STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: August 29, 2022)

RICKEY THOMPSON,	:	
Appellant,	:	
	:	
v.	:	**C.A. No. WC-2020-0268**
	:	
TOWN OF NORTH KINGSTOWN ZONING BOARD OF APPEALS, RANDY WEITMAN, JOHN V. GIBBONS, JR., DAVID MCCUE, PATRICIA O'CONNOR-SIEGMUND, and John Marth, in their capacities as members of the Zoning Board of Appeals, and TOWN OF NORTH KINGSTOWN PLANNING COMMISSION, and JAMES GRUNDY, PATRICIA NICKLES, PATRICK ROACH, PAUL DION, TRACEY MCCUE and BOB JACKSON, in their capacities as members of the PLANNING COMMISSION, the TOWN OF NORTH KINGSTOWN, and GREGORY MANCINI, RICHARD WELCH, MARY BRIMER, STACEY ELLIOTT, and KERRY P. MCKAY, in their capacities as members of the NORTH KINGSTOWN TOWN COUNCIL, and JAMES LATHROP, in his capacity as FINANCE DIRECTOR of the TOWN OF NORTH KINGSTOWN and JAMM GOLF LLC, MARK L. HAWKINS, JOSHUA L. HAWKINS, and M.L. HAWK REAL ESTATE LLC,	:	
Appellees.	:	

DECISION

TAFT-CARTER, J. Before the Court for decision as Count I of Appellant Rickey Thompson's (Thompson) Complaint is Thompson's appeal from the June 12, 2020 decision (the Zoning Board Decision) of the Town of North Kingstown Zoning Board, sitting as a board of appeal (the Zoning Board). The Zoning Board Decision affirmed an April 9, 2020 decision (the Preliminary Plan

Decision) of the Town of North Kingstown Planning Commission (the Planning Commission). Jurisdiction is pursuant to G.L. 1956 §§ 45-23-66 and 45-23-71.

I

Facts and Travel

This case concerns a major land development project (the Project) proposed for multiple parcels of real estate located on Ten Rod Road in North Kingstown, Rhode Island (the Property). (Compl. ¶ 1.) Appellees JAMM Golf, LLC, Mark L. Hawkins, Joshua L. Hawkins, and M.L. Hawk Realty, LLC (collectively, Applicants) envision the Project—officially known as "The Preserve at Rolling Greens"—as a "mixed use compact village development, including 212 bedrooms in a mix of unit styles and 26,000 square feet of commercial space[,]" with a "new clubhouse" for the preexisting Rolling Greens Golf Course "and a civic building for the residential development[.]" *Id.* ¶¶ 10-14; *see* R. Ex. 24 (Preliminary Plan Decision), 1. Thompson, as an aggrieved party, appealed the Planning Commission's Preliminary Plan Decision approving the Project to the Zoning Board and now appeals the Zoning Board Decision upholding the Preliminary Plan Decision to this Court. Compl. ¶¶ 1, 4; *see* R. Ex. 51 (Zoning Board Decision). The other appellees in this case are the Town of North Kingstown (the Town); the Planning Commission; the Zoning Board; the Town's Finance Director; and the individual members of the Planning Commission, the Zoning Board, and the North Kingstown Town Council (the Town Council) in their official capacities (collectively, the Municipal Defendants). (Compl. ¶¶ 5-9.)

Through the Project, Applicants seek to develop the Property into a compact village development (CVD) under § 21-95 of the Town's Zoning Ordinances (the CVD Ordinance). *Id.* ¶¶ 14-15. The CVD Ordinance contemplates that CVDs will "create or reinforce the character and function of village centers through [the] compact arrangement of residential and nonresidential

uses which are well related to community needs." Zoning Ordinances § 21-95. The Project is subject to review as a major land development project because completion of the Project requires that the Property be rezoned as a CVD. Zoning Ordinances § 21-95(3)(a) ("Any application for CVD that requires a change to the zoning map shall be reviewed as a major land development project."); *see also* § 45-23-61(b) (specifying order of sequential approvals "[w]here an applicant requires both planning board approval and council approval for a zoning ordinance or zoning map change").

Under Rhode Island's Development Review Act, the major land development project review process "consists of three stages of review[:] master plan, preliminary plan and final plan[.]" Section 45-23-39(b); *cf.* North Kingstown Subdivision and Land Development Regulations (Subdivision Regulations) § 5.3.5.a.1 ("Major plan review shall consist of four stages of review: (a) Pre-application meeting(s); (b) Conceptual master plan[,] including a site visit; (c) Preliminary plan; (d) Final plan."). A master plan is defined as "[a]n overall plan for a proposed project site outlining general, rather than detailed, development intentions" and "describ[ing] the basic parameters of a major development proposal, rather than giving full engineering details." Section 45-23-32(23); *see* Subdivision Regulations § 5.3.5.c.2 (same). Among other procedural and substantive requirements for the establishment of CVDs, the CVD Ordinance provides that the "overall percentage of nonresidential to residential building coverage shall be set by the planning commission at the master plan level of review and approved by the town council as a condition of the zoning map amendment to the CVD district for the parcel(s) of land." Zoning Ordinances § 21-95(7)(f).

On December 18, 2012, the Applicants obtained master plan approval for the Project from the Planning Commission. Compl. ¶ 22; *id.* Ex. A (Master Plan Decision), 1. The Master Plan

Decision describes the Project as "a compact village containing between 24,000 and 40,000 square feet of commercial/retail and 106 dwelling units (188 bedrooms)" and notes that "[n]ine existing bedrooms will also stay." (Master Plan Decision 3.) In addition to the "existing 3 bed single family units[,]" the 106 proposed dwelling units "include[ ] one bedroom live/work units, two bedroom duplex units, one bedroom duplex units, two bedroom townhouse units, two bedroom single family units, [and] three bedroom single family units[.]" *Id.* Apart from the dwelling units and the commercial and retail space, a "new clubhouse for the [existing] golf course and a civic building for the residential development [were] also proposed" at the master plan stage. *Id.*

In the Master Plan Decision's findings of fact, the Planning Commission found that the Project satisfies the provisions of the Town's Zoning Ordinances, including the CVD Ordinance, because "[a] range of 24,000 square feet to 40,000 square feet of commercial uses satisfies the CVD requirement to provide an appropriate proportion of nonresidential to residential uses." *Id.* However, the Master Plan Decision does not indicate the proposed square footage of the Project's residential units or explicitly address whether the proposed clubhouse and civic building would affect the Project's balance of residential and nonresidential spaces. *See id.*; *see also* Zoning Board Decision 2 (describing Master Plan Decision). The Master Plan Decision also provides that the exact amount of commercial square footage is to "be determined at the preliminary stage based upon the revised design of the plan" and that "[t]he ratio of residential to non-residential shall be set at the preliminary stage." (Master Plan Decision 5-6.) Thompson did not file a timely appeal of the Master Plan Decision to the Zoning Board. *See* Subdivision Regulations § 12.1.1(a) (allowing parties aggrieved by a decision of the Planning Commission to appeal to Zoning Board within "20 days of the day the decision is recorded and posted"); *cf.* § 45-23-67 (giving same time period for appeal).

On June 23, 2014, the Town Council rezoned the Property as a CVD by passing Ordinance 14-15. Zoning Board Decision 2; *see* Pl.'s Brief Supp. Count I Compl. (Pl.'s Br.) Ex. 3 (Ordinance 14-15). However, on August 28, 2017, the Town Council passed Ordinance 17-16, which amended the Property's zoning district descriptions by adding the following conditions:

> "1. The overall percentage of nonresidential to residential building coverage on these lots for the proposed development shall be no more than 5.0% (five percent) of nonresidential building coverage and no less than 95.0% (ninety-five percent) of residential building coverage.
> "2. The total square footage of commercial building space shall not exceed 10,000 square feet." Pl.'s Br. Ex. 4 (Ordinance 17-16); *see* Zoning Board Decision 3.

In the interim, the Applicants had obtained a certificate of completeness for their preliminary plan application; however, after the Town Council passed Ordinance 17-16, that certificate was withdrawn. Zoning Board Decision 3; *see* Subdivision Regulations 5.3.5.l. The Applicants then filed suit against the Town, alleging that Ordinance 17-16 violated the Applicants' vested property rights. Zoning Board Decision 3; *see* Defs.' Mem. Opp'n Pl.'s Brief on Count I Compl. (Defs.' Mem.) 4. After the Applicants' suit was removed from Rhode Island Superior Court to the United States District Court for the District of Rhode Island, Thompson filed a motion to intervene, which the District Court denied. (Compl. ¶¶ 30-31; Defs.' Mem. 4.)

After mediation and further discussions, the Applicants' suit against the Town resulted in a settlement agreement memorialized in a Consent Judgment. Zoning Board Decision 3; *see* R. Ex. 5 (Planning Commission Agenda, Feb. 18, 2020) at 1374-79 (Consent Judgment). In the Consent Judgment, the Town agreed that the Project

> "is APPROVED, on the specific terms and conditions set forth herein, subject only to
> "(a) the Town Council's approval of the settlement embodied in this Consent Judgment, and

> "(b) final approval by the Town's Planning Department and by the Planning Commission of Applicants' Preliminary Plan application (to include any associated technical review typically associated with such process) in accordance with any applicable provisions of the CVD Ordinance Section 21-95 (but not to include the amendments to the CVD district approved by the Town Council on or about August 28, 2017). Other than the foregoing, the Parties agree that Applicants do not need to seek any further municipal approvals and may proceed with the [Project] as set forth herein[.]" (Consent Judgment ¶ 1.)

The Consent Judgment also sets out the following "essential components" for the Project:

> "(a.) No more than 26,000 square feet of non-residential commercial space, not including the golf clubhouse, which shall remain as a pre-existing recreational use. Applicants reserve the right to seek to expand the golf clubhouse at some time in the future, without expanding or altering the underlying use (in other words, not to create a large commercial retail outlet or indoor training or practice facility), subject to any applicable municipal approvals at that time, and the Parties agree that any additional square footage associated with such approved expansion of the golf clubhouse will not count toward the 26,000 square feet of commercial space included in the [Project] under the terms of this Consent Judgment. The 26,000 square feet of commercial space set forth herein shall be located throughout the [Project] in Applicants' discretion, but with no more than 15,000 square feet of commercial space in any one building;
> "(b.) Up to two hundred twelve (212) bedrooms in up to one hundred six (106) residential dwelling units (including nine (9) existing bedrooms associated with four (4) existing residential dwelling units), to be located throughout the development in the Applicants' discretion in one-bedroom and two-bedroom units (not to include any three-bedroom units), subject to the Applicants' ability to satisfy any associated nitrate loading requirements and subject to the requirements of Section 21-95 of the Ordinance (but not to include the amendments to the CVD district approved by the Town Council on or about August 28, 2017), including average bedroom counts per unit and maximum bedrooms per acre. The Parties agree that Applicants shall be entitled to the maximum number of bedrooms possible, up to the 212 set forth herein, consistent with their obligation to satisfy any nitrate loading requirements. Applicants shall also have the right to address any nitrate loading issues by other means, such as making changes in the proposed commercial space or the usage thereof[;]
> "(c.) Residents in the [Project] shall be age-restricted to occupants at least fifty-five (55) years in age or older; and

> "(d.) Except as specifically set forth herein, the [Project] shall be consistent with the Town's previous Master Plan approval and with the approval of a Preliminary Plan by the Planning Commission as set forth in Paragraph 1(b) herein. Approval of the Preliminary Plan by the Planning Commission, as set forth in Paragraph 1(b) herein, shall be generally consistent with all other prior approvals granted to Applicants to date and/or with the terms of this Consent Judgment." *Id.* ¶ 2.

The Consent Judgment was approved by the Town Council at a public hearing on February 28, 2019 and received the District Court's preliminary approval on March 15, 2019. (Zoning Board Decision 3-4.) The Zoning Board Decision states that Thompson was present at the February 28, 2019 public hearing and voiced his opposition to approving the Consent Judgment. *Id.* at 4.

After holding public hearings on Applicants' preliminary plan application on February 18, 2020 and March 10, 2020, the Planning Commission approved the application through the April 9, 2020 Preliminary Plan Decision. *Id.* Among other findings of fact, the Planning Commission concluded that the Project meets the requirements of the CVD Ordinance; for example, the Project "allows for the preservation of the golf course[,]" which "accounts for a portion of the percentage of open space and therefore shall be deed restricted for preservation" with a development easement granted to the Town. Preliminary Plan Decision 7; *see id.* at 8 ("The percentage of protected open space or recreation area meets the requirement of the CVD at 40%.").

On the issue of the proportion of residential and nonresidential uses, the Preliminary Plan Decision states that:

> "The Planning Commission has considered the residential and nonresidential use, the nearby properties, and the potential future development of the surrounding properties in its deliberations and has considered the historical development patterns and traditional village in its review of the proposal. The Commission finds that based on the preliminary design plans presented . . . by the applicant's project engineer, and assuming the full build-out of non-residential space to the 26,000 square feet permitted by the Consent Judgment, the ratio of residential to non-residential footprint area in

> the development would be approximately 7.8 : 1. This includes the existing residential units. The Commission finds that this ratio is reasonable and is within the range contemplated for the CVD zone. As building footprints and layouts within the [Project] become final, this ratio may fluctuate and any such fluctuation shall be acceptable as long as it does not substantially deviate from the ratio set forth above or from the preliminary plans presented by the applicant. In any event, in all such cases, the applicant shall remain entitled to, and shall be limited by, the 212 bedrooms within 106 residential dwelling units, and the 26,000 square feet of commercial space (not including the golf clubhouse), set forth in the consent judgment." *Id.* at 7-8.

As the above quotation indicates, the Planning Commission recognized and adopted the contents of the Consent Judgment in the Preliminary Plan Decision. *See id.* at 6 ("The subject property is subject to a consent judgment C.A. No[.] 17-00491-JJM-LDA which allows no more than 26,000 square feet of nonresidential commercial space, not including the golf clubhouse, which shall remain as a pre-existing recreational use."). Among other conditions of the preliminary plan approval, the Preliminary Plan Decision provides that "[l]egal documents shall describe development as age restricted" and that the "legal documents shall include language to permanently restrict future subdivision or development of the golf course, with the exception of the reconstruction of the clubhouse per the consent agreement." *Id.* at 12-13; *see id.* at 6 (finding that the residential portion of the Project "shall be age-restricted to occupants at least 55 years in age or older").

The Planning Commission also found that the Project would have "no significant negative environmental impacts[.]" *Id.* at 8; *see id.* at 9 (reviewing "conditions related to fertilizer, water use, units per acre, [and] impervious coverage"). In this context, the Planning Commission acknowledged the testimony presented at the March 10, 2020 hearing by Robert Ferrari of Northeast Water Solutions (Ferrari), who was retained as an expert witness by Thompson. *Id.* In support of Thompson's contention that the Project's water usage would have a negative impact on

the entire town, Ferrari presented an updated version of his 2016 report on "water distribution systems, design, operation, and water resources." *Id.*; *see* R. Ex. 6 at 1847-83 (Ferrari Report). However, the "Planning Commission found that Mr. Ferrari's expertise related to town-wide water supply and was not specific to the [Project], which ha[d] already been accepted and approved by the Town Council for public water." (Preliminary Plan Decision 9.) The Planning Commission also found "that the town-wide water concerns cannot be tied to this specific project and need[ ] to be addressed on a town-wide basis." *Id.*

In addressing the Project's planned connection to the Town's water supply, the Planning Commission found that

> "The proposed development received approval for a water main extension on July 18, 2016. The subject properties for the proposed development [are] within the Water Service Area and have obtained approval by the Town Council for the extension of water main on July 18, 2016. The revised plans were submitted for review to Pare. It was determined that the total average daily demand (ADD) did not change and the revisions to the project did not warrant additional hydraulic modeling." *Id.* at 6; *see id.* at 5 (listing "2016 Town Council Vote for Water Main Extension and 2019 Re-Evaluation" as an exhibit considered by the Planning Commission).

Additionally, as a condition of approval, the Preliminary Plan Decision provides that a "private irrigation system shall be installed for outdoor watering" and "[n]o town water shall be used for outdoor watering." *Id.* at 11; *see id.* ("This condition also pertains to the golf course. Golf course will not utilize town water for irrigation.").

On May 1, 2020, Thompson appealed the Preliminary Plan Decision to the Zoning Board. *See* R. Ex. 35 (Appeal of Preliminary Plan Decision). In that appeal, Thompson advanced six primary arguments. *Id.* at 3-9. First, Thompson argued that the Planning Commission could not make the required finding that "'the proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance'" because the Project does not comply with

Ordinance 17-16. *Id.* at 2-3 (quoting § 45-23-60(a)(2)). Second, Thompson asserted that the Planning Commission erred by disregarding Ferrari's expert testimony and ignoring the negative environmental impacts that the Project would have on the Town. *Id.* at 4-6. Third, Thompson argued that the Town Council impermissibly acted as a Planning Commission by purporting to approve the Applicants' preliminary plan through the Consent Judgment, thereby violating the Development Review Act. *Id.* at 6-7.

Fourth, Thompson asserted that the Planning Commission erred by not considering the Project's proposed golf clubhouse as a nonresidential use when calculating the ratio of residential to nonresidential uses under the CVD Ordinance. *Id.* at 7. Fifth, Thompson argued that the golf course, as a commercial use of the Property, could not be considered one of the "'open, available spaces throughout the development'" required by the CVD Ordinance. *Id.* at 8. Sixth, Thompson noted that the CVD District created by the Town included not only the Property, but additional parcels that were separated from the Property by state highways; as such, Thompson contended that the Project did not conform with the CVD Ordinance's requirement that vehicular, bicycle, and pedestrian traffic be interconnected within the CVD District. *Id.* at 8-9. As such, Thompson asked the Zoning Board to overturn the Preliminary Plan Decision and remand the matter to the Planning Commission for further proceedings. *Id.* at 3.

After holding public hearings on June 4, 2020 and June 11, 2020, the Zoning Board issued its written decision denying Thompson's appeal on June 12, 2020. *See* Zoning Board Decision 13. Addressing Thompson's challenges to the Preliminary Plan Decision in the order they were presented, the Zoning Board first found that the Project was not subject to Ordinance 17-16 because the Consent Judgment specifically excluded the Project from compliance with Ordinance 17-16 due to Applicants' vested property rights. *Id.* at 5. As the Zoning Board noted, shortly after

the Preliminary Plan Decision was recorded, the Consent Judgment ripened into a final judgment of the United States District Court. *Id.* at 4 n.2. The Zoning Board found that the Planning Commission did not change Ordinance 17-16 by refusing to apply it to the Project, as the Planning Commission recognized that Ordinance 17-16 would still apply to future applicants who did not hold vested property rights as of August 2017. *Id.* at 5. The Zoning Board also found that the Planning Commission, which had no authority to review or reject the Town Council's decision to enter into the Consent Judgment, still undertook a thorough review of the development criteria associated with the preliminary plan stage before granting its approval. *Id.* at 6.

On Thompson's second argument, the Zoning Board found that the Planning Commission's finding that there would be no significant negative environmental impacts from the Project was supported by substantial evidence. *Id.* at 6-7. The Zoning Board also found that the Planning Commission did not disregard Ferrari's expert opinions, but considered and rejected them in favor of other competent evidence; in particular, the Zoning Board highlighted the Town Council's 2016 approval of the Project's connection to the town water supply and the updated 2019 assessment of the Project's water supply needs prepared by the Pare Corporation (Pare). *Id.* at 7-8. The Zoning Board also questioned whether the long-term, town-wide water supply issues addressed by Ferrari even qualified as the type of negative environmental impacts the Planning Commission was required to consider. *Id.* at 8-9.

On Thompson's argument that the Town Council had "acted like" a Planning Commission by approving the Consent Judgment, the Zoning Board questioned whether that argument was properly raised given that Thompson had no standing to challenge the validity of the Consent Judgment and neither the Planning Commission nor the Zoning Board were empowered to review the actions of the Town Council. *Id.* at 9. Nevertheless, the Zoning Board found that the provisions

of the Consent Judgment that addressed the Project's maximum commercial space and the total number of bedrooms worked a minimal change on the Master Plan Decision and noted that the Planning Commission had made specific findings about the resulting ratio of residential to non-residential space in the Preliminary Plan Decision. *Id.* at 9 & n.4. The Zoning Board also found that the issue of the Project's residential age restriction had been addressed and ratified by both the Town Council and the Planning Commission. *Id.* at 10 n.5.

On the issue of the golf clubhouse, the Zoning Board found that it was properly excluded from the ratio of residential to nonresidential space because the existing golf clubhouse predated the Project and primarily served the golf course and its customers; the Zoning Board also noted that the Project's proposed residential and commercial development was adjacent to—and separate from—the golf course and its clubhouse. *Id.* at 10. Stating that the main purpose of nonresidential space in a CVD is to provide services for residents, the Zoning Board also found that inclusion of the golf clubhouse in the 26,000 square feet of nonresidential space permitted by the Consent Judgment would not serve that purpose. *Id.* The Zoning Board also acknowledged that the Applicants reserved the right to seek leave to expand or remodel the golf clubhouse, but that the Consent Judgment provided that any such proposal would remain subject to municipal approvals at that time. *Id.* at 11 n.8.

On the issue of whether the Project contained sufficient open space as required by the CVD Ordinance, the Zoning Board first found that, contrary to Thompson's assertions, the golf course on the Property is open to the public; it also found that the golf course qualifies as open space because it serves as a "buffer" adjacent to the proposed development. *Id.* at 11. The Zoning Board also noted that the Planning Commission had ensured that the golf course would remain

undeveloped as a condition of its preliminary plan approval and that the record indicated the presence of other areas of open space throughout the Project. *Id.* at 11-12.

Finally, the Zoning Board found that vehicular, bicycle, and pedestrian traffic were sufficiently interconnected within the Project's own boundaries; as such, the Project created a "'walkable village'" as contemplated by the CVD Ordinance. *Id.* at 12-13 (quoting Zoning Ordinances § 21-95(3)(h)). The Zoning Board did acknowledge that the CVD Ordinance also provides that vehicular, bicycle, and pedestrian traffic shall connect to adjacent lots zoned for business purposes; it also found that it was not feasible to connect the Project to the closest nearby existing business use in the same intensive manner as the Project's internal connections because a major intersection of two state highways separates the Property from the adjacent land. *Id.* at 12 (citing Zoning Ordinances § 21-95(8)). However, the Zoning Board found that the Applicants had worked with state and municipal officials, including the Planning Commission, to address issues of traffic flow at the adjoining intersection, and that the Preliminary Plan Decision reflected the Planning Commission's satisfaction with the resolution of those issues. *Id.*

Having addressed all of Thompson's arguments, the Zoning Board upheld the Preliminary Plan Decision because that decision "was not the result of any procedural error, or other clear error, and was amply supported by evidence in a voluminous record before the Planning Commission." *Id.* at 13; *cf.* § 45-23-70(a) ("The board of appeal shall not reverse a decision of the planning board or administrative officer except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record."). The Zoning Board Decision was officially recorded on June 18, 2020. (Zoning Board Decision 1.)

On July 7, 2020, Thompson commenced the instant action by filing a Complaint in Superior Court. In Count I of his Complaint, Thompson appealed the Zoning Board Decision

pursuant to § 45-23-71. (Compl. ¶¶ 1, 43-50.) In Count II, Thompson sought a declaratory judgment to the effect that the Town Council lacked the legal authority to enter into the Consent Judgment, that the Consent Judgment usurped the Planning Commission's authority and effectively changed the Town's Zoning Ordinances without the notice and public hearings required by the Zoning Enabling Act, and that the Planning Commission should not have relied on the Consent Judgment in the Preliminary Plan Decision. *Id.* ¶¶ 51-56. In Count III, Thompson alleged that the Planning Commission had violated the Open Meetings Act by engaging in discussions outside of its public hearings. *Id.* ¶¶ 57-58.

After this Court established a briefing schedule for the resolution of Count I, Thompson and the Applicants exchanged briefs. *See* Pl.'s Brief Supp. Count I Compl. (Pl.'s Br.); Defs.' Mem. Opp'n Pl.'s Brief Count I Compl. (Defs.' Mem.); Pl.'s Reply Brief Supp. Count I Compl. (Pl.'s Reply). On October 19, 2021, after finding that the Town had the legal authority to enter into the Consent Judgment and that Thompson's request for a declaratory judgment to the contrary was an improper collateral attack on a final judgment of a United States District Court, this Court granted the Defendants' Motion for Summary Judgment on Count II of the Complaint. (Hr'g Tr. 14:10-15:9, Oct. 19, 2021.) On December 16, 2021, Count III of Thompson's Complaint was dismissed by stipulation of the parties. *See* Stip. Dismissal Count III Pl.'s Compl., Dec. 16, 2021. On November 15, 2021, this Court heard and denied Thompson's Motion for Leave to Present Additional Evidence in Support of Count I; on January 18, 2022, this Court denied Thompson's Motion for Leave for Oral Argument on Count I.

II

Standard of Review

Pursuant to § 45-23-66, "an aggrieved party" may take "an appeal from any decision of the planning board, or administrative officer charged in the regulations with enforcement of any provisions . . . to the board of appeal" of the appropriate city or town. Section 45-23-66. In reviewing the challenged decision, a zoning board sitting as a board of appeal

> "shall not substitute its own judgment for that of the planning board or the administrative officer but must consider the issue upon the findings and record of the planning board or administrative officer. The board of appeal shall not reverse a decision of the planning board or administrative officer except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record . . . . The board of appeal shall keep complete records of all proceedings including a record of all votes taken, and shall put all decisions on appeals in writing. The board of appeal shall include in the written record the reasons for each decision." Section 45-23-70.

Under § 45-23-71, an "aggrieved party may appeal a decision of the board of appeal" to the Superior Court. Section 45-23-71(a). Sitting without a jury, the reviewing Court "shall consider the record of the hearing before the planning board" and "may allow any party to the appeal to present evidence in open court" only after a determination that such "additional evidence is necessary for the proper disposition of the matter[.]" Section 45-23-71(b). On appeal, the Court

> "shall not substitute its judgment for that of the planning board as to the weight of the evidence on questions of fact. The court may affirm the decision of the board of appeal or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions or decisions which are:
> "(1) In violation of constitutional, statutory, ordinance or planning board regulations [or] provisions;
> "(2) In excess of the authority granted to the planning board by statute or ordinance;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error of law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Section 45-23-71(c).

Section 45-23-71 thus "utiliz[es] the traditional judicial review standard that is applied in administrative-agency actions." *Munroe v. Town of East Greenwich*, 733 A.2d 703, 705 (R.I. 1999). The Court must "give[ ] deference to the findings of fact of the local planning board[,]" and the Court's "review 'is confined to a search of the record to ascertain whether the board's decision rests upon 'competent evidence' or is affected by an error of law.'" *West v. McDonald*, 18 A.3d 526, 531 (R.I. 2011) (quoting *Kirby v. Planning Board of Review of Middletown*, 634 A.2d 285, 290 (R.I. 1993)). "A planning board's determinations of law, like those of a zoning board or administrative agency, are not binding on the reviewing court; they may be reviewed to determine what the law is and its applicability to the facts." *Id.* at 532 (citing *Pawtucket Transfer Operations v. City of Pawtucket*, 944 A.2d 855, 859 (R.I. 2008)).

III

Analysis

Before examining each of Thompson's arguments in detail, the Court must delineate the appropriate scope of its analysis, which is limited to an appellate review of the Zoning Board's affirmance of the Preliminary Plan Decision, on the record before the Planning Commission and under the standard set out by the Development Review Act. *See* § 45-23-70(c), (d). Although Thompson's arguments often reference the approval of the Consent Judgment and other actions by the Town Council, those actions are not before this Court for review and are ultimately only relevant to the extent that they bear on whether the Preliminary Plan Decision "'rests upon competent evidence or is affected by an error of law.'" *West*, 18 A.3d at 531 (quoting *Kirby*, 634 A.2d at 290). However, because the Preliminary Plan Decision integrates the contents of the Consent Judgment in several respects, the Court will first address the parties' dispute over the

propriety and legal import of the Town Council's approval of the Consent Judgment before moving on to Thompson's substantive challenges to the Preliminary Plan Decision itself.

A

The Consent Judgment's Approval and Legal Effect

Thompson argues that the Town Council's approval of the Consent Judgment effectively amended the Town's Zoning Ordinances with respect to the Property; because Thompson also argues that the Town Council did not first provide proper notice to the public, as required by state law for all zoning ordinance amendments, he concludes that the zoning changes purportedly effected by the Consent Judgment are void. (Pl.'s Br. 16-19.) Thompson also contends that, through its approval of the Consent Judgment, the Town Council impermissibly usurped the authority of the Planning Commission by setting out specific terms and conditions for the Project and directing the entry of preliminary plan approval. *Id.* at 19-20. In his Reply Brief, Thompson raises further challenges to the Consent Judgment. While acknowledging the Town's authority to settle disputes and that the Consent Judgment constitutes an enforceable contract between the Applicants and the Town, Thompson argues that the Planning Commission nevertheless erred by relying on the Consent Judgment because its terms constitute an impermissible attempt to amend the Town's Zoning Ordinances without following the procedures required by law. (Pl.'s Reply 2-6.)

Defendants characterize the Consent Judgment as a legally enforceable agreement that resolved a dispute between the Applicants and the Town by recognizing Applicants' vested rights and argue that this Court cannot second-guess a judgment entered by a United States District Court. *See* Defs.' Mem. 4, 9-11. Defendants assert that the Consent Judgment was properly approved by the Town Council following notice and a public hearing, and that this approval did not amend the

Town's Zoning Ordinances; instead, Defendants describe the Consent Judgment as a one-time compromise that exempted Applicants from compliance with Ordinance 17-16 while ensuring that its terms would continue to apply to other parties. *Id.* at 12-13, 17. Defendants also note that the Consent Judgment expressly preserved the Planning Commission's ability to evaluate the Project's preliminary plan application; as such, Defendants contend that the Town Council did not usurp the authority of the Planning Commission and that the Preliminary Plan Decision rests on the Planning Commission's independent review of the record. *Id.* at 13-14.

As alluded to above, Thompson previously advanced his challenge to the validity of the Consent Judgment through his request for declaratory judgment in Count II of his Complaint. *See* Compl. ¶¶ 51-56; *see also* Hr'g Tr. 14:11-18, Oct. 19, 2021 ("[P]laintiff is asking the Court to declare that the defendant Town had no authority to enter into the consent judgment and, . . . as such, defendant Town should not have relied on the consent judgment to move forward with defendant applicants' development proposal[.]"). However, this Court granted Defendants' Motion for Summary Judgment on Count II on the grounds that the Town possessed the legal authority to resolve Applicants' claims through the Consent Judgment and that Count II was essentially an improper collateral attack on a valid final judgment entered by a United States District Court. *See* Compl. ¶¶ 51-56; Hr'g Tr. 14:10-15:9, Oct. 19, 2021 (citing North Kingstown Town Charter § 106). The Court sees no reason why it should now reverse course on those findings in the context of Thompson's appeal from the Zoning Board Decision under Count I. *Cf. Lynch v. Spirit Rent-A Car, Inc.*, 965 A.2d 417, 425 (R.I. 2009) (holding that trial justice's decision to grant defendant's second motion for summary judgment after denying the first motion was made "appropriately and within the confines of the law of the case doctrine" where the second motion was granted "on an expanded record, replete with new evidence" and a new legal argument).

"When parties to litigation resolve issues through compromise and in good faith, it is well settled that 'courts will enforce the compromised settlement 'without regard to what [the] result might, or would have been, had the parties chosen to litigate.'" *In re McBurney Law Services, Inc.*, 798 A.2d 877, 882 (R.I. 2002) (quoting *Mansolillo v. Employee Retirement Board of Providence*, 668 A.2d 313, 316 (R.I. 1995)). That principle applies to municipalities as well as private parties. *See, e.g.*, *Mansolillo*, 668 A.2d at 316-17. Additionally, as this Court noted when disposing of Count II, Thompson's attempt to intervene in the federal litigation between the Applicants and the Town was denied, and Thompson failed to appeal from that denial. *See* Hr'g Tr. 15:3-5, Oct. 19, 2021; *see also M.L. Hawk Realty, LLC, v. Town of North Kingstown*, No. 17-491-JJM-LDA (D.R.I. Dec. 11, 2017) (order denying motion to intervene as of right) (finding that Thompson's right to participate in preliminary plan approval proceedings would not be affected by outcome of suit and that Town defendants adequately represented Thompson's interest in the suit).

Thompson can thus establish neither the standing nor the grounds necessary to mount a successful collateral attack against the Consent Judgment, and the Court declines his invitation to forcibly reopen disputed issues—and a lawsuit—that the Applicants and the Town elected to resolve. *See Borozny v. Paine*, 122 R.I. 701, 706, 411 A.2d 304, 307 (1980) ("[A] collateral attack is not permitted upon a final judgment, even though it may be alleged to be erroneous."); *Metts v. B. B. Realty Co.*, 108 R.I. 55, 59, 271 A.2d 811, 813 (1970) (citations omitted) ("A judgment cannot be attacked collaterally except for fraud or lack of jurisdiction."); *cf. United States v. Yonkers Board of Education*, 902 F.2d 213, 218 (2d Cir. 1990) (upholding denial of individual parties' motion to intervene after finding, *inter alia*, that state defendant adequately protected individuals' shared "interest in maintaining [the state's] legislative processes").

The Court also agrees with Defendants that the Town Council's approval of the Consent Judgment did not work an amendment of the Town's Zoning Ordinances or usurp the authority of the Planning Commission. The terms of the Consent Judgment specifically provide that the Property will be subject to Ordinance 14-15, as interpreted by the Consent Judgment, and exempt from the terms of Ordinance 17-16; the Consent Judgment also provides that it shall not be applicable to, or set any precedent for, any other applications before the Planning Commission. *See* Consent Judgment 1-3, 6; *cf. DEG, LLC v. Township of Fairfield*, 966 A.2d 1036, 1054 (N.J. 2009) ("[A] municipality must enact an ordinance if it chooses to rezone . . . . [b]ut the consent judgment, by its very terms, was not intended to rezone the area in which [plaintiff] was located but only to settle [plaintiff]'s statutory claim and acknowledge its prior nonconforming status under the zoning laws[.]").

The Consent Judgment makes itself, and approval of the Project, contingent on "final approval by the Town's Planning Department and by the Planning Commission of Applicants' Preliminary Plan application (to include any associated technical review typically associated with such process) in accordance with any applicable provisions of the CVD Ordinance Section 21-95 (but not to include [Ordinance 17-16])." (Consent Judgment 3.) As the Town solicitor explained at the February 18, 2020 hearing, the Consent Judgment thereby protected the Planning Commission's authority to ensure that the Applicants met "the same parameters, the same guidelines, the same checklist, as any other applicant has to meet with respect to engineering, drainage, and other issues." R. Ex. 30 (Hr'g Tr. 37:17-20, Feb. 18, 2020; *see id.* at 41:1-6 ("If the testimony comes out . . . that 212 units is a public safety issue, or something of that nature, you would be able to modify it, and we take our chance in Court if we have to go back.").

The Preliminary Plan Decision also provides that the Project's "[f]inal submission review and approval shall be at the Planning Commission and shall not be administrative" and that "[t]he final development plan (overall plan) shall be recorded." Preliminary Plan Decision 12; *see* Planning Commission Hr'g Tr. 41:10-23, Feb. 18, 2020 (explanation by Town solicitor that Consent Judgment does not foreclose final plan stage of development review). Although the Consent Judgment had not yet been entered as a final order by the federal court at the time of the Preliminary Plan Decision, it had received the federal court's preliminary approval and had been approved by the Town Council; shortly after the Preliminary Plan Decision, the federal court duly entered the Consent Judgment as a final judgment between the Applicants and the Town. *See* Zoning Board Decision 3-4, n.2. The upshot is that the Court can discern no basis on which to find that the Planning Commission erred by considering and relying on the Consent Judgment's contents in reaching the Preliminary Plan Decision.

B

Residential and Nonresidential Building Coverage

In his first challenge to the Preliminary Plan Decision itself, Thompson alleges that the Planning Commission erred when it found the Project in compliance with the CVD Ordinance's provisions governing a CVD district's required mixture of residential and nonresidential spaces. (Pl.'s Br. 10-11.) Specifically, Thompson argues that the Project's overall percentage of residential to nonresidential building coverage was not set by the Planning Commission at the master plan stage, or approved by the Town Council as a condition of the CVD rezoning, as required by § (7)(f) of the CVD Ordinance. *Id.* Thompson also contends that the ratio and nonresidential square footage provisions of Ordinance 17-16 apply to the Project because the Town Council was required to amend the conditional CVD zoning change approved in Ordinance 14-15

as the Project progressed and the Planning Commission had no authority to deviate from the major land development approval framework. *Id.* at 13-15. In a related argument, Thompson asserts that the Planning Commission erred by omitting the existing and proposed golf clubhouses from the calculation of the Project's nonresidential square footage. *Id.* at 12, 21-22; Pl.'s Reply 7.

In response, Defendants assert that the Planning Commission properly found, in accordance with the procedural history of the Project and the explicit terms of the Consent Judgment, that the Project is not subject to the terms of Ordinance 17-16. (Defs.' Mem. 11.) According to Defendants, the Master Plan Decision set out specific limits for nonresidential space as against the Project's much larger residential component, while providing that a final ratio would be set at the preliminary plan stage; the Town Council then ratified that approach when it enacted Ordinance 14-15 and rezoned the Property as a CVD District. *Id.* Defendants also assert that the Planning Commission exercised considerable authority and discretion in addressing the issue of the Project's nonresidential and residential spaces through the Preliminary Plan Decision, which set a specific ratio of residential to nonresidential building coverage. *Id.* at 11-12. On the issue of the pre-existing golf clubhouse, Defendants contend that its exclusion from the calculation of the Project's nonresidential building coverage—in addition to having been previously addressed in the Master Plan Decision—was within the Planning Commission's legal authority and was not inconsistent with the Town's Zoning Ordinances or any other extant law. *Id.* at 10-11.

As mandated by the Development Review Act and the Town's Land Development Regulations, the Planning Commission found in the Preliminary Plan Decision that the Project "meets the requirements of the [CVD] [O]rdinance." Preliminary Plan Decision 7; *see* § 45-23-60(a), (a)(2) (requiring "positive finding[ ]" that "[t]he proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance" before approval of

development application); North Kingstown Ordinances Appendix A (Land Development Regulations), § 3.1(a), (a)(2) (implementing same requirement). The stated intent of the CVD Ordinance is to "create opportunities for land development projects consistent with the CVD ordinance and to create or reinforce the character and function of village centers through compact arrangement of residential and nonresidential uses which are well related to community needs." Zoning Ordinances § 21-95. As such, "[a] CVD must include both residential and nonresidential uses[.]" Zoning Ordinances § 21-95(1).

Section 7 of the CVD Ordinance, entitled "Architectural and lot layout design specifications[,]" sets out how the Planning Commission must address those specifications during the major land development review process. Zoning Ordinances § 21-95(7); *cf.* Zoning Ordinances § 21-95(3)(a) ("Any application for CVD that requires a change to the zoning map shall be reviewed as a major land development project."). Pursuant to § (7)(f), "[t]he overall percentage of nonresidential to residential building coverage shall be set by the planning commission at the master plan level of review and approved by the town council as a condition of the zoning map amendment to the CVD district for the parcel(s) of land." Zoning Ordinances § 21-95(7)(f); *see* G.L. 1956 § 45-24-31(42) ("Lot building coverage[:] That portion of the lot that is, or may be, covered by buildings and accessory buildings."); *Lloyd v. Zoning Board of Review for City of Newport*, 62 A.3d 1078, 1089 (R.I. 2013) ("'Lot building coverage' is a two-dimensional concept, encompassing the total area of the lot covered by buildings and accessory buildings; it does not contemplate a vertical dimension.").

> "In addition to the factors set forth in section 21-95(3)[(h)],[1] this determination shall take into account the existing traffic patterns,

[1] Although the text of the CVD Ordinance refers to "the factors set forth in section 21-95(3)g.," this is plainly a clerical error; it is § (3)(h) that lists the required factors for "determining the appropriate amount of residential and nonresidential uses or the ratio between the residential and

> existing zoning and land uses, the comprehensive plan, surrounding zoning and land uses, the fiscal impact of the CVD district on the town and the availability of services and utilities including, but not limited to, water and sewer." Zoning Ordinances § 21-95(7)(f).

Pursuant to § (3)(h), as part of the "[p]ermit procedures" used to "[r]eview . . . development proposals within an existing or proposed CVD district[,]"

> "The planning commission shall consider how the proposed percentage of nonresidential and residential development promotes the development of a walkable village as contemplated by the CVD ordinance. In determining the appropriate amount of residential and nonresidential uses or the ratio between the residential and nonresidential uses, the planning commission shall consider the following, without limitation:
> "1. The amount and type of nonresidential use on nearby properties.
> "2. The amount of residential use in close proximity to the CVD and the degree to which that residential use is readily connected to the proposed CVD through vehicular, pedestrian or bicycle connections.
> "3. The degree to which the proposal may be compatible with historic or otherwise notable structures in or near the proposed CVD.
> "4. The degree to which the proposed CVD may represent historic development patterns in the area or otherwise model traditional New England village types.
> "5. The capacity for roadways to effectively handle anticipated volumes of traffic.
> "6. The capacity for existing or proposed utilities to effectively provide service to the proposed mix of uses.
> "7. The carrying capacity of the site, the watershed(s) within which the site lies or the underlying groundwater.
> "8. The need for commercial or residential uses in the area.
> "9. The current zoning of the proposed CVD district.
> "10. The current future land use map designation in the comprehensive plan.
> "11. The percentage of proposed protected open space or recreation land." Zoning Ordinances § 21-95(3)(h).

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nonresidential uses," and § (3)(g) simply provides that "[i]f the CVD is proposed to be built in phases, phasing requirements shall be determined at the discretion of the planning commission." *See* Zoning Ordinances §§ 21-95(3)(g), (3)(h), (7)(f).

In the Preliminary Plan Decision, "based on the preliminary design plans presented for residential development" along with the pre-existing residential units on the property, "and assuming the full build-out of non-residential space to the 26,000 square feet permitted by the Consent Judgment," the Planning Commission found that the "ratio of residential to non-residential footprint area in the development would be approximately 7.8 : 1" and that "this ratio is reasonable and is within the range contemplated for the CVD zone."[2] Preliminary Plan Decision 7; *see* R. Ex. 6 (March 10, 2020 Planning Commission Materials), at 680-97 (Project site plans); Consent Judgment 3-4 (stating that the Project shall include "[n]o more than 26,000 square feet of non-residential commercial space, not including the golf clubhouse, which shall remain as a pre-existing recreational use"). As the reference to the 26,000 square feet of nonresidential space permitted by the Consent Judgment indicates, "the range contemplated for the CVD zone" does not refer to Ordinance 17-16, which establishes a minimum residential to nonresidential building coverage ratio of nineteen to one and caps commercial building space at 10,000 square feet. Preliminary Plan Decision 7; *see id.* at 5 ("The subject properties were rezoned to [CVD] in June 2014. . . . According to the consent judgment, the property is not subject to the August 2017 Town Council rezoning."); Ordinance 17-16.

Having previously declined to entertain Thompson's collateral attack on the Consent Judgment, which specifically exempts the Project from compliance with the terms of Ordinance 17-16, the Court also declines to find that the Planning Commission erred when it did not hold the Project to those terms. *See* Consent Judgment 3; Preliminary Plan Decision 5. Instead, the Consent

[2] When referring to the Project's relative proportions of residential and nonresidential building coverage, the parties—like the Planning Commission and the Zoning Board—use the terms "ratio" and "overall percentage" more or less interchangeably. *See* Zoning Board Decision 9 n.4; Pl.'s Br. 11 n.3; Defs.' Mem. 12.

Judgment provides that the Project is governed by Ordinance 14-15, which does not contain Ordinance 17-16's limits on nonresidential space. *See* Consent Judgment 2-3; Ordinance 14-15. Similarly, the Master Plan Decision's exemption of the pre-existing golf clubhouse from the calculation of the Project's nonresidential square footage was ratified in the Consent Judgment, which resolved the disputed question of the Applicants' vested rights with respect to the Master Plan Decision and has now been entered as a final judgment in federal court.[3] *See* Master Plan Decision 3-4; Consent Judgment 4; Preliminary Plan Decision 8.

Section 45-23-61(b), which Thompson relies on for an alternative argument that the Project is properly subject to the terms of Ordinance 17-16, also fails to tip the scales in Thompson's favor. The terms of that statute, which applies "[w]here an applicant requires both planning board approval and council approval for a zoning ordinance or zoning map change," provide that

> "the applicant shall first obtain an advisory recommendation on the zoning change from the planning board, as well as conditional planning board approval for the first approval stage for the proposed

[3] In addressing this issue, the Zoning Board noted that the Project consists of a proposed residential and commercial development that will be located adjacent to—but separate from—the pre-existing golf course and golf clubhouse; as such, the Zoning Board reasoned that the Planning Commission had the "authority and discretion" to exclude the clubhouse from the calculation of the Project's nonresidential space, as including it would count against the approved commercial space and thus limit the services available to future residents. *See* Zoning Board Decision 10-11. The provisions of the CVD Ordinance that address the determination of a CVD district's "overall percentage of nonresidential to residential building coverage" occur in the context of provisions that are largely aimed at the design and layout of proposed "development[s]" and do not explicitly address whether pre-existing buildings adjacent to the development must be included. *See* Zoning Ordinances §§ 21-95(7), (7)(f); *see also* § 45-23-32 (provision of Development Review Act that "[w]here words or phrases used in this chapter are defined in the definitions section of . . . the Rhode Island Zoning Enabling Act of 1991, § 45-24-31, they have the meanings stated" therein); § 45-24-31(20) ("Development. The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance; or any change in use, or alteration or extension of the use, of land.") For the purposes of the Court's current analysis, it is sufficient to note that the Zoning Board's approach—and more importantly, the Consent Judgment's exclusion of the pre-existing golf clubhouse from the Project's 26,000 square feet of commercial space—rests on a colorable interpretation of the CVD Ordinance, which the Town Council was entitled to adopt in resolving the federal litigation.

> project, which may be simultaneous, then obtain a conditional zoning change from the council, and then return to the planning board for subsequent required approval(s)." Section 45-23-61(b).

According to Thompson, this statute reveals that Ordinance 14-15 was merely a conditional zoning change and that the Applicants could not have acquired vested rights under that ordinance; from this, he concludes the Town Council was entitled to subsequently enact Ordinance 17-16 and that the terms of the latter ordinance must apply to the Project. (Pl.'s Br. 13-15.)

The Court cannot agree with Thompson's conclusion. Beyond representing a further attempt to reopen issues resolved through the Consent Judgment, his position is not supported by the language of the statute. As the title of § 45-23-61 indicates, that section sets out the "[p]recedence of approvals between planning board[s] and other local permitting authorities" and establishes a process of "conditional" approvals so that an applicant's need to obtain multiple approvals from separate authorities over a period of time will not result in procedural gridlock. Section 45-23-61. Given the procedural history of this matter, nothing in the terms of the statute indicates that the Planning Commission erred when it declined to enforce Ordinance 17-16 following the Town Council's subsequent decision to exempt the Project from that ordinance.

Returning to the Preliminary Plan Decision, based on "the residential and nonresidential use, the nearby properties, and the potential future development of the surrounding properties[,]" as well as "the historical development patterns and traditional village[,]" the Planning Commission found that the Project's "approximately 7.8 : 1" ratio of residential to nonresidential building coverage "is reasonable and is within the range contemplated for the CVD zone." Preliminary Plan Decision 7; *cf.* Zoning Ordinances § 21-95(3)(h) (requiring Planning Commission to consider, *inter alia*, the "amount and type of nonresidential use on nearby properties" and the "degree to which the proposed CVD may represent historic development patterns in the area or otherwise model traditional New England village types" when "determining the . . . ratio between the

residential and nonresidential uses"). The Preliminary Plan Decision also indicates that the Planning Commission considered other relevant factors, including the "capacity of the roadways" to handle traffic, the approval of the Project's proposed utilities, and the percentage of "protected open space or recreation area[.]" Preliminary Plan Decision 8; *cf.* Zoning Ordinances § 21-95(3)(h).

More generally, and despite the Preliminary Plan Decision's acknowledgment and adoption of the commercial space, bedroom, and residential unit limits set out in the Consent Judgment, the Planning Commission retained the authority to conduct the technical review associated with the preliminary plan stage and to hold the Project to the appropriate standards. *See* Planning Commission Hr'g Tr. 37:17-20, Feb. 18, 2020 (statement by Town Solicitor that Applicants "have to meet the same parameters, the same guidelines, the same checklist, as any other applicant has to meet with respect to engineering, drainage, and other issues"); *id.* at 41:1-6 (statement by Town Solicitor that "[if] the testimony comes out . . . that 212 units is a public safety issue, or something of that nature, you would be able to modify it, and we take our chance in Court if we have to go back"). Finally, and in contrast to the Master Plan Decision, the Preliminary Plan Decision contains a specific ratio of residential to nonresidential building coverage based on the square footage of the two types of uses, rather than using a rate that compares square footage to bedrooms or residential units. Preliminary Plan Decision 7; *see* R. Ex. 31 (Hr'g Tr. 112:24-114:22, Mar. 10, 2020) (discussing ratio of residential and nonresidential units and stating that square footage of residential units can be derived from detailed plans submitted by Applicants); *cf.* Master Plan Decision 3 (approving proposal of "between 24,000 and 40,000 square feet of commercial/retail and 106 dwelling units (188 bedrooms)" in addition to "[n]ine existing bedrooms [that] will also stay").

The end result is that the Preliminary Plan Decision supportably found the Project in substantive compliance with the provisions of the CVD Ordinance designed to "promote[ ] the development of a walkable village" through a mixture of residential and nonresidential spaces.[4] Zoning Ordinances § 21-95(3)(h); *cf. id.* Zoning Ordinances § 21-95(7)(e) ("Coverage of any lot by nonresidential and residential buildings shall be designed so as to create a walkable village."). As for Thompson's argument that the Planning Commission could not find that the Project complies with the CVD Ordinance because the overall percentage of nonresidential to residential building coverage was not set by the Planning Commission at the master plan stage, the Court's review in the instant appeal—as previously stated—is limited to the Project's preliminary plan approval. Thompson's window of opportunity to appeal the Master Plan Decision closed almost ten years ago. *See* Subdivision Regulations § 12.1.1 (allowing parties aggrieved by a decision of the Planning Commission to appeal to Zoning Board within "20 days of the day the decision is recorded and posted"). The Superior Court's appellate jurisdiction over decisions of zoning boards sitting as boards of appeal can only be invoked through the procedures set out in the Development Review Act, which provides in part that:

> "'An aggrieved party may appeal a decision of the zoning board of review to the superior court for the county in which the city or town is situated by filing a complaint stating the reasons of appeal within twenty (20) days after the decision has been recorded and posted in the office of the city or town clerk.'" *Jeff Anthony Properties v. Zoning Board of Review of Town of North Providence*, 853 A.2d 1226, 1231 (R.I. 2004) (quoting § 45–24–69(a)).

[4] The Court also notes that—in contrast to the requirement that "a minimum of 25 percent of the total land area" of the CVD district be dedicated as open space or recreation area—the provisions of the CVD Ordinance that are germane to the determination of the overall percentage of residential and nonresidential uses and building coverage do not mandate compliance with a specific limit or range. Zoning Ordinances § 21-95(16). As such, the Court discerns no error in the Planning Commission's finding that the Project's "7.8 : 1" ratio of residential to nonresidential building coverage is a "reasonable" one for a CVD district. (Preliminary Plan Decision 7.)

Our Supreme Court has made clear that "the filing of a notice of appeal with the clerk of the Superior Court for the appropriate county is an essential condition precedent to the invoking of the jurisdiction of the Superior Court to review a decision of a zoning board." *Mauricio v. Zoning Board of Review of City of Pawtucket*, 590 A.2d 879, 880 (R.I. 1991). Accordingly, any challenges that Thompson could have advanced against the contents of the Master Plan Decision through a timely appeal of that decision—including the condition that the "ratio of residential to non-residential shall be set at the preliminary stage" and the exclusion of the pre-existing golf clubhouse from the Project's nonresidential square footage—are not properly before the Court. Master Plan Decision 3-4, 6.; *see Piccirilli v. Sheppard*, No. PC-2001-0942, 2002 WL 32334822, at *7 (R.I. Super. Dec. 20, 2002) (holding that appellants "waived any objections that they could have raised with respect to the procedures that the Planning Board followed" by failing to appeal from that decision in the proper timeframe "and cannot now argue on appeal to this Court that the Zoning Board's [subsequent] decision to grant [a] special use permit was based on faulty procedures undertaken by the Planning Board").

C

Age Restrictions

Next, Thompson argues that the Preliminary Plan Decision must be overturned because the Applicants failed to file a new master plan, as required by Section (3)(c) of the CVD Ordinance, to address subsequent changes in the Project's "'restrictions [and] conditions per the original Zoning Map amendment[.]'" (Pl.'s Br. 20-21) (quoting Zoning Ordinances § 21-95(3)(c)). Specifically, Thompson highlights the Project's change from age-targeted residences in the Master Plan Decision to age-restricted residences in the Consent Judgment and Preliminary Plan Decision; he also alleges that, if Ordinance 14-15 approved an "implied" overall percentage of residential

and nonresidential building coverage, as Defendants contend, then that percentage must have fluctuated with the changes that followed the Master Plan Decision. *Id.* at 20-21 & n.7. In response, Defendants assert that the terms and conditions of the Project's master plan have not substantially changed, and that any minimal changes to the master plan's parameters have been approved and ratified by the Town Council and the Planning Commission. (Defs.' Mem. 16-17.)

Pursuant to § (3) of the CVD Ordinance, which governs the "[r]eview of development proposals within an existing or proposed CVD district[,] . . . [a]ny change to restrictions or conditions per the original Zoning Map amendment including, but not limited to, deed restrictions, covenants, maintenance agreements, and limits on commercial square footage, shall require a change to the master plan and a zone change application." Zoning Ordinances § 21-95(3), (3)(c). Notably, however, § (3)(c) does not state *how* the master plan must be changed. Thompson's contention that such a change necessarily requires Applicants to file a new master plan before proceeding to preliminary plan review is not supported by a comparison with (3)(b), which addresses situations "[w]here a CVD district is already established on the zoning map, but the development proposed as part of the initial zoning map change was not constructed per the conditions of the approved master plan within the required timeframe allowed by state law," by requiring that "new proposals or revisions to the master plan shall require review as a new major land development project"—which would necessarily involve the filing of a new master plan. Zoning Ordinances § 21-95(3)(b); *see* § 45-23-39(b) ("Major plan review consists of three stages of review, master plan, preliminary plan and final plan[.]").

Moreover, Thompson's contention that the Applicants can only implement substantive changes to the Project by returning to the master plan stage of review is inconsistent with the overall contours of the major land development process as defined by state law. The Development

Review Act defines a master plan as "[a]n overall plan for a proposed project site outlining general, rather than detailed, development intentions." Section 45-23-32(23). As such, "[i]t describes the basic parameters of a major development proposal, rather than giving full engineering details." *Id.* By contrast, it is the preliminary plan "stage of land development and subdivision review which requires detailed engineered drawings and all required state and federal permits." Section 45-23-32(35); *see* § 45-23-41(a)(4) (requiring submission of "copies of all legal documents describing the property" before "approval of the preliminary plan").

The Development Review Act also contemplates that applicants may wish to make "changes to the approved plans of land development projects" and sets out the appropriate procedures to do so for both minor and major changes; in the case of "[m]ajor changes, as defined in the local regulations," they may be approved "only by the planning board and must follow the same review and public hearing process required for approval of preliminary plans as described in § 45-23-41." Section 45-23-65(a), (c). That statutorily approved procedure is essentially what transpired in this case, where the change from age-targeted residential units to age-restricted was before the Planning Commission for consideration as part of the Project's preliminary plan application. *See, e.g.*, Hr'g Tr. 16:3-5, Feb. 18, 2020 (statement by Commissioner Paul Dion) ("It was already age targeted, so the age restricted is a substantive change, I believe."); Hr'g Tr. 100:9-14, Mar. 10, 2020 (examination of Town Solicitor by Commissioner Paul Dion) ("An age-restricted development, which I'm not happy with, means that the owner has to be 55 and older. . . . Not that [every] resident of that development has to be 55 and older."); R. Ex. 12 (e-mail from Nicole LaFontaine, Town Director of Planning and Development) ("Attached please find two draft decisions for Rolling Greens. Being that the discussion at the meeting did not necessarily meet a consensus on the age-restriction in the consent judgment as compared to being age-targeted, there

are TWO drafts."). Requiring Applicants to return to the master plan stage of review, rather than allowing them to address age restrictions—or building coverage—through the Preliminary Plan Decision, would thus be inconsistent with both the Consent Judgment and the Development Review Act. The Planning Commission did not commit an error of law when it declined to hold Applicants to that drastic remedy.[5] *See West*, 18 A.3d at 531.

D

Environmental and Water Supply Issues

In his final argument, Thompson asserts that the Planning Commission erred when it found that there would be no significant negative environmental impacts from the Project. (Pl.'s Br. 22.) According to Thompson, the Planning Commission improperly ignored Ferrari's uncontroverted expert testimony that the Project would negatively impact the Town's water resources by overstressing the aquifers on which the Town relies; Thompson also challenges the Planning Commission's decision to downplay the Project's negative impact on the grounds that the "town-wide water concerns" identified by Ferrari "'cannot be tied to this specific project and need[ ] to be addressed on a town-wide basis.'" *Id.* at 24-26 (quoting Preliminary Plan Decision 9). Thompson argues that the Planning Commission also failed to make an independent determination that the Project would have an adequate water supply, as required by the CVD Ordinance. *Id.* at 23-24.

[5] In addition to a "new master plan[,]" Thompson argues that the Applicants were required to file a "zone change application before proceeding to [the] Preliminary Plan." (Pl.'s Br. 21.) Once again, although § (3) of the CVD Ordinance states that "[a]ny change to restrictions or conditions per the original Zoning Map amendment . . . shall require a change to the master plan and a zone change application[,]" it does not indicate that the Planning Commission could not act on the preliminary plan application until after a zone change application was filed. Zoning Ordinances § 21-95(3)(c); *cf.* § 45-23-61(b) ("[T]he applicant shall first obtain an advisory recommendation on the zoning change from the planning board, . . . then obtain a conditional zoning change from the council, and then return to the planning board for subsequent required approval(s).").

Defendants respond by contending that the Planning Commission did not disregard Ferrari's evidence but considered it before choosing to rely on contrary evidence in the record, as the Planning Commission was entitled to do in its capacity as a fact-finding body. (Defs.' Mem. 14-15.) Specifically, Defendants highlight the Town Council's prior approval of the Project's water main extension and Pare's post-Consent Judgment review of the Project's impact on the Town's water supply. *Id.* at 15. Defendants also assert that the Planning Commission properly chose not to give substantial weight to Ferrari's testimony because it dealt with the Town as a whole and was thus not specific to the Project. *Id.* at 16.

As mandated by the Development Review Act, the Town's Subdivision Regulations state that "[i]n the instances where approval of any subdivision or land development by the planning commission is required, the commission, prior to granting approval, shall make [a] positive finding[ ]" that "[t]here will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval." Subdivision Regulations § 3.1(a), (a)(3); *cf.* § 45-23-60(a), (a)(3). Section (3)(f) of the CVD Ordinance also specifically provides that, as part of the development review process, "[t]he applicant must demonstrate that the proposed development would have an adequate water supply." Zoning Ordinances § 21-95(3)(f).

In the Preliminary Plan Decision, the Planning Commission addressed the issue of the Project's water supply by finding that the Property is "within the [Town's] Water Service Area" and that the Applicants "obtained approval by the Town Council for the extension of water main[s] on July 18, 2016." Preliminary Plan Decision 6; *see id.* at 7 ("The connection to the North Kingstown municipal water supply has been approved by the Town Council."). Due to the subsequent changes to the Project's size and scope as set forth in the Consent Judgment, "[t]he

revised plans were submitted for review to Pare[,]" who "determined that the total average daily demand (ADD) did not change and the revisions to the project did not warrant additional hydraulic modeling." *Id.* at 6. Also relevant to the Project's water supply is the Planning Commission's finding "that the irrigation system at the golf course is fueled by a pond that is on the site and is not going to be fueled by public water." *Id.* at 9. As a further condition of approval, the Planning Commission required that all outdoor watering and irrigation at the Project take place through a "private irrigation system" and without the use of "town water[.]" *Id.* at 11. These findings are supported by competent evidence in the record. *See* March 10, 2020 Planning Commission Materials 1357-58 (2019 Pare Letter) ("It is the opinion of Pare that the proposed modifications to this development will not material[ly] change the conclusions from Pare's 2016 assessment, which is to say the system has the capacity to provide adequate pressure to the development and meet the needed fire flow of 750 gpm."); March 10, 2020 Planning Commission Materials 1363-64 (2016 Water Main Approval) ("No inground irrigation systems shall be permitted to be connected to the municipal water system."); Hr'g Tr. 60:12-13, Feb. 18, 2020 (testimony of Project Engineer Samuel Hemingway) ("There is a restriction that any irrigation does not utilize town water.").

The Planning Commission also addressed the Project's effect on the Town's water supply as part of its overall finding that the Project would have no significant negative environmental impacts. Preliminary Plan Decision at 8-9. Here, the Planning Commission acknowledged Ferrari's expert testimony at the March 10, 2020 hearing, which Thompson presented to support his contention that the Project would "have a negative impact on the entire town." *Id.* at 9. Noting Ferrari's expertise with respect to the "town-wide water supply[,]" including "water distribution systems, design, operation, and water resources[,]" the Planning Commission found that the "town-wide water concerns" Ferrari raised "cannot be tied to this specific project and need[ ] to

be addressed on a town-wide basis." *Id.* The Planning Commission also reiterated that the Project had "already been accepted and approved by the Town Council for public water." *Id.; see id.* at 11 ("The impact on public and private water supplies and the proposed groundwater withdrawals have been reviewed through the water main extension approval process and the nitrate loading peer review.").

Turning to Ferrari's specific testimony at the March 10, 2020 hearing, Ferrari began by outlining his professional experience and expertise as a professional engineer specializing in "water supply development, water resources, . . . and related issues." (Hr'g Tr. 12:13-19, Mar. 10, 2020.) Ferrari explained that the Town obtains its water supply through wells that draw from the Hunt, Annaquatucket, and Pettaquamscutt aquifers, collectively known as "the HAP" or "the Sole Source HAP Aquifer System." *Id.* at 22:20-25. Two other public water systems, the Economic Development Corporation (EDC) and the Kent County Water Authority (Kent County), also draw from the Hunt aquifer. *Id.* at 23:5-11.

However, the water use estimates set out in the Town's Comprehensive Plan "show a deficit . . . in available water in the Hunt and Annaquatucket aquifers during the summer months, meaning that the amount of water that customers are using exceeds an amount that is considered protective of aquatic habitats." *Id.* at 20:20-21:1. Ferrari also emphasized that the "ecological effects" of overstressing the HAP aquifer "are pretty serious." *Id.* at 33:9; *see id.* at 31:9-11 ("With your current pumping regimen, you're basically turning the Hunt River and the Annaquatucket River into long, skinny ponds."); *id.* at 36:18-19 ("When you overpump an aquifer, by the way, you have water quality problems[.]"). According to Ferrari, the "crux" of his concerns regarding the Project and its effect on the Town's water supply centers on the Comprehensive Plan's projection that, "in the next 20 years, North Kingstown's average day demand will increase by 1.7

million gallons per day, and the peak-day demand will increase by 4 million gallons a day, bringing it close to the maximum capacity and exceeding the environmental protection goals established for the Hunt-Annaquatucket-Pettaquamscutt aquifer complex." *Id.* at 21:3-11.

As a result, Ferrari concluded that the Project and its associated increase in water usage would be "additive to municipal water demands, contrary to the objectives of the Comprehensive Plan[,]" such that the Planning Commission could not make the required finding of no significant negative environmental impacts. *Id.* at 20:9-11, 40:21-41:2; *see id.* at 41:2-5 ("The plan itself identifies negative impacts from overstressing your water supply aquifers, which is exactly what's happening here."). With regard to the Pare report, Ferrari did not disagree with its conclusion that "the municipal system can provide adequate pressure to the proposed development during average demand day, maximum demand day and peak-hour scenarios[,]" but indicated that this finding was not responsive to the issue of overstressing the HAP aquifer. *Id.* at 21:13-24; *see id.* at 32:23-33:4 ("Every time you add more major demands on your system, the issue isn't . . . can your 12-inch water main in Ten Rod Road . . . push the water through to the right flow rate and pressure to meet a given user demand? . . . Your issue is, do you have the supply available[?]"). In his report, Ferrari elaborated on his response to Pare's hydraulic modeling, stating that "[t]he hydraulic evaluation by Pare Corporation demonstrates that although the system is capable of meeting the residual pressure requirements, it is not capable of meeting the [Maximum Day Demand] capacity requirements, unless ALL water supply wells are operating concurrently (including Well No. 10), an extremely high risk scenario." (Ferrari Report 13) (emphasis omitted).

At the March 10, 2020 hearing, Ferrari hastened to add that the issues he identified would be "true for any significant development that is being served by the system[,]" as "[a]ny large-scale development is going to be a significant addition to the municipal water demands." (Hr'g Tr.

20:13-16, Mar. 10, 2020.) In fact, Ferrari was clear that the Town already "has a problem" with its water resources and is "boxed in[,]" as it "can't produce any more water out of the HAP aquifer than [it's] producing right now because of the limitations of [the] low-flow summer season." *Id.* at 34:16-19; *see id.* at 34:22-24 ("[T]his has been established for a long time, you need more water source capacity."); *id.* at 37:16 ("I've been saying this for years."). Ferrari noted that "all kinds of alternatives" had been floated to address this problem, both as short-term and long-term solutions, but that "they all have price tags associated with them." *Id.* at 35:2-18; *see id.* at 43:10-12. Ferrari also stated that the Rhode Island Department of Health (RIDOH) was debating how to deal with water quality issues posed by "perfluoroalkyl and polyfluoroalykyl substances[,]" or PFAS; because several of the Town's wells have "PFAS detects in them[,]" the PFAS limits that RIDOH may set in the future have the potential to significantly affect the Town's water supply by "requir[ing] significant capital expenditures for treatment" and "accelerat[ing] [the] need to develop new water sources." *Id.* at 33:13-34:15. Ultimately, Ferrari reiterated that he didn't "have any specific issue, per se," with the Project, but that his "objection and [his] warning to [the] town [was] this: Every time you tack on another 25,000 or 50,000 gallons a day of average daily demand, where are you getting the water from?" *Id.* at 35:20-36:2.

The Court has no difficulty in finding that the consequences of overstressing the HAP aquifer are among the type of negative environmental impacts that the Planning Commission was required to consider under state law. *See* § 45-23-60(a)(3); *cf.* Zoning Board Decision 8 ("[I]t is not even clear that the long-term water supply issues raised by Ferrari are within the types of 'negative environmental impacts' addressed in Section 3.1(3) of the Subdivision Regulations."). However, this Court must "give[ ] deference to the findings of fact of the local planning board[,]" and the Court's "review 'is confined to a search of the record to ascertain whether the board's

decision rests upon 'competent evidence' or is affected by an error of law.'" *West*, 18 A.3d at 531 (quoting *Kirby*, 634 A.2d at 290). "Therefore, the . . . Court [can] not consider the credibility of witnesses, weigh the evidence, or make its own findings of fact." *Munroe*, 733 A.2d at 705 (citing *Kirby*, 634 A.2d at 290). "While it is generally true that there is no talismanic significance to expert testimony [and it] may be accepted or rejected by the trier of fact, . . . it is also true that, if expert testimony before a zoning board is competent, uncontradicted, and unimpeached, it would be an abuse of discretion for a zoning board to reject such testimony." *Murphy v. Zoning Board of Review of Town of South Kingstown*, 959 A.2d 535, 542 (R.I. 2008) (internal quotation marks and citations omitted); *see id.* at 542 n.6 ("It should go without saying that expert testimony proffered to a zoning board is not somehow exempt from being attacked in several ways."). Expert testimony may thus be fairly rejected in favor of other forms of legally competent evidence. *See, e.g.*, *Restivo v. Lynch*, 707 A.2d 663, 671 (R.I. 1998).

As a result, the Court cannot find that the Planning Commission erred by choosing to rely on the Town Council's July 18, 2016 approval of the Project's connection to the Town water supply—and Pare's 2019 calculations that the proposed changes to the Project would have a "relatively insignificant" effect on the "total system demand"—rather than on Ferrari's testimony. *See* March 10, 2020 Planning Commission Materials 1357-58 (2019 Pare Letter); *id.* at 1363-64 (2016 Water Main Approval). Although Ferrari spoke to the causal connection between the Project's increased demand on the Town's water supply and the negative impacts on the HAP aquifer that were likely to result, his testimony indicated that the same would hold true for *any* increased demand on the Town's water supply. *See, e.g.*, Hr'g Tr. 35:20-22, Mar. 10, 2020 ("I don't have any specific issue, per se, with the Rolling Greens development."). The proper focus of the Planning Commission's inquiry was whether "[t]here will be no significant negative

environmental impacts *from* the proposed development[.]" Section 45-23-60(a)(3) (emphasis added). When combined with Ferrari's testimony regarding other factors affecting the HAP aquifer and the Town's water supply, the causal connection between the Project's water usage and the attendant risk of environmental harms becomes increasingly attenuated, such that the Planning Commission could justifiably find that the "town-wide concerns cannot be tied to this specific project[,]" especially when the Town Council had already approved the Project's water main extension. Preliminary Plan Decision 9; *see* Hr'g Tr. 23:5-20, Mar. 10, 2020 (discussing average daily extractions from Hunt aquifer by EDC and Kent County water systems); *cf. Restivo*, 707 A.2d at 668-69 (finding that abutter's testimony that his "chronic problems with basement flooding and poor drainage in his back yard" had worsened "since the construction of nearby duplexes" was competent evidence that proposed development nearby would exacerbate the issue).

In addition, Ferrari was unequivocal in his opinion that the HAP aquifer issue was one that predated the Project and that the Town would need to address *regardless* of whether the Project was approved. *See, e.g.*, Hr'g Tr. 34:16-19, Mar. 10, 2020; *see also id.* at 33:11-12 ("Sooner or later, you're going to run out of water."). Given the scope and complexity of the problem, the Court agrees with the Planning Commission's conclusion that the issue must be addressed on a town-wide level—a responsibility that devolves squarely upon the Town Council as the Town's governing body.[6] *See North End Realty, LLC v. Mattos*, 25 A.3d 527, 535 (R.I. 2011) (quoting *Town of East Greenwich v. O'Neil*, 617 A.2d 104, 111 (R.I. 1992)) ("'[C]ities and towns that have adopted home rule charters are free to exercise authority over purely local concerns.'"); North

[6] Given the EDC and Kent County water systems' extractions from the Hunt aquifer, as well as the potential effects of RIDOH's future PFAS limits, issues with the HAP aquifer and the Town's water supply may in fact need to be addressed on a state-wide level.

Kingstown Town Charter § 107 (vesting the Town's "power to adopt and amend local laws and ordinances relating to its property, affairs and government" in Town Council).

Whatever steps the Town Council might take in the future if it follows Ferrari's advice to "very aggressively and proactively address this issue [of] your effective water supply capacity to deal with the overstressing of your aquifers," the Town Council had already decided in 2016 to specifically approve the Project's connection to the Town's water system, based in part on the hydraulic modeling conducted—and later reviewed—by Pare.[7] Hr'g Tr. 54:18-21, Mar. 10, 2020; *see id.* at 103:18-21 (statement of Chairperson James Grundy) ("[M]y concern is that this application has a vested right to water granted to it by the Town Council, whose authority I don't believe this commission can super[s]ede[.]"); *see also id.* at 41:11-22 (examination by Commissioner Paul Dion) (confirming that Ferrari's analysis did not consider "any enhancements to the water system in the future" and questioning the ongoing validity of the 2012 Water Resources Board Strategic Plan on which Ferrari relied); *cf. Restivo*, 707 A.2d at 671 (noting that town council questioned the weight of expert testimony). Under those circumstances, and applying the appropriately deferential standard of review, the Court cannot find that the Planning Commission erred by weighing the conflicting evidence as it did.

[7] For example, although Ferrari acknowledged that a short-term moratorium on development might be necessary to address the Town's water supply issues, only the Town Council could properly take that action. (Hr'g Tr. 54:23-24, Mar. 10, 2020.) *See Ocean Road Partners v. State*, 670 A.2d 246, 250-51 (R.I. 1996) ("The trial justice took note of the fact that the town had adopted a comprehensive building moratorium[.]"); *see also Q.C. Construction Co. v. Gallo*, 649 F. Supp. 1331, 1331 (D.R.I. 1986) ("This case involves the constitutionality of a residential building moratorium enacted by Resolution of the Johnston[,] Rhode Island Town Council on July 11, 1983.").

IV

Conclusion

For the foregoing reasons, Count I of Thompson's Complaint is denied and dismissed and the Zoning Board Decision is affirmed. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Rickey Thompson v. Town of North Kingstown Zoning Board of Appeals, et al.**
CASE NO:	**WC-2020-0268**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**August 29, 2022**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Kelley M. Salvatore, Esq.;** **Christopher A. D'Ovidio, Esq.**
For Defendant:	**Alexandra G. Lancey, Esq.** **Mark W. Freel, Esq.** **Nicholas J. Hemond, Esq.** **Matthew F. Callaghan, Jr., Esq.**