily presence as an inhabitant in a given place." As such, the question presented is whether the words "for residential purposes" connote a durational aspect of the specific length of time necessary to constitute "residence." The only clear indication of the Legislature's intended meaning of the term "Resident" is the definition of the term provided in R.I. Gen. Laws § 31-44-1(15) providing that a "Resident" is "an owner or renter occupying a mobile and manufactured home in a mobile and manufactured home park with the consent of the owner as defined in R.I. Gen. Laws § 31-44-1(11)." The statute thus plainly indicates that anyone occupying a (mobile home) residence falls within the protection of mobile home park regulation, regardless of the specific amount of time

spent there. Moreover, *Black's Law Dictionary* distinguishes "residence" from "domicile" which requires both bodily presence and an intention to make the place one's home. As such, a person may have more than one residence at a time, but only one domicile.

Pursuant to the rules of statutory construction, the entire statute must be considered, as a whole, to ascertain and effectuate the intent of the Legislature in the enactment thereof. *Cummings*, 761 A.2d 680, 684; *Smiler*, 911 A.2d 1035. A full and careful reading of R.I. Gen. Laws § 31-44-1 *et seq.*, indicates a clear intent and concern on the part of the Legislature as to the need to regulate the operation of mobile and manufactured home parks, and to provide protection for the tenants thereof. This clear intent is evidenced by the enumerated protections provided: specifically protecting mobile and manufactured home park tenants' rights to peaceably assemble; the proscribing of landlord reprisals against tenants; and the unique rules for evictions. *See* R.I.Gen. Laws §§ 31-44-13; 31-44-5; and 31-44-2. In light of the full title and chapter at issue, it is clear the Legislature intended to confer a certain degree of protection upon mobile and manufactured home park tenants, without regard for the time frame spent at the residence.

In order to further aid in the determination of legislative intent, the Department shifts its focus to consider the enactment, in its entirety, in light of the circumstances and purpose that motivated its passage. *Brennan*, 529 A.2d 633, 637. The motivation of the Legislature in its passage of R.I. Gen. Laws § 31-44-1 *et seq.* is not a matter of first impression; rather, the matter was rightly considered and enumerated by the Supreme Court of Rhode Island as recently as 2001. In its decision, the Rhode Island Supreme

court determined that "the legislative intent [in passing the Mobile and Manufactured Home Act] of affording special protection to residents of mobile home parks, who often are low and moderate income citizens, and the elderly" was the underlying reason for the passage of the statute now at issue. *Kingstown Mobile Home Park v. Strashnick*, 774 A.2d 847, 857 (R.I. 2001). To be certain, for reasons to be discussed *supra,* the Court did not intend its statement of the legislative intent to apply to only low income individuals; rather, those were simply the facts at bar. As the Court's focus in *Strashnick* was to examine the interpretation and application of the eviction process of R.I. Gen. Laws § 31-44-2, the applicability of the Court's analysis to the facts of the present inquiry ends there. *Id.* As the Department is not in a position to adopt an interpretation contrary to that of the Rhode Island Supreme Court in its determination of the Legislature's motives for passing R.I. Gen. Laws § 31-44-1 *et seq.*, the Department shall heed the opinion of the learned Justices to the extent it applies to the present matter.

In light of the Legislature's intent to provide special protections for the residents of mobile and manufactured home parks, the Department is still left to determine whom the Legislature intended to confer the statutory benefits and protections upon. Respondent urges the Department to interpret "for residential purposes," as used in § 31-44-1(9), to mean year-round occupancy. To adopt such an interpretation would necessarily restrict the application of R.I. Gen. Laws § 31-44-1 *et seq.*, bifurcating the classes of mobile and manufactured home park occupants to those year-round occupants worthy of the statutory protections, and those seasonal occupants who should be shuttered from the legislative protections in R.I. Gen. Laws § 31-44-1 *et seq.* Accordingly, the Department must necessarily give weight to the plain reading of the

statute, which evidences the legislative intent of protecting the tenancy rights of all mobile and manufactured home park residents, regardless of durational factors. The Department does not accept that the statutory protections of R.I. Gen. Laws § 31-44-1 *et seq.* should be interpreted to apply only to non-seasonal residents absent specific direction to do so. The Department notes specifically the use of the words "resident" and "occupying" by the Legislature. Had the Legislature intended a strict interpretation, it is likely that the Legislature would have used the terms "domiciliary," or "permanent resident" to effectuate its intent.

In reaching this interpretation, the Department notes and relies upon its unwillingness to confer upon the Legislature a seeming denial of equal protection, drawing a distinction between seasonal and non-seasonal residents that is neither present in the plain language of the statute, nor evidenced by the legislative intent. The Department is further compelled to reach this conclusion in light of the Department's duty in interpreting a statute to "avoid inconsistency and... unreasonable results." *Goff*, at 416-17. If the Legislature wished to bifurcate statutory protections between classes of mobile and manufactured home park occupants depending upon the duration of occupancy, then it is the provenance of the Legislature and not this Department to make this intention evident. It is not, nor can it be, the duty of the Department to circumvent the intention and statutory provisions adopted by the Legislature, as they are written, so as to create different classes of residents, some who are protected, and some who are not.

In light of the foregoing, it is clear that the meaning of "for residential purposes" as used in the definition of "mobile and manufactured home park," as adopted and intended by the Legislature in R.I. Gen. Laws § 31-44-1(9), does not patently exclude

seasonal occupants from the protections afforded year-round occupants. Respondent, in its brief, makes the argument that the Legislature, in enacting mobile and manufactured home park regulations, sought to protect low income individuals and provide only for affordable housing. As such, Respondent reasons that a seasonal "resort" mobile and manufactured home park should not fall under the statutory authority, citing *Brown v. Shumpert*, an unpublished Rhode Island Superior Court case from 2003. For reasons stated previously, the Department is unwilling to draw such an economic distinction among residents of mobile and manufactured home parks in the absence of clear statutory language directing this disparate treatment, as to do so would create an unreasonable interpretation of the existing statutory language. The Department further finds *Brown v. Shumpert* to not be on point for the facts of the present inquiry, as although the opinion does state that the legislative intent behind the enactment of R.I. Gen. Laws §§ 31-44-1 *et seq.* was to provide protections for mobile and manufactured home park tenants, many of whom are low income individuals, the opinion does not stand for the proposition that the Legislature only intended to confer the statutory protections upon such low income individuals.

VII. APPLICATION OF THE INTERPRETED STATUTE

A "mobile and manufactured home" as defined by R.I. Gen Laws. § 31-44-1(8) is "a detached residential unit designed: (i) [f]or a long term occupancy and containing sleeping accommodations, a flush toilet, and a tub or shower, bath, and kitchen facilities, and having both permanent plumbing and electrical connections for attachment to outside systems; (ii) [t]o be transported on its own wheels or on a flatbed or other trailer or detachable wheels; and (iii) [t]o be placed on pads, piers, or tied down, at the site where it

is to be occupied as a residence complete and ready for occupancy, except for minor and incidental unpacking and assembly operations and connection to utilities systems. The statute next defines in § 31-44-1-(9) that a "mobile and manufactured home park" is "a plot of ground upon which four (4) or more mobile and manufactured homes, occupied for residential purposes are located." It flows from the preceding that for Wakamo Park to be considered a "mobile and manufactured home park" under the relevant statutes, the preceding definitions must first be satisfied.

Wakamo Park is located in South Kingstown, Rhode Island appearing on the corresponding Tax Assessor's map as Plat 87-3, Lots 2 and 5, owned by Shore Line Realty Co. d/b/a Wakamo Park, and upon such plot of ground there are presently located more than 30 "residential structures." As Petitioner's brief in this matter describes "at least 9 mobile/manufactured homes" along with at least "12 stick built homes... on blocks for easy removal by trailer" the Department is satisfied that the statutory minimum of four (4) mobile and manufactured homes has been satisfied, so long as the homes meet the remaining statutory requirements [Petitioner's Brief, Page 2]. Applying the above referenced statutory requirements that define a mobile and manufactured home under R.I. Gen. Laws § 31-44-1(8); the Department is satisfied that the Wakamo Park properties fall within the statutory requirements for the regulation of mobile home parks.

The Department has reached the above conclusion in light of the following, supported by the owner affidavits contained within Exhibits A and B of Petitioner's Brief, and uncontroverted by Respondent. Sufficient documentation has been submitted upon which the Department can reasonably conclude that the structures located within Wakamo Park meet the statutory definition of a mobile and manufactured home, pursuant

to R.I. Gen. Laws § 31-44-1(8). Each home is a detached residential unit that: (i) contains sleeping accommodations, a flush toilet, a tub or shower, bath, and kitchen facilities and has both permanent plumbing and electrical connections for attachment to outside systems; (ii) can be transported on its own wheels, or on a flatbed or other trailer, and (iii) can be placed on pads or piers, or tied down at the site where it is to be occupied as a residence, complete and ready for occupancy except for minor and incidental assembly operations and connection to utilities systems. The brief of the Petitioner clearly supports the assertion that there are a sufficient number of such structures to invoke the statutory protections.

Respondent contends that this conclusion is in error to the extent that the utility services, as applied to water, are not permanent on part of the lessor's property, since the pipes are not located sufficiently deep below ground, necessitating the termination of water service during the winter months to the majority of the units. The Department is not swayed that seasonal water supply necessarily precludes the statutorily described permanent utilities connections. Rather, the Department reads this requirement, in light of the plain meaning of the statutory text, applying to the utilities provisions existing within the dwelling unit, up to and including the exterior termination of those utilities, where such termination is designed for permanent connection to an external hookup located appurtenant thereto. In a prior decision of the Department (In the Matter of Parkside Terrace Mobile Home Park, DBR No. 00-L-0005, April 24, 2002), reference was made to R.I. Gen. Laws § 31-44-7(1)(vii), which states, in relevant part, that the licensee must:

> "Maintain all utilities provided to mobile and manufactured home within the park up to and including the connection to the individual mobile/manufactured home, and all water and sewage lines and connections in good working order, and in the event of any emergency

make necessary arrangements possible for the provision of service on a temporary basis."

This statutory protection requires mobile home park licensees to maintain all utilities up to and including the connection to the individual mobile and manufactured home, and all water and sewage lines and connections in good working order. Accordingly, the *Parkside* case concluded that it is the responsibility of the park owner to maintain utilities, water and sewer lines. As such, the pipes within the mobile home are the responsibility of the tenant, but outside water and sewer pipes are a part of the infrastructure of the park, and must be maintained by the park owner.

Respondents contentions to the contrary are disingenuous at best. The entire statutory scheme regulating mobile home parks is permeated with an important legislative concern for public health, safely, and welfare. For example, R.I. Gen. Laws §31-44-1.7 provides, in pertinent part, that approved certifications are necessary before the Department can issue a license. Such required certifications relate to (1) compliance with land use regulations; and (2) adequate and operational sewage disposal systems from the DEM's ISDS licensed designers. In addition, R.I. Gen. Laws § 31-44-1.8 authorizes the Department of Health to conduct periodic surveys of mobile home parks. Accordingly, it would be specious for Respondent to assert that seasonal occupancy removes it from these important public health, safety, and welfare concerns.

As at least four (4) of the structures located within Wakamo Park, for occupancy by tenant lessees, fall within the statutory definition of mobile and manufactured homes contained in R.I. Gen. Laws § 31-44-1(8), the Department next moves to determine whether Wakamo Park falls under § 31-44-1(9), the definition of a mobile and manufactured home park. The statute provides that a mobile and manufactured home

park is a plot of ground upon which four (4) or more mobile and manufactured homes, occupied for residential purposes are located. *Id.* As the number and the classification of the structures has been satisfied, the last remaining requirement involves the key issue referenced in Section IV herein. The application of the specific facts will determine if Wakamo Park tenants occupy their mobile and manufactured homes for "residential purposes." As examined above, in determining the intent of the statute, the Department arrived at the conclusion that "residential purposes" does not patently exclude seasonal occupancy, as the Legislature did not directly evidence this intent.

Petitioner and Respondent have submitted various arguments for consideration that indirectly implicate "residential purposes," including past seasonal or year-round occupancies, language of lease agreements, and economic classifications by the Legislature. From these arguments, the Department finds no merit in Respondent's position that Wakamo Park is akin to a resort property, and as such, is exempt from regulation by this Department. Clearly, if the Department were to accept this conclusion, it would indicate a departure from the public interest that the Department is bound to uphold, subject to statutory requirements. Though it is true that at present, the residents of Wakamo Park do not physically occupy their leasehold interests year-round, they cannot be said to not occupy them for residential purposes when they are physically present. Any other determination would be contrary to the reality of the situation. Respondent urges the Department to adopt the rule that the nature of vacation property is such that it cannot be occupied for residential purposes. The tenant lessees of Wakamo Park may only be present on a seasonal basis; however, when they are present at Wakamo Park, they reside there with access to permanently connected utilities, in satisfaction of all other aspects of

the mobile and manufactured home park definition, further occupying the structures as residential houses. Moreover, they must necessarily be entitled to the same public health, safety, and welfare concerns mandated by statutory requirements. It is clear that the Legislature intended to protect mobile home owners occupying leased ground, at least in part, due to the inherent unequal relationship which exists between the mobile home park owner and the mobile home owner. Further, interpreting seasonal occupancy as being "for residential purposes" as the Department now does, assures that additional protections will be afforded to the occupants of such seasonal leaseholds, benefiting the public interest and well-being.

Respondent Shoreline Realty Co., the owners of Wakamo Park, assert that if seasonal occupancy constitutes "residential purposes" in light of the statute, Wakamo Park is exempt from the requirements of licensure because at the present time it cannot meet the statutory predicates upon which issuance of a license to operate a mobile home park is based. This contention is without merit, as the non-fulfillment of the requirements upon which a license shall issue cannot be said to obviate the need itself for licensure. Stated differently, it is Respondent's contention that since Wakamo Park would stand to be in likely violation of the statutory requirements placed upon mobile home park operator licensees, pursuant, inter alia, to the requirements of R.I. Gen. Laws § 31-44-1.7, Wakamo Park can therefore not be a mobile and manufactured home park. On this matter, the statute is clear and unambiguous; R.I. Gen. Laws § 31-44-1(9) defines a mobile or manufactured home park as "a plot of ground upon which four (4) or more mobile and manufactured homes, occupied for residential purposes are located." The statute does not define a mobile and manufactured home park as one capable of satisfying

R.I. Gen. Laws § 31-44-1(9) *and* the other substantive requirements affecting licensure and violations appurtenant thereto; thus, neither shall the Department import such a meaning. As previously explained, there is no doubt that Shoreline Realty d/b/a Wakamo Park is the owner and operator of a mobile and manufactured home park, and must comply with all of the statutory requirements imposed on park owners in R.I. Gen. Laws § 31-44-1 *et seq.*, including but not limited to securing a license with approved certifications as required by R.I. Gen. Laws § 31-44-1.7.

To conclude, it is clear from the preceding that in light of the proper interpretation of R.I. Gen. Laws § 31-44-1 *et seq.*, the Wakamo Park property owned and operated by Shoreline Realty is a mobile and manufactured home park falling under the Department's regulatory authority.

VIII. FINDINGS OF FACT

Pursuant to the requirement of R.I. Gen. Laws § 31-44-18(a) the Department issues the following findings of fact:

1. Wakamo Park is located at 607 Succotash Road, South Kingstown, Rhode Island.
2. Respondent maintains land on which four (4) or more mobile and manufactured homes are sited.
3. The mobile and manufactured homes are occupied as residences during certain times of the year.

IX. CONCLUSIONS OF LAW

1. The seasonally occupied structures located at Wakamo Park are mobile and manufactured homes as defined in R.I. Gen. Laws § 31-44-1(8)

2. The seasonally occupied structures located at Wakamo Park are occupied for residential purposes as intended by R.I. Gen. Laws § 31-44-1(9).
3. Wakamo Park, owned and operated by Shoreline Realty, is subject to the requirements of licensure and other regulatory requirements contained in R.I. Gen. Laws §§ 31-44-1 *et seq.*, and 31-44.1-1 *et seq.*

Accordingly, Wakamo Park is forthwith subject to the regulatory authority of the Department of Business Regulation, pursuant to R.I. Gen. Laws § 31-44-1.4.

X. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the Director of the Department of Business Regulation find that R.I. Gen. Laws §§ 31-44-1 *et seq.* and 31-44-1-1 *et seq.* be interpreted as applying not only to year-round mobile home parks, but also to seasonally operated mobile and manufactured home parks This finding includes Respondent Shoreline Realty Co., Inc., d/b/a Wakamo Park, which shall comply with all licensing and other regulatory requirements forthwith.

It is further recommended that Respondent be given until July 15, 2010, to fully comply with all required mandates imposed upon mobile home operators, including, but not limited to:

A. Licensing requirements as set forth in R.I. Gen. Laws § 31-44-1.7;
B. The promulgation of reasonable rules and regulations as mandated by R.I. Gen. Laws § 31-44-3;
C. Compliance with the sale of mobile and manufactured homes pursuant to R.I. Gen. Laws § 31-44-4;
D. Prohibition against reprisals by a licensee as set forth in R.I. Gen. Laws § 31-44-5

E. Lease requirements under R.I. Gen. Laws § 31-44-7;

F. Security deposit requirements pursuant to R.I. Gen. Laws § 31-44-7.1;

G. Notice requirements as set forth in R.I. Gen. Laws § 31-44-8; and

H. Notification and cooperation required pursuant to R.I. Gen. Laws § 31-44-9; and

I. Statutory requirements pertaining to lot rental increases pursuant to R.I. Gen. Laws § 31-44-1 *et seq.*

Accordingly, Respondent shall further ensure that at all times relevant to any tenant at Wakamo Park, all such lessees have the protections provided in R.I. Gen. Laws §§ 31-44-1 *et seq.* and 31-44-1-1 *et seq.* Respondent shall also, within thirty (30) days, submit a Compliance Plan to the Department with all actions to be taken to comply with the terms of this Decision. Any subsequent violation(s) of statute may result in: (1) the commencement of an investigation pursuant to R.I. Gen. Laws § 31-44-9.2; (2) the application of remedies as contained in R.I. Gen. Laws § 31-44-9.1; and (3) the imposition of administrative penalties pursuant to R.I. Gen. Laws § 31-44-10.

Dated: May 18, 2010

Richard W. Berstein
Hearing Officer

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby

✓ ADOPT
____ REJECT
____ MODIFY

the Decision and Recommendation.

A. Michael Marques
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION AND DECLARATORY RULING CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT ITSELF DOES NOT STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 18th day of May, 2010, that a copy of the within Decision was sent by first class mail, postage prepaid to:

Charles D. Wick, Esq.
1050 Main Street, Suite 23
East Greenwich, Rhode Island 02818

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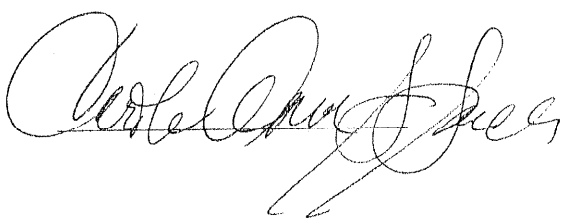

EXHIBIT 2

STATE OF RHODE ISLAND
WASHINGTON COUNTY

SUPERIOR COURT

(FILED: JUNE 29, 2011)

SHORE LINE REALTY CO., INC.	:	
	:	
v.	:	
	:	W.M. No. 2010-367
RHODE ISLAND DEPARTMENT OF BUSINESS REGULATION and WAKAMO PARK HOMEOWNERS ASSOCIATION	:	

DECISION

LANPHEAR, J. This matter is before the Court on the appeal of Shore Line Realty Co., Inc. Shore Line seeks to vacate a Declaratory Ruling of the Department of Business Regulation ("DBR"). The department regulates year-round mobile home parks, pursuant to chapter 31-44 of the Rhode Island General Laws. The Declaratory Ruling of DBR found that the department was also empowered to regulate seasonally operated mobile and manufactured home parks pursuant to the same statute.

I.

FACTS AND TRAVEL

Shore Line owns and operates Wakamo Park in South Kingstown, which rent spaces upon which residents install mobile homes and removable cottages. Leases run only from April 15 to October 15 of each year, that is, the homes are not permanently

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I.

FACTS AND TRAVEL

Shore Line owns and operates Wakamo Park in South Kingstown, which rent spaces upon which residents install mobile homes and removable cottages. Leases run only from April 15 to October 15 of each year, that is, the homes are not permanently

affixed to the sites. The residents of the park have organized the Wakamo Park Homeowners Association. Several members of the association, residents of the park, wrote to DBR in 2008 and 2009 expressing their concern regarding the Department's failure to actively improve the property.

On May 7, 2009 the association filed a Petition for Declaratory Ruling with DBR seeking an order "declaring Wakamo Park to be subject to the requirements of 31-44-1 et seq and 31-44.1-1 et seq", and subject to the jurisdiction of DBR. Shore Line was not served with the petition. On July 2, 2009 the director of DBR appointed a hearing officer and scheduled a hearing for July 23. DB's order and notice of the July 2 notice was sent to Shore Line at an incorrect address. At the July 23 hearing, the hearing officer expressed concern about the owner's failure to attend, and entered an order allowing all interested parties to brief the issue and ordering the record will "be kept open through September 15, 2009." (DBR order of July 24, 2009). Shortly thereafter, the residents noticed that an incorrect address was being used for the owner, and the July 24 order was mailed to the correct address.

On August 18, 2009, an attorney for Shore Line appeared in the DBR case. Shore Line immediately moved to dismiss and to continue the matter as it had received no advance notice of the hearing, the petition failed to join an indispensable party and failed to state a claim.[1] In a letter dated August 31, the hearing officer extended the deadline for briefs for another 30 days, and allowed either party to request an additional hearing. The owner submitted an answer and a memorandum in October, but did not request a hearing.

[1] Apparently, the motion to dismiss was never heard at the department level.

The Decision of DBR was issued on May 18, 2010, concluding that the statute is interpreted to allow the department to regulate seasonal mobile and manufacture home sites. Shore Line timely filed this appeal.

II.

THE STATUTORY FRAMEWORK

The Rhode Island Administrative Procedures Act provides for declaratory rulings by administrative agencies:

> **§ 42-35-8. Declaratory rulings by agencies.** – Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. Rulings disposing of petitions have the same status as agency orders in contested cases.

Pursuant to this statute, the departments establish administrative rules or regulations setting forth the procedures for obtaining declaratory rulings. No party cited those department regulations extensively nor did anyone append them to the record herein.

III.

THE STANDARD FOR REVIEW

An appeal from an administrative agency is described in another statute, which sets forth the statutory standard for review:

> **§ 42-35-15. Judicial review of contested cases.** – (a) Any person, including any small business, who has exhausted all administrative remedies available to him or her within the

agency, and who is aggrieved by a final order in a contested case is entitled to judicial review under this chapter. ...
(b) Proceedings for review are instituted by filing a complaint in the superior court ...
(c) ...
(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
(1) In violation of constitutional or statutory provisions;
(2) In excess of the statutory authority of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error or law;
(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

IV.

ANALYSIS

A.

Statutory Interpretation

Shore Line first suggests that the Department misconstrued the statute to provide for regulation of seasonal communities.

The Petition for Declaratory Ruling sought an order "declaring Wakamo Park to be subject to the requirements of 31-44-1 et seq." (May 5, 2009 petition, page 3).

Chapter 31-44 of the General Laws authorizes DBR to regulate mobile and manufactured homes, issue licenses for the homes, and imposes certain statutory regulations on them.[2]

Several definitions in the chapter provide significant guidance in determining which homes are subject to regulation:

> **§ 31-44-1. Definitions.** – As used in this chapter:
>
> (1) ...
>
> (8) "Mobile and manufactured home" means a detached residential unit designed:
>
> (i) For a long term occupancy and containing sleeping accommodations, a flush toilet, and a tub or shower bath and kitchen facilities, and having both permanent plumbing and electrical connections for attachment to outside systems;
>
> (ii) To be transported on its own wheels or on a flatbed or other trailer or detachable wheels; and
>
> (iii) To be placed on pads, piers, or tied down, at the site where it is to be occupied as a residence complete and ready for occupancy, except for minor and incidental unpacking and assembly operations and connection to utilities systems.
>
> (9) "Mobile and manufactured home park" or "park" means a plot of ground upon which four (4) or more mobile and manufactured homes, occupied for residential purposes are located.

The department construed this language of the statute to include seasonal occupants and seasonal units.

---

[2] One requirement of such a license is found in G.L. 1956 § 31-44 7(d) which requires approval of the septic system by the Department of Environmental Management prior to licensing by DBR. This requirement appears to be of particular concern to the homeowners' association at bar.

In order to interpret a statute, this Court and the department are similarly bound by established Rhode Island law:

> When we construe a statute or an ordinance, "our ultimate goal is to give effect to the purpose of the act as intended by the Legislature." D'Amico, 866 A.2d at 1224 (quoting Webster, 774 A.2d at 75). We must "determin[e] and effectuat[e] that legislative intent and attribut[e] to the enactment the most consistent meaning." In re Almeida, 611 A.2d 1375, 1382 (R.I. 1992). "That intent is discovered from an examination of the language, nature, and object of the statute." Berthiaume v. School Committee of Woonsocket, 121 R.I. 243, 247, 397 A.2d 889, 892 (1979). "It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996). "This is particularly true where the Legislature has not defined or qualified the words used within the statute." D'Amico, 866 A.2d at 1224 (quoting Markham v. Allstate Insurance Co., 116 R.I. 152, 156, 352 A.2d 651, 654 (1976)). In giving words their plain-meaning, however, we note that this "approach is not the equivalent of myopic literalism." In re Brown, 903 A.2d 147, 150 (R.I. 2006). "When we determine the true import of statutory language, it is entirely proper for us to look to `the sense and meaning fairly deducible from the context.'" Id. (quoting In re Estate of Roche, 16 N.J. 579, 109 A.2d 655, 659 (1954)). As we previously have held, it would be "foolish and myopic literalism to focus narrowly on" one statutory section without regard for the broader context. In re Brown, 903 A.2d at 150.
>
> Thus, in interpreting a statute or ordinance, we first accept the principle that "statutes should not be construed to achieve meaningless or absurd results." Berthiaume, 121 R.I. at 247, 397 A.2d at 892. "[W]e [then] consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994); accord Bailey v. American Stores, Inc./Star Market, 610 A.2d 117, 119 (R.I. 1992); Stone v. Goulet, 522 A.2d 216,

218 (R.I. 1987). Ryan v. City of Providence, 11 A.3d 68, 70-1 (2011)

Accordingly, the Court first considers the plain language of the statute. It is noteworthy that the legislature specifically intended to define a mobile and manufactured home, for purposes of this statute. R.I. Gen. Law § 31-44-1(8) not only defines that home as a detached residential unit, but sets forth several conditions. The unit must be designed for long term occupancy, with sleeping accommodations, plumbing and electrical connections. It must also be designed to be transported on wheels and situated on pads. It is a very comprehensive, explicit list of conditions, clearly enumerated in specific detail.

Shore Line contends that the statute was designed to regulate affordable, year round residences (Plaintiff's Brief, Page 8), but none of these requirements is contained in the plain language of the statute. The statutory definition, in itself is clear and unambiguous and can be literally interpreted. In short, there is no need to read more or less into the statute. The General Assembly attempted to set forth a clear definition and did so. The Court cannot presume that the legislature intended to limit the definition to year round residences or to affordable housing, as those terms are not included in the statutory chapter.[3]

---

[3] It is inappropriate, of course, to turn to the judiciary in an attempt to modify a statute. Such tasks are the province of the legislature, not the judiciary. As the high court recently stated:

> The role of the judicial branch is not to make policy, but simply to determine the legislative intent as expressed in the statutes enacted by the General Assembly. See, e.g., Little, 121 R.I. at 237, 397 A.2d at 887; State v. Patriarca, 71 R.I. 151, 154, 43 A.2d 54, 55 (1945) ("[O]ur duty * * * is solely to construe the statute * * *."); see also Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164, 188, 114 S. Ct. 1439, 128 L.Ed. 2d 119 (1994) ("Policy considerations cannot override our interpretation of the text and structure of the Act * * *."); Tennessee Valley Authority v. Hill, 437 U.S. 153, 194, 98 S. Ct. 2279, 57 L.Ed. 2d 117 (1978); United States v. Great Northern Railway Co., 343 U.S. 562, 575, 72 S. Ct. 985, 96 L.Ed. 1142 (1952) ("It is our judicial function to apply statutes on the basis of what Congress has written, not what Congress might have written."); Caminetti v. United States, 242 U.S. 470, 485, 37 S.Ct.

Construing the statute so as to include seasonal sites, does not render any other part of the statute to be "meaningless or absurd". Ryan, p. 72. It is an appropriate and rational interpretation of the act as a whole.

Moreover, the Rhode Island Department of Business Regulation, from who the ruling is appealed, is empowered to administer the regulations, pursuant to the same chapter, R.I.G.L. ch. 31-44. As such it is afforded some deference in its interpretation of the statutes. This Court must:

> recognize the "well-recognized doctrine of administrative law that deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency * * * even when the agency's interpretation is not the only permissible interpretation that could be applied." Pawtucket Power Associates Limited Partnership v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993); see Unistrut Corp. v. State Department of Labor and Training, 922 A.2d 93, 99 (R.I. 2007) ("[W]hen the administration of a statute has been entrusted to a governmental agency, deference is due to that agency's interpretation of an ambiguous statute unless such interpretation is clearly erroneous or unauthorized."); Gallison v. Bristol School Committee, 493 A.2d 164, 166 (R.I. 1985) ("[W]here the provisions of a statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to weight and deference as long as that construction is not clearly erroneous or unauthorized."); see also Labor Ready Northeast, Inc. v. McConaghy, 849 A.2d 340, 344-45 (R.I. 2004); In re Lallo, 768 A.2d 921, 926 (R.I. 2001).

192, 61 L.Ed. 442 (1917) ("It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, * * * the sole function of the courts is to enforce it according to its terms."); Civitarese v. Town of Middleborough, 412 Mass. 695, 700, 591 N.E.2d 1091, 1095 (1992) ("We will not read into the plain words of a statute a legislative intent that is not expressed by those words."). Chambers v. Ormiston, 935 A.2d 956 (R.I. 2007)

> The hearing justice's review of DBR's interpretation of § 27-29-4.4 should have been limited to determining whether such interpretation was "clearly erroneous or unauthorized." See Gallison, 493 A.2d at 166; see also Labor Ready Northeast, Inc., 849 A.2d at 344-45; In re Lallo, 768 A.2d at 926. Auto Body Association of Rhode Island v. State Department of Business Regulation, 996 A.2d 91, 97 -98 (R.I. 2010)

It was reasonable for DBR to consider the statute as clear and unambiguous. DBR reasonably interpreted the statute, and the Court could reasonably defer to a department's interpretation, particularly when that determination results from a contested case where there was an opportunity for hearing. In this instance, the department was specifically empowered to construe the regulatory framework by the Administrative Procedures Act.

B.

Sufficiency of the Evidence Below

The Appellant contends that the hearing officer failed to base his Decision on legally competent evidence. (Appellant's brief, page 18).

The Decision referenced only three findings of fact, Decision, page 15. Charles Cummisky, the manager of Appellant's Shore Line Realty Co., Inc. submitted a September 28, 2009 affidavit which referenced most of the identical facts. Indeed, this Court knows of no facts in dispute, though the parties clearly disagree on their interpretation of the law.

The statutes afford deference to the hearing officer in procedurally conducting an administrative hearing.

The Rhode Island Administrative Procedures Act states:

> **§ 42-35-10. Rules of evidence—Official notice.—**
>
> In contested cases:
>
> (1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this state shall be followed; but, when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be submitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. *Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;*
> (2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;
> (3) ...
> Gen. Laws 1956, § 42-35-10, emphasis added.

The Mobile Homes law provides the same latitude for the hearing procedure:

> **§ 31-44-17. Filing of complaint with department—Notice—Rules of evidence not binding.**—(a)....
>
> (c) The director or his or her agent shall not be bound by common law or statutory rules of evidence but may admit all testimony having a reasonable probative value. Complaints filed shall be handled in accordance with the departments' rules of practice and the Administrative Procedures Act, chapter 35 of Title 42. It may exclude evidence which, in the opinion of the director or his or her agent, is immaterial, irrelevant, or unduly repetitious.
> Gen. Laws 1956, § 31-44-17

As the issues were never really in dispute, an both parties agree that the park is operated on a seasonal basis, the department relied on appropriate evidence in reaching its decision. The proceeding below requested a declaratory ruling on an issue of law. It is the ruling of law which is in issue here.

C.

The Limited Record Does Not Require a Remand

Shore Line next claims that the lack of an administrative record compels this Court to require a remand. (Appellant's memorandum, page 22). While audio recordings of the proceedings have not yet been located,[4] the appellant has yet to indicate which facts are in dispute. While the Appellant vaguely references the danger of *ex parte* communications which could go undiscovered, the Appellant neither alleges improper communications nor is there any reason to believe that they occurred. There is no reason to presume that the DBR hearing officer, an outside attorney who is not an employee of the department communicated with departmental officials (or anyone else) about contested adjudicatory facts, or even issues of law. The Appellant has not met its burden to justify a reversal or a remand of the proceeding.

D.

There is no Showing That Insufficient Due Process Was Afforded

At the hearing, the Court indicated its concern about the lack of notice to the owner, Shore Line Properties. It is the property owners' use of its own property which was at risk at the Declaratory Ruling. Hence the notice and opportunity to defend itself is instrumental. As the United States Supreme Court summarized:

> "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be

[4] The Department contends that the only missing audiotape is of a status conference. Appellee Memorandum, page 12.

> heard; and in order that they may enjoy that right they must first be notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' " Fuentes v. Shevin, 407 U.S. 67, 80, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972) (quoting Baldwin v. Hale, 1 Wall. 223, 233, 17 L.Ed. 531 (1864); Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965) (other citations omitted)). These essential constitutional promises may not be eroded. Hamdi v. Rumsfeld, 542 U.S. 507, 533, 124 S.Ct. 2633, 2648 - 2649 (U.S. 2004).

To determine the property interest which should be protected, this Court looks to another recent case:

> In Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), the Court set forth three factors that normally determine whether an individual has received the "process" that the Constitution finds "due": "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." By weighing these concerns, courts can determine whether a State has met the "fundamental requirement of due process"-"the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " Id., at 333, 96 S.Ct. 893. City of Los Angeles v. David, 538 U.S. 715, 716-717, 123 S.Ct. 1895, 1896 (U.S. 2003)

If due process does apply, this Court must then determine the type of process which should be afforded:

> Though the required procedures may vary according to the interests at stake in a particular context, the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Depending on the circumstances, and the interests at stake, a fairly extensive evidentiary hearing may be constitutionally required before a legitimate claim of entitlement may be terminated. In other instances, however, the Court has upheld procedures affording less than a full evidentiary hearing if 'some kind of a hearing' ensuring an effective "initial check against mistaken decisions" is provided before the

> deprivation occurs, and a prompt opportunity for complete administrative and judicial review is available.
>
> Determining the adequacy of pre-deprivation procedures requires consideration of the Government's interest in imposing the temporary deprivation, the private interests of those affected by the deprivation, the risk of erroneous deprivations through the challenged procedures, and the probable value of additional or substitute procedural safeguards. Brock v. Roadway Express, Inc., 481 U.S. 252, 261-262, 107 S.Ct. 1740, 1747 - 1748 (U.S. Ga. 1987), quotations and citations omitted.

Shore Line was afforded an opportunity to be heard prior to the hearing officer's decision. The record was kept open for further briefing. Shore Line briefed the legal issues for the hearing officer and raised no issues of fact. Shore Line was given the opportunity to address the issues at a reasonable time and in a reasonable manner. No due process violation was demonstrated.[5]

V.

CONCLUSION

For the reasons stated, the administrative appeal is denied and the Decision of the Department of Business Regulation is affirmed.

[5] As Shore Line questions whether the affidavits are sworn, the Court again notes that no issues of fact were raised. Mr. Cummiskey's sworn affidavit of September 28, 2009 is consistent with the hearing officer's findings of fact.

CERTIFICATION

I hereby certify that on this 20th day of December 2012 a copy of this Stipulation and Final Order was sent by email to:

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