

STATE OF RHODE ISLAND

NEWPORT, SC.

SUPERIOR COURT

(FILED: November 1, 2023)

BERNARD F. RADOBICKY, JR., :  
MORGAN W. O’HARA, ROBERT L. :  
FADDEN, and SUSAN FADDEN :  
Appellants, :

v. :

C.A. No. NC-2022-162

TOWN OF JAMESTOWN, TOWN OF :  
JAMESTOWN PLANNING :  
COMMISSION, and CHURCH :  
COMMUNITY HOUSING :  
CORPORATION :  
Appellees. :

**DECISION**

**KEOUGH, J.** Before this Court is an appeal from a decision of the Jamestown Planning Commission (Commission) approving a comprehensive permit application initiated by Appellee Church Community Housing Corporation (CCHC). CCHC is a not-for-profit affordable housing developer and the Town of Jamestown’s (Town) affordable housing partner. CCHC seeks to subdivide an already dimensionally nonconforming lot for the purpose of developing affordable housing. In approving the application, the Commission acted as a local review board pursuant to the Rhode Island Low and Moderate Income Housing Act, G.L.1956 chapter 53 of title 45. This Court’s jurisdiction is pursuant to § 45-53-4(a)(4)(x).<sup>1</sup>

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<sup>1</sup> As will be further discussed *infra*, Appellants challenge the Court’s subject-matter jurisdiction over this appeal.

# I

## Facts and Travel<sup>2</sup>

### A

#### The Town's Comprehensive Community Plan

The Town of Jamestown encompasses Conanicut Island, an island approximately nine miles long and one-and-a-half miles wide. (Comp. Plan 19.)<sup>3</sup> According to its most recent Comprehensive Community Plan, the Town's "largest land use issue is . . . potable water." *Id.* at 39. "In general, Jamestown's geology yields the lowest quantity of groundwater in the State of Rhode Island." *Id.* at 82. The Town has therefore identified "hydrologically sensitive areas" requiring concerted conservation efforts and greater attention to potential pollutants, including septic systems. *Id.* at 60. One such critical area is the Town's primary, center-island drinking water watershed. *Id.* at 78.

The Town's Comprehensive Community Plan includes two primary strategies to conserve and protect this watershed. First, the Town has established a Rural Residential Zoning District (RR-200), a watershed conservation district "intended to protect the Town water supply reservoir

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<sup>2</sup> The certified Record is a single 243-page file containing thirty-three documents. (R. at 4-5.) Citations to the record will reference the relevant page number for the consolidated file and not the individual document pages.

<sup>3</sup> The certified Record before this Court includes only excerpts of the Town's Comprehensive Community Plan. *See generally* R. at 145-161. Therefore, the Court takes judicial notice of the full version of the 2015 Comprehensive Community Plan, as amended April 6, 2015. *See* JAMESTOWN, R.I., 2015 *Comprehensive Community Plan*, [https://planning.ri.gov/sites/g/files/xkgbur826/files/documents/comp/2015/jam\\_10yp\\_14\\_amd04\\_0615-1.pdf](https://planning.ri.gov/sites/g/files/xkgbur826/files/documents/comp/2015/jam_10yp_14_amd04_0615-1.pdf); *see also* *Trazi v. Town of Scituate Zoning Board*, No. PC 05-1700, 2006 WL 391881, at \*6 (R.I. Super. Feb. 16, 2006) (judicially noticing a town's comprehensive plan); *Toohey v. Kilday*, 415 A.2d 732, 734 n.1 (R.I. 1980) (observing that a court "may take notice of the ordinance without its having been admitted into evidence, since the board itself, as a municipal tribunal, could have 'judicially noticed' the regulation enacted by the municipality that created it"). The Town's Comprehensive Community Plan is a 308-page document that is not consistently paginated. Citations will be indicated as "Comp. Plan" followed by the overall file page number.

while permitting residential dwelling at low density.” *Id.* at 33, 78. The RR-200 district requires a minimum lot size of 200,000 square feet for residential construction. *Id.* at 33. Nevertheless, development can occur on smaller nonconforming lots following development plan review by the Town’s Planning Commission. *Id.* at 78; *see also* TOWN OF JAMESTOWN, RI, REV. CODE OF ORDINANCES, ch. 82, art. 8, § 82-801 (Supp. No. 6 2020). Currently, the Town’s watershed is 17 percent developed. (Comp. Plan 78.) Second, the Town has aggressively pursued a land preservation program specifically focused on protection of the public drinking-water watershed and other natural resources. *Id.* at 123. “Approximately 70 percent of the watershed area is permanently protected” and “[t]he Town goal is to purchase the remaining undeveloped land that falls within this protective watershed . . . to permanently protect this land for the Town residents.” *Id.*

In addition to its watershed concerns, “Jamestown is, and has been, concerned about the affordability of its housing.” *Id.* at 180. According to Rhode Island Housing’s July 2012 assessment, only 4.19 percent of the Town’s housing is considered low- or moderate-income, compared to the statutory-required minimum of 10 percent. *Id.* at 186. Jamestown needs an additional 191 low- to moderate-income units to reach the 10 percent goal. *Id.*

There are, however, numerous barriers to achieving that goal. “Land and home prices are at an historical high point.” *Id.* at 41. As such, the Town has prioritized “actively pursu[ing] affordable housing to add to its ‘permanently affordable’ housing stock.” *Id.* The Town’s Comprehensive Community Plan also identifies zoning as a barrier to its goal of affordable housing development. *Id.* at 189-90. Although the Town’s zoning is, in most cases, designed based on environmental factors—primarily watershed conservation, as discussed above—the Comprehensive Community Plan acknowledges that “increasing density” may nevertheless occur

for affordable housing so long as it is “done carefully with public health, safety and welfare being considered.” *Id.* at 190.

The Town’s Comprehensive Community Plan harmonizes these two key challenges of watershed conservation and affordable housing as follows:

“Jamestown’s island nature presents a number of constraints that make it challenging to develop affordable housing. There is a limited amount of land on the island, and much of it is protected for environmental or open-space reasons. Infrastructure, especially for water, is very limited. Housing and land prices are among the highest in the State. Zoning and community opposition are additional barriers. These obstacles may be daunting, but most can be overcome through flexible land-use policies, public education, and creativity[.]” *Id.* at 193.

Further, the Plan states that “[t]he Town must pursue partnerships between organizations such as CCHC and The Nature Conservancy in order to simultaneously achieve the goal of open space preservation and the goal of affordable housing development.” *Id.* at 201. The Comprehensive Community Plan also identifies comprehensive permitting, pursuant to the Rhode Island Low and Moderate Income Housing Act, as a “valuable tool” to provide such flexibility, “allow[ing] the Town to change the use of a property or its development density without changing the zone.” *Id.* at 195.

## **B**

### **Rhode Island Low and Moderate Income Housing Act**

Enacted in 1991 to address “an acute shortage of affordable, accessible, safe, and sanitary housing for . . . citizens of low and moderate income,” § 45-53-2, the Rhode Island Low and Moderate Income Housing Act (the Act) “provides for a streamlined and expedited application procedure whereby a single application for a comprehensive permit to build low and moderate income housing in lieu of separate applications to the applicable local municipal boards may be

submitted to the [local review board] of a city or town.” *East Bay Community Development Corp. v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1145 (R.I. 2006) (internal quotations and alterations omitted) [hereinafter *East Bay*]; *see also* § 45-53-4(a). Notwithstanding this consolidated application process, any application for a major subdivision or major land development project requires multiple stages of review and approval. *See* § 45-23-39(b) (prescribing stages of review). After the local review board conducts a public hearing on the applicant’s master plan and renders its initial decision, the project is then subject to preliminary and final plan review “according to local regulations promulgated pursuant to chapter 23” of title 45. *See* § 45-53-4(a)(4)(iv); *see also* § 45-23-41 (describing preliminary plan requirements); § 45-23-43 (describing final plan requirements).

“Requirements for the preliminary plan and supporting materials for this phase of the review include, but are not limited to: engineering plans depicting the existing site conditions, engineering plans depicting the proposed development project, a perimeter survey, all permits required by state or federal agencies prior to commencement of construction, including permits related to freshwater wetlands, the coastal zone, floodplains, preliminary suitability for individual septic disposal systems, public water systems, and connections to state roads.” (Section 45-23-41(a)(2).)

“The provisions of the [A]ct confer upon the [local review board] considerable powers in *granting* an application for a permit.” *East Bay*, 901 A.2d at 1145 (emphasis added). A local review board, “when passing upon an application . . . is not merely performing its limited statutory duties, but rather is vested with significant discretion and responsibility to act in the best interest of the community.” *Town of Coventry Zoning Board of Review v. Omni Development Corp.*, 814 A.2d 889, 897 (R.I. 2003). “The [A]ct is more circumscribed with respect to the [local review board’s] ability to *deny* an application,” *East Bay*, 901 A.2d at 1145-46 (emphasis added), limiting the review board’s authority to deny an application to five enumerated deficiencies, including

when “the proposal is not in conformance with the comprehensive plan[.]” (Section 45-53-4(a)(4)(vii)(C).)

## C

### 91 Carr Lane

On August 17, 2018, the Town purchased a nearly seven-acre parcel located at 91 Carr Lane, Assessors Plat 4, Lot 52. (R. at 81.) The parcel is in the Town’s RR-200 district, “at the headwaters of the Town of Jamestown[’s] primary drinking water watershed and contiguous to 133 acres of Town owned protected land in the watershed area.” *Id.* at 48. The Town subdivided the parcel to create two separate lots. *Id.* The new Lot 47 carved out five-and-a-half acres, or approximately 241,133 square feet, as a watershed conservation lot with a conservation easement prohibiting development. *Id.* at 81. The revised Lot 52 then comprised the remaining 1.35 acres, or approximately 59,119 square feet, and included a preexisting three-bedroom, two-bathroom residence, a detached garage, and a preexisting nonconforming septic system. *Id.* at 72, 81, 101. In approving the subdivision, the Zoning Board decision acknowledged that the Town intended to sell Lot 52 to CCHC and stated that the subdivision and related sale achieved the goals of watershed protection, open space conservation, and affordable housing development. *Id.* at 102, 118. The Zoning Board noted, however, that neither the “density of the existing lots” nor “water use” would change as a result of this subdivision. *Id.* at 102; *see also id.* at 124, 126.

In October 2018, as planned, the Town and CCHC executed a purchase and sale agreement for Lot 52. *Id.* at 81. In early 2022, CCHC applied for a comprehensive permit for a major subdivision and major land development pursuant to the Act (the Application).<sup>4</sup> *Id.* at 6-9. The

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<sup>4</sup> A reviewing Court applies “the law in effect at the time when the applicant-developer submitted its application for a permit to the [local review board.]” *East Bay*, 901 A.2d at 1144. CCHC submitted its application on March 21, 2022. (R. at 6.) Although the General Assembly has since

Application sought approval for three single-family dwelling units—one market-rate unit comprising the existing residence and two “Low Moderate Income Dwelling Units.” *Id.* at 8, 48.

CCHC included a “Project Narrative” stating that:

“This proposal takes into account the fragile watershed and proposes all new Advanced Treatment On-Site Wastewater Treatment Systems (OWTS) that include denitrification, including for the existing house. These OWTS systems are located in the front of the lots, to provide the greatest separation distance from the wetlands associated with the drinking water reservoir. This project has been designed to be in compliance with all [Department of Environmental Management (DEM)] standards for wetlands and OWTS systems including special standards for watersheds.” *Id.* at 48.

CCHC also included with the Application a report by a certified professional planner, Nancy Letendre. *Id.* at 13-22. Ms. Letendre observed that the Town’s goal for the original seven-acre parcel at 91 Carr Lane had always been “both affordable housing production and watershed and open space protection[.]” *Id.* at 14. In her professional opinion, local concerns relating to protection of the surface water reservoir and groundwater aquifers did not outweigh the need for low- and moderate-income housing. *Id.* at 15. In support, Ms. Letendre outlined the historic and increasing housing affordability issues in the Town and observed that watershed protection would be achieved by CCHC’s adherence to “state regulatory requirements and best practices regarding sewage disposal, stormwater handling, erosion control, etc.” *Id.* at 19. In her opinion, neither the zoning ordinance nor the Comprehensive Community Plan categorically prohibited increased density in the RR-200 district, so long as potential negative impacts on water quality were adequately mitigated. *Id.*

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amended the Act, *see, e.g.*, P.L. 2022, ch. 413, § 1, eff. June 30, 2022; P.L. 2022, ch. 414, § 1, eff. June 30, 2022, those amendments have not materially altered the statutory language relevant to this appeal. Nevertheless, throughout this Decision, the Court cites to the version of the Act effective as of March 21, 2022. *See* P.L. 2006, ch. 371, § 1, eff. July 7, 2006; P.L. 2006, ch. 511, § 1, eff. July 7, 2006.

## D

### Public Hearings and the Commission's Decision

In consideration of the Application, the Commission conducted hearings on April 20 and May 18, 2022 and recorded its approval in a written decision on May 25, 2022 (the Commission's Decision). *Id.* at 67-80, 176-95, 234-42.

In advance of the April hearing, the Town's consulting planner, Ashley Sweet, prepared a report for the Commission (Planner's Report). *See generally* R. at 81-90. The Planner's Report identified that the Town's Comprehensive Community Plan expressly discussed the import of the CCHC partnership and that the Plan targeted "appropriate parcels outside the village area for development as affordable housing," including adaptive reuse of underutilized buildings and existing homes. *Id.* at 85-86. The Planner's Report further provided that the Town's affordable housing goals existed alongside other goals to protect groundwater resources, pursue aggressive land acquisition in the center-island watershed, and conserve open space. *Id.* at 87-88. It therefore concluded that CCHC's Application—including consideration of the prior 5.5-acre conservation decision—was consistent with all these goals. *Id.* at 88.

At the April hearing, CCHC's counsel informed the Commission that the Town had only achieved 4.5 percent low- and moderate-income housing, compared to the State requirement of 10 percent. (R. at 70.) He acknowledged hydrogeological and environmental concerns associated with increased density but stated that those issues would be addressed "down the line," including through a CCHC-procured hydrogeological report. *Id.* at 70-71. CCHC's executive director represented that the Environmental Protection Agency (EPA) had stated that the planned development at 91 Carr Lane would not impact the aquifer so long as CCHC incorporated certain protective measures in the site plan. *Id.* at 72. Michael Darveau, an expert planning engineer, also



testified at the April hearing and indicated that EPA’s referenced regulations and guidelines had in fact been incorporated into CCHC’s site design. *Id.* at 73.<sup>5</sup> He further stated that, in his professional opinion, the planned installation of new OWTS would have no significant negative environmental impacts, and the planned development would not adversely impact safe sewage disposal or the availability of potable water. *Id.* Finally, Ms. Letendre also testified on behalf of CCHC, reiterating her professional opinion that “RR-200 doesn’t prevent development, it says proceed with caution.” *Id.* at 74.

In opposition to the Application, Appellants’ counsel then shared with the Commission the same concern presented in this appeal—that the proposed development conflicts with the Comprehensive Community Plan’s directive to protect the aquifer by limiting density in the RR-200 district. *Id.* at 75-76.

At the May hearing, Appellants’ counsel submitted a memorandum of law to the Commission, again challenging the appropriateness of increased density in the RR-200 district. *See generally id.* at 196-231. The Commission acknowledged Appellants’ concerns regarding watershed preservation but questioned whether requiring additional hydrogeological information from CCHC at the master plan stage was necessary. *Id.* at 185-86. In response, CCHC stated that it had already retained a hydrologist and suggested that the Commission could require a favorable hydrogeology report as a condition of approval. *Id.* at 185. The Commission then approved CCHC’s Application by a vote of 5-1. *Id.* at 187. It recognized the public concern for the

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<sup>5</sup> These protections include: “1. No lubricants, fuels, or solvents used in construction and any site development work are allowed to spill, infiltrate, or degrade aquifer water quality[;] 2. Stormwater from the site is managed in compliance with the Rhode Island Stormwater Management Guidance document[; and] 3. Stormwater from this site is treated in accordance with EPA National Pollutant Discharge Elimination Systems (NPDES) General Permit for Construction Activities effective February 16, 2017.” (R. at 83, 97.)

watershed, but stated that “the Planning Commission ha[d] been presented with no facts evidencing significant negative environmental impacts from the proposed development as shown on the plans, with all required conditions of approval” and observed that CCHC had otherwise engaged a professional land surveyor and engineer “to ensure that the new development will not impact the watershed[.]” *Id.* at 192. As conditions of approval, the Commission required that: (1) “[t]he proposed OWTS to be installed for all three lots shall be denitrification units as proposed on the master plan site plans and associated documentation and permitting from [DEM],” *id.* at 193; and (2) “[p]eer review of hydrological study and other issues identified may take place at the Preliminary stage by experts hired by the Town at the discretion of the Planning Commission.” *Id.* at 195.

Now before the Court is Appellants’ timely appeal from the Commission’s Decision.

## II

### Standard of Review

Although the Act does not specify a standard of review for appeals to this Court pursuant to § 45-53-4(a)(4)(x), our Supreme Court has determined that the standard provided in § 45-24-69 applies. *See Curran v. Church Community Housing Corp.*, 672 A.2d 453, 454 (R.I. 1996). Under that standard:

“[t]he court shall not substitute its judgment for that of the [Commission] as to the weight of the evidence on questions of fact. The court may affirm the decision . . . 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, or ordinance provisions;
- “(2) In excess of the authority granted to the [Commission] 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 45-24-69(d).)

After *Curran* was decided, the General Assembly amended § 45-53-5(d) to prescribe this same standard of review for appeals under the Act from any decision of the State Housing Appeals Board. See P.L. 2006, ch. 371, § 1; P.L. 2006, ch. 511, § 1. Although the Act continues to lack an explicit standard for appeals to this Court from the local review board, the 2006 amendment to § 45-53-5 reinforces the *Curran* Court’s conclusion as to the legislature’s intended standard of review.

Therefore, this Court will “examine the whole record to determine whether the findings of the [Commission] were supported by substantial evidence.” *Lloyd v. Zoning Board of Review for City of Newport*, 62 A.3d 1078, 1083 (R.I. 2013) (quoting *Apostolou v. Genovesi*, 120 R.I. 501, 507, 388 A.2d 821, 824 (1978)). “Substantial evidence is defined as ‘such relevant evidence that a reasonable mind might accept as adequate to support a conclusion[ ] and means [an] amount more than a scintilla but less than a preponderance.’” *Iadevaia v. Town of Scituate Zoning Board of Review*, 80 A.3d 864, 870 (R.I. 2013) (quoting *Pawtucket Transfer Operations, LLC v. City of Pawtucket*, 944 A.2d 855, 859 (R.I. 2008)). If the Court finds that the Commission’s Decision was supported by substantial evidence in the whole record, then the decision must stand. *Lloyd*, 62 A.3d at 1083.

Questions of law are reviewed *de novo*. *Tanner v. Town Council of Town of East Greenwich*, 880 A.2d 784, 791 (R.I. 2005).

### III

#### Analysis

##### A

#### Subject-Matter Jurisdiction

As a preliminary matter, CCHC challenges this Court’s subject-matter jurisdiction over this appeal. (CCHC Mem. 11-16.) Just as the Act does not contain a standard of review for judicial appeals from the local review board, it also does not include specific procedural requirements for an appeal to this Court, outside of providing that “[a]ny person aggrieved by the issuance of an approval may appeal to the superior court within twenty (20) days of the issuance of approval.” (Section 45-53-4(a)(4)(x).) CCHC argues that, in the absence of further instruction in the Act, § 45-23-71(a) of the Development Review Act sets forth the appellate procedure necessary to confer jurisdiction on this Court. (CCHC Mem. 11.) The Development Review Act provides that “[w]hen the complaint is filed by someone other than the original applicant or appellant, the original applicant or appellant and the *members* of the planning board shall be made parties to the proceedings.” (Section 45-23-71(a) (emphasis added).) CCHC therefore asserts that including the individual Commission members as named defendants to this action was “an essential condition precedent to the invoking of the jurisdiction of the Superior Court[.]” (CCHC Mem. 13 (quoting *Mauricio v. Zoning Board of Review of City of Pawtucket*, 590 A.2d 879, 880 (R.I. 1991)).

It is true that our Supreme Court has looked to the Development Review Act and similar statutes governing appeals from planning and zoning boards for guidance as to standards and procedures when the Act is otherwise silent. *See, e.g., Curran*, 672 A.2d at 454. It does not follow, however, that instructive reference to analogous statutes can serve to divest this Court of the jurisdiction otherwise conferred by § 45-53-4(a)(4)(x). Nothing in the Act indicates that this

Court’s jurisdiction is dependent on the inclusion of specific parties. *See generally* ch. 53 of title 45. In fact, § 45-53-5, which governs appeals to the State Housing Appeals Board from an application denial, does not require notice to individual Commission members. (Section 45-53-5(a)-(b).) That section requires only that the appeal be filed with the appeals board and then provides that “[t]he appeals board shall immediately notify the local review board of the filing of the petition for review.” (Section 45-53-5(c)).

To the extent an appellant fails to include all persons needed for just adjudication, Rule 19 of the Superior Court Rules of Civil Procedure would provide the necessary procedural protections for mandatory joinder of indispensable parties. *See Middle Creek Farm, LLC v. Portsmouth Water & Fire District*, 252 A.3d 745, 754 (R.I. 2021) (“Rule 19 . . . requires the joining of indispensable parties.”); *see also Carbone v. Planning Board of Appeal of Town of South Kingstown*, 702 A.2d 386, 388 (R.I. 1997) (“The rules of civil procedure insofar as applicable, shall govern the review proceedings.”). CCHC passingly refers to “indispensable parties” in its memorandum to this Court but offers no argument as to the individual Commission members’ necessity or indispensability. (CCHC Mem. 13.) In any event, the record does not demonstrate that any individual member would suffer “separable consequences” or have an individual interest divorced from the Commission itself that would necessitate joinder under Rule 19. *See Robert B. Kent et al., Rhode Island Civil & Appellate Procedure* § 19:1 at 208-09 (2022-2023).

## **B**

### **Consistency of CCHC’s Master Plan & Jamestown’s Comprehensive Community Plan**

On the merits, Appellants advance a single argument—that the record and the Commission’s Decision failed to establish that “[t]he proposed development is consistent with local needs as identified in the [local comprehensive community plan.]” (Appellants’ Mem. 12

(citing § 45-53-4(a)(4)(v)).) Appellants contend that “CCHC’s application increases affordable housing in a manner contrary to the comprehensive plan . . . [by] clash[ing] with provisions relating to water conservation . . . [and] increasing density on an already-substandard lot in the RR-200 zone.” *Id.* at 2. In short, they assert that the Comprehensive Community Plan makes plain that such development is “verboten” in the RR-200 zone. *Id.* at 2, 14.

Although Appellants strenuously urge this Court to consider various approaches to judicial construction of ambiguous comprehensive plans, no such consideration is required—the Town’s Comprehensive Community Plan unambiguously provides that (1) “the Town will identify parcels suitable for construction of affordable housing outside the village area” (Comp. Plan 205); and (2) “increasing density” may occur for affordable housing in the watershed conservation area so long as it is “done carefully with public health, safety and welfare being considered.” *Id.* at 190. “[W]e give clear and unambiguous language in an ordinance its plain and ordinary meaning.” *Pawtucket Transfer Operations, LLC*, 944 A.2d at 859.

Nevertheless, Appellants contend that “nothing supports the idea that . . . ‘outside the village area’ includes the RR-200 zone” or that the Comprehensive Community Plan otherwise “dictate[s] that this kind of increase in density should occur elsewhere in Jamestown, either in the Village or other areas zoned RR-80, -40, or -20.” (Appellants’ Mem. 27, 29.) While the Comprehensive Community Plan recognizes that “increased density . . . is most appropriate in the areas of the Village,” *see* Comp. Plan 202, this statement does not dictate that the downtown village is the *only* appropriate area. *Cf. Cohen v. Duncan*, 970 A.2d 550, 563 (R.I. 2009) (reasoning that the absence of an affirmative grant of permission does not equate to an affirmative denial). The mere fact that other zoning districts permit greater density does not necessitate the conclusion that increased density is prohibited in the RR-200 zone, especially where the Comprehensive

Community Plan allows such development when “done carefully.” (Comp. Plan 190.) “[A] municipality has discretion in choosing options for conforming its ordinances or land use decisions to its comprehensive plan,” *N & M Properties, LLC v. Town of West Warwick ex rel. Moore*, 964 A.2d 1141, 1147 (R.I. 2009), and that discretion is even more significant in the specific context of the Act. *Omni Development Corp.*, 814 A.2d at 897.

Consequently, the Comprehensive Community Plan does not reflect a blanket prohibition on further development in the RR-200 zone, but instead embodies a forward-looking directive that the Commission “carefully” consider the Town’s coexistent goals of affordable housing and watershed protection. The record demonstrates that the Commission did just that and found that there was no evidence demonstrating a risk of “significant negative environmental impacts.” (R. at 240.) The Commission therefore concluded that “[t]here will not be significant negative impacts on the health and safety of current or future residents of the community with what is proposed in the Master Plan application.” *Id.* There is substantial evidence in the record to support this conclusion. *Lloyd*, 62 A.3d at 1083.

Notwithstanding Appellants’ concern that the proposed development could threaten the Town’s groundwater, the Commission correctly concluded that there was no evidence in the record of the *likelihood* of that threat. *See* R. at 192; *see also Perron v. Zoning Board of Review of Town of Burrillville*, 117 R.I. 571, 575, 369 A.2d 638, 641 (1977) (The “mere possibility” of adverse effects “could and should have been guarded against by imposing appropriate safeguards and conditions[.]”); *GD Richmond Beaver River I, LLC v. Town of Richmond Zoning Board of Review*, No. WC-2021-0111, 2023 WL 2825918, at \*14 (R.I. Super. Mar. 31, 2023) (“The mere *possibility* of failure . . . absent any competent evidence of the *likelihood* of failure, is insufficient to rebut . . . evidence that the appropriate policies and permits had been established or obtained to ensure that

the Project would have no adverse environmental impact.”) (emphasis in original). To the contrary, the record reflects that “[s]ignificant improvements to the public water supply system, the Town’s Wastewater Management Program, and its active land acquisition program have contributed to increasing the public water supply system capacity and protecting the private well-water quality.” (Comp. Plan 39.) Although the Town had experienced a “water crisis” in the 1990s and at least one subsequent period of drought, “Jamestown has made great strides in the areas of public potable water and land preservation in the last decade.” *See id.*; *see also* R. at 186, 209.

The Commission also complied with the Comprehensive Community Plan’s directive to manage the Town’s “growth rate . . . to [e]nsure that the Town’s water capacity is able to adequately supply future population growth,” *see* Comp. Plan 39, by conditioning approval on the installation of DEM-compliant OWTS and independent, peer review of CCHC’s hydrogeological study. *See* R. at 195; *see also Perron*, 117 R.I. at 575, 369 A.2d at 641. The record also reflects that the EPA had affirmatively stated its opinion that CCHC’s development plan would not impact the aquifer. (R. at 72.) While the EPA’s opinion is not dispositive and does not displace the Commission’s responsibility and authority to conduct a diligent local review, it is entitled to deference absent contrary competent evidence in the record. *See New Castle Realty Co. v. Dreczko*, 248 A.3d 638, 646 (R.I. 2021).<sup>6</sup>

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<sup>6</sup> Appellants have also argued that the Commission’s Decision was inadequate to facilitate judicial review because it did nothing more than “recite[] plan provisions that seemed to apply and left it at that.” (Appellants’ Mem. 13.) The Act requires that the Commission “make positive findings, supported by legally competent evidence on the record that discloses the nature and character of the observations upon which the fact finders acted” including—as already discussed herein—that “[t]he proposed development is consistent with local needs as identified in the local comprehensive community plan with particular emphasis on the community’s affordable housing[.]” (Section 45-53-4(a)(4)(v).) In the analogous context of a zoning decision, our Supreme Court has “long held that ‘a zoning board of review is required to make findings of fact and conclusions of law in support



In sum, the Town’s Comprehensive Community Plan does not reflect a blanket prohibition against increased density in the RR-200 district and is therefore not a “dealkiller” (Appellants’ Mem. at 15) for affordable housing development proposals that can otherwise be “done carefully with public health, safety and welfare being considered.” (Appellants’ Mem. 21 (citing Comp. Plan at I(H)(8)(b)). Further, there exists substantial evidence in the record to support the Commission’s conclusion that approving two additional low- and moderate-income housing units on dimensionally nonconforming lots in that district would advance the Town’s affordable housing goals without otherwise jeopardizing the center-island watershed.

#### IV

#### Conclusion

For the foregoing reasons, this Court finds that the Commission’s Decision was supported by the substantial and probative evidence on the record and was not clearly erroneous, arbitrary or capricious, made upon unlawful procedure, in violation of ordinance provisions, or otherwise an abuse of discretion. Accordingly, the Commission’s Decision is affirmed. Counsel shall submit an appropriate order for entry in accordance with this Decision.

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of its decisions in order that such decisions may be susceptible of judicial review.” *Bernuth v. Zoning Board of Review of Town of New Shoreham*, 770 A.2d 396, 401 (R.I. 2001) (quoting *Cranston Print Works Co. v. City of Cranston*, 684 A.2d 689, 691 (R.I. 1996)). The Commission’s recorded Decision, the Planner’s Report, and the hearing meeting minutes provide this Court with a “reasonable understanding” of the Commission’s findings and conclusions such that the Court has not had to impermissibly speculate about the Commission’s reasoning, and the record therefore serves as an adequate basis for judicial review. *Thorpe v. Zoning Board of Review of Town of North Kingstown*, 492 A.2d 1236, 1237 (R.I. 1985); *Our Lady of Mercy Greenwich, R.I. v. Zoning Board of Review of Town of East Greenwich*, 102 R.I. 269, 274, 229 A.2d 854, 857 (1967).



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** Bernard F. Radobicky, Jr., et al. v. Town of Jamestown,  
et al.

**CASE NO:** NC-2022-162

**COURT:** Newport County Superior Court

**DATE DECISION FILED:** November 1, 2023

**JUSTICE/MAGISTRATE:** Keough, J.

**ATTORNEYS:**

**For Plaintiff:** Kelly M. Fracassa, Esq.

**For Defendant:** Michael D. Resnick, Esq.; Peter D. Ruggiero, Esq.;  
Wyatt A. Brochu, Esq.