

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND

**In the Matter of the Petition of Jon
M. Restivo for a Declaratory Ruling**

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DBR No.: 19PDR001

DECISION

Introduction

On October 2, 2019, the Petitioner sent, and the Department of Business Regulation (“Department”) received, his *Petition for Declaratory Ruling* (“Petition,” attached hereto as Exhibit A). In the Petition, the Petitioner requests that “the Department of Business Regulations issue a declaratory order with respect to whether the provisions set forth in RIGL § 42-14.2-3 and 230-RICR-30-05-5.4(B) prohibit the activity taking place at Wright’s Auto, and thus are being violated by William Ricci Jr., Morris Maglioli and/or any other individual, partnership, corporation, limited liability company, sole proprietorship, or other legal entity...” The Petition sets forth several numbered paragraphs with Petitioner’s allegations of facts, and requests the Department take certain actions against a third party who Petitioner represents is conducting certain activities on property that is adjacent to Petitioner’s property.

Issue

Whether the Department shall issue a declaratory order, decline to issue an order, or schedule the matter for further consideration.

Discussion

The applicable law regarding petitions for declaratory orders in the administrative law context begins with R.I. Gen. Laws § 42-35-8(a), which states: “A person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner.” Additionally, R.I. Gen. Laws § 42-35-8(c) provides: “Not later than sixty (60) days after receipt of a petition under subsection (a), an agency shall issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration.” And, R.I. Gen. Laws § 42-35-8(d) also states: “If an agency declines to issue a declaratory order requested under (a), it shall notify, promptly, the petitioner of its decision. The decision must be in a record and must include a brief statement of the reasons for declining. An agency decision to decline to issue a declaratory order is subject to judicial review for abuse of discretion...”

The Rhode Island Supreme Court has had the opportunity to consider the initial inquiry when dealing with a request for declaratory relief. In *Bowen v. Mollis*, 945 A.2d 314 (R.I. 2008), the Court stated “When confronted with a request for declaratory relief, the first order of business for the trial justice is to determine whether a party has standing to sue. A standing inquiry focuses on the party who is advancing the claim rather than on the issue the party seeks to have adjudicated.” *Id.* at 317 (citing *Flast v. Cohen*, 392 U.S. 83, 99 (1968)). Indeed, as the Court commented at another juncture, “The test to determine whether a party has the requisite standing was well articulated in *Rhode Island Ophthalmological Society v. Cannon*, 113 R.I. 16, 317 A.2d 124 (1974). The plaintiff must allege to the court’s satisfaction that “ ‘the challenged action has caused him injury in fact, economic or otherwise.’ ” *Id.* at 22, 317 A.2d at 128. This often has been characterized as a legally cognizable and protected interest that is “concrete and

particularized***and***actual or imminent, not ‘conjectural’ or ‘hypothetical.’ ” Pontbriand v. Sundlun, 699 A.2d 856, 862 (R.I. 1997)(quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992))...These venerable principles apply equally to actions at law, in equity, or claims seeking declaratory relief.” McKenna v. Williams, 874 A.2d 217, 227 (R.I. 2005).


The Petitioner has not established that the Petition requests the interpretation of a statute or rule as it is applied to him consistent with the letter and spirit of R.I. Gen. Laws § 42-35-8(a). Relatedly, beyond a cursory statement that the Petitioner is the neighbor of the property identified as Wright’s Auto and as such is an “interested party,” the Petitioner does not illustrate how he has or is suffering a concrete and particularized, actual or imminent, protected interest in conformity with the standing requirements as articulated by Rhode Island Ophthalmological Society v. Cannon and its progeny.

Moreover, the Department has the discretion with which to address enforcement actions within the confines of its legislatively apportioned jurisdictions, expressly including auto wrecking and salvage matters, pursuant to R.I. Gen. Laws §§ 42-14.2-1 *et seq.*, 42-14-1 *et seq.*, 42-35-1 *et seq.* and in conjunction with 230-RICR-10-00-2, *Rules of Procedure for Administrative Proceedings* (the “Rules”). The Rhode Island Supreme Court has long recognized that “an administrative agency will be accorded great deference in interpreting a statute whose administration and enforcement have been entrusted to the agency.” Murray v. McWalters, 868 A.2d 659, 662 (R.I. 2005). Importantly, such discretion is afforded both to agency action and abstention, and declaratory relief cannot be used as a weapon to compel a petitioner’s desired relief. When faced with a similarly situated intervenor in a Department of Environmental Management administrative procedure, the Court stated “We are confident that the General

Assembly did not envision an administrative proceeding in which a non-party intervenor with divergent interests from DEM's could control the outcome in favor of its own interests over those of the agency responsible for enforcing the state's environmental laws." Town of Richmond v. Rhode Island Department of Environmental Management, 941 A.2d 151, 157-158 (R.I. 2008).

In the context of any possible enforcement proceeding regarding Wright's Auto, the Department has undertaken an investigation into the matter, a fact which has been communicated to the Petitioner on at least two occasions prior to the filing of this Petition. As is the Department's policy in all areas of its enforcement investigations, the Department will not comment on an investigation beyond confirming that the investigation exists. Because the Department is still conducting its investigation, together with the aforementioned considerations including the discretion afforded the Department with respect to action and abstention as to matters within its regulatory purview, the Department hereby declines to issue a declaratory order in response to the Petition in conformity with R.I. Gen. Laws § 42-35-8(c) and (d).¹

Nothing herein shall or is intended to impair the ability of the Petitioner to pursue a court action for civil relief or any other rights or remedies Petitioner may have with respect to the conduct of activities on a neighboring property.

Dated: November , 2019



Elizabeth M. Tanner, Esq.
Director
Department of Business Regulation

¹ To the extent the Department, in its discretion, determines to commence an enforcement proceeding against a party, the Department conducts such proceeding in accordance with applicable notice and other requirements of the Administrative Procedures Act, Rhode Island General Laws Chapter 42-35.

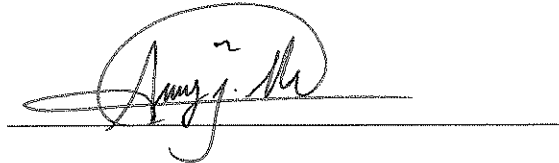
NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A DENIAL TO ISSUE A DECLARATORY ORDER REQUESTED UNDER R.I. GEN. LAWS § 42-35-8(a). PURSUANT TO R.I. GEN. LAWS § 42-35-8(d), THIS ORDER MAY BE SUBJECT TO JUDICIAL REVIEW.

CERTIFICATION

I hereby certify on this 26th day of November 2019, that a copy of the within Decision was sent by e-mail and first-class mail, postage prepaid to:

Mr. Jon M. Restivo
27 Mill Road
Foster, RI 02825
JRestivo@darroweverett.com

A handwritten signature in black ink, appearing to read "Amy J. M.", is written over a solid horizontal line. The signature is cursive and includes a small flourish above the "y".