STATE OF RHODE ISLAND

KENT, SC. **SUPERIOR COURT**

(FILED: November 10, 2026)

232 REALTY ASSOCIATES, LLC, ***Plaintiff/Appellant,***	:	
v.	:	**C.A. No. KC-2026-0210**
TOWN OF COVENTRY PLANNING COMMISSION and ROBERT J. CIVETTI, in his capacity as the Town of Coventry Finance Director, ***Defendants/Appellees.***	:	

DECISION

LICHT, J. On February 2, 2026, the Town of Coventry Planning Commission ("Planning Commission") granted conditional Preliminary Plan approval for the Village at Tiogue's (the "Project") Comprehensive Permit application (the "Decision") (Administrative Appeal of Planning Commission Decision ("Compl.") at Ex. A). On February 23, 2026, 232 Realty Associates, LLC ("232 Realty" or "Appellant") appealed certain conditions in the Decision. Jurisdiction is pursuant to G.L. 1956 § 45-53-5.1.

I

Facts and Travel

A

Comprehensive Permit Submission

On September 15, 2025, 232 Realty submitted its comprehensive permit submission for preliminary plan review for the Project. The Project seeks to construct 176 residential units with 25 percent affordable units located at Tiogue Avenue and Tiffany Road, Assessor's Plat 32, Lots 149, 150, 151, and 153 (the "Property"). (R. Ex. A, Ex. 1, at 1.) On October 9, 2025, the Project

application was deemed incomplete and on November 10, 2025, counsel for 232 Realty reached out to request that the items noted as incomplete be deferred to later points in the process or waived. (R. Ex. B, at 1-3.) At the November 19, 2025 Town of Coventry Planning Commission's Public Hearing regarding the Project, the Planning Commission voted to certify the comprehensive permit as complete as of November 19, 2025. (R. at Ex. E, Hr'g Tr. of In Re: Village at Tiogue Public Hearing 143:5-12, Nov. 19, 2025; Ex. N, Hr'g Tr. of In Re: Village at Tiogue Public Hearing 4:19-21, Jan. 28, 2026.)

B

The Decision

The Planning Commission granted conditional Preliminary Plan approval on February 2, 2026. *See* Compl. Ex. A. The Decision imposed nineteen Conditions of Approval. *Id.* at 5-7. Only four of the nineteen Conditions of Approval are at issue in this Appeal, specifically, Conditions of Approval 3, 4, 13 and 14. (Compl. ¶¶ 29-33.)

1

Conditions of Approval 3

Conditions of Approval 3 requires 232 Realty to "follow the Town of Coventry Inspection Procedures Document dated November 10, 2025 during the construction process" to "provide a Certificate of Conformance for an entire phase of the project prior to receiving a Certificate of Occupancy for any units within the next phase" and "shall provide a Certificate of Conformance for the last phase of the project (#4) prior to receiving the Certificate of Occupancy for the final two units of the last phase." (Compl. Ex. A, at 5.)

Coventry's Town Engineering Office produced an "Inspection Procedures Document" on November 10, 2025. (R. at Ex. C.) The Inspection Procedures Document requires the engineer of record to complete "Reports and/or Certificates of Conformance" only for,

> "a. Roadway infrastructure, including asphalt, base and top courses
>
> "b. Newly installed drainage infrastructure being installed as part of the project
>
> "c. Cuts and fills within the roadway cross-section including the roadway shoulder
>
> "d. Processed gravel within the roadway cross-section including the roadway shoulder
>
> "e. Grading of the asphalt within the roadway cross-section including the roadway shoulder
>
> "f. Outside the roadway cross section, as set forth below, the EOR shall certify that the grading of the site is in general conformance with the approved RIDEM plans and that surface water flows as intended and the drainage is going to its intended destination." (R. at Ex. C, at 1-2.)

Certificates of Conformance are not "required for items being inspected by or installed by another public agency or utility that performs its own inspections, including sewer, water, electric, CATV, Phone, and natural gas." (R. at Ex. C, at 2.)

Doug McLean ("Mr. McLean"), Coventry's Director of Planning and Development, stated that in reference to the Engineer's document, "it's not in our code, but that's why we're including it and it's a condition of approval . . . this is a procedural document you've seen in previous decisions. It is a standard document we're holding all applicants to, and it is to ensure that the applicant provides an engineering review throughout the construction process[.]" (R. at Ex. N, 46:5-13, Jan. 28, 2026.)

2

Conditions of Approval 4

Conditions of Approval 4 requires the completion of "off-site improvements to Tiffany Road" and for 232 Realty to "submit an associated Certificate of Conformance consistent with the Inspection Procedures Document prior to [it] receiving the 44th building permit Certificate of Occupancy in Area 3." (Compl. Ex. A at 5.)

3

Conditions of Approval 13

Conditions of Approval 13 sets the "bond for this proposed Comprehensive Permit Application . . . at $3,418,806.87 and a fiscal assurance instrument shall be submitted and approved prior to receiving Final Plan approval." *Id.* at 6.

4

Conditions of Approval 14

Conditions of Approval 14 imposes a "2 [percent] inspection fee associated with this proposed Comprehensive Permit Application" at "$68,376.14 based on the bond amount of $3,418,806.87" and requires the "inspection fee . . . be paid to the Town of Coventry prior to commencing any construction activity on the site." *Id.*

This appeal pertains to the Planning Commission's scope of authority under Rhode Island's Low- and Moderate-Income Housing Act (the "LMI Act"), chapter 53 of title 45. Appellant questions the Planning Commission's authority to impose the previously discussed conditions of approval.

II

Standard of Review

"The court shall not substitute its judgment for that of the local review board as to the weight of the evidence on questions of fact." Section 45-53-5.1(g).[1] "The court may affirm the decision of the local review board 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 that were arbitrary, capricious or unreasonable." *Id.*

Section 45-53-5.1(e) directs the Superior Court to review the appeal, deciding "[w]hether the decision was arbitrary and capricious or clearly erroneous in light of the considerations" such as:

> "(i) The consistency of the decision to deny or condition the permit with the approved affordable housing plan;
>
> "(ii) The extent to which the community meets or plans to meet housing needs, as defined in an affordable housing plan, including, but not limited to, the ten percent (10%) goal for existing low- and moderate-income housing units as a proportion of year-round housing;
>
> "(iii) The consideration of environmental protection;
>
> "(iv) The state's need for low- and moderate-income housing;
>
> "(v) The need to protect the health and safety of the occupants of the proposed housing or the residents of the city or town;
>
> "(vi) The need to promote better site and building design in relation to the surroundings or to preserve open space; and

[1] Section 45-53-5.1 was amended by P.L. 2026, ch. 406, § 5 and P.L. 2026 ch. 407, §5, effective June 23, 2026. However, the appropriate standard for an appeal is "the law in effect at the time when the applicant . . . submitted its application for a permit to the zoning board[,]" absent a "clear expression of retroactive application." *East Bay Community Development Corp. v. Zoning Board of Review of Town of Barrington,* 901 A.2d 1136, 1144 (R.I. 2006).

> "(vii) Whether the reasons for denial, local zoning or land use ordinances, requirements and regulations are applied as equally as possible to both subsidized and unsubsidized housing." Section 45-53-5.1(e).

In addition, "[i]f the appeal is by an applicant for a decision approving an application with conditions, the superior court shall . . . determine whether such conditions and requirements imposed make the construction or operation of the housing infeasible." Section 45-53-5.1(f). The LMI Act defines infeasible as

> "any condition brought about by any single factor or combination of factors, as a result of limitations imposed on the development by conditions attached to the approval of the comprehensive permit, *to the extent that it makes it financially or logistically impracticable* for any applicant to proceed in building or operating low- or moderate-income housing within the limitations set by the subsidizing agency of government or local review board, on the size or character of the development, on the amount or nature of the subsidy, or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the applicant." Section § 45-53-3(6)(emphasis added).

"The court shall consider the record of the hearing before the local review board[.]" Section 45-53-5.1(d). However, "if it appears to the court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present that evidence in open court, which evidence, along with the record, constitutes the record[.]" *Id.*

III

Analysis

"An administrative agency is a product of the legislation that creates it, and it follows that '[a]gency action is only valid, therefore, when the agency acts within the parameters of the statutes that define [its] powers.'" *Iselin v. Retirement Board of Employees' Retirement System of Rhode Island,* 943 A.2d 1045, 1050 (R.I. 2008) (quoting *In re Advisory Opinion to the Governor,* 627 A.2d 1246, 1248 (R.I. 1993) (citing *F. Ronci Co. v. Narragansett Bay Water Quality Management*

District Commission, 561 A.2d 874, 879 (R.I. 1989))). The LMI Act gives the Planning Commission the authority to grant or deny comprehensive permits. *See* § 45-53-4.

Appellant requests the Court to vacate Conditions 3, 4, and 13 and modify Condition 14. (Appellant's Mem. in Supp. of Appeal (Appellant's Mem.) at 2.) Although the Planning Commission presents strong policy arguments to support its view of the authorizing legislation, the Court must require the Planning Commission to remain within the parameters the General Assembly has laid out for it.

Appellant argues that the Town of Coventry (the "Town") exceeded its authority as authorized in the LMI Act in imposing the four conditions. (Appellant's Mem. at 16-18.) The LMI Act does not end a Planning Commission's longstanding authority to impose reasonable conditions of approval. (Appellees' Mem. in Opp'n to Appeal (Appellees' Opp'n) at 7-9.)

> "The local review board has the same power to issue permits or approvals that any local board or official who would otherwise act with respect to the application, including, *but not limited to*, the power to attach to the permit or approval, conditions, and requirements with respect to height, site plan, size or shape, or building materials, as are consistent with the terms of this section." Section 45-53-4(e)(8)(emphasis added).

Although 232 Realty attempts to limit the Planning Commission's authority to impose conditions only as enumerated in the statute, the General Assembly specifically did not limit the Planning Commission to imposing only the types of conditions as delineated in the statute. Thus, the Court does not agree with 232 Realty's overarching argument that the Planning Commission was broadly without authority to impose the conditions, because they are not "with respect to height, site plan, size or shape, or building materials[.]" *See* § 45-53-4(e)(8). The Court will now delve into whether the Planning Commission had the authority to impose each Condition of Approval.

A

Conditions of Approval 13

Appellant asserts that portions of the bond established in Condition of Approval 13 were beyond the scope of the Planning Commission's authority as it imposed bonds on private infrastructure and in an amount that is unrelated to infrastructure improvements. (Appellant's Mem. at 18-23.) The Planning Commission asserts that it can impose private improvement guarantees because it can impose guarantees necessary to complete the development which aligns with the statutory purpose of an improvement guarantee. (Appellees' Opp'n at 11-13.) As there is no express prohibition on private improvement guarantees and the policy behind the guarantee is supported in either public or private improvements, the Planning Commission asserts it should be authorized to impose private improvement guarantees. *Id.* at 12-13. The Court cannot agree with the Planning Commission.

Section 45-53-4(e)(4)(i)(D)(I) states that the submission requirements for Final Plan review require "[a]rrangements for completion of the *required public improvements*, including construction schedule and/or financial guarantees[.]" Section 45-53-4(e)(4)(i)(D)(I)(emphasis added). Appellant asserts that the definition used under the Development Review Act should be applicable to the LMI Act, which does not define public improvements. (Appellant's Mem. at 20.) Public improvements in G.L. 1956 § 45-23-32, the Development Review Act, are defined as "[a]ny street or other roadway, sidewalk, pedestrian way, tree, lawn, off-street parking area, drainage feature, or other facility for which the local government or other governmental entity *either is presently responsible, or will ultimately assume the responsibility for maintenance and operation* upon municipal acceptance." Section 45-23-32(34) (emphasis added). "When the language of a statute or a zoning ordinance is clear and certain, there is nothing left for interpretation and the

ordinance must be interpreted literally." *RH McLeod Family LLC v. Westerly Zoning Board of Review*, 338 A.3d 304, 310 (R.I. 2025) (internal citations and quotations omitted). Therefore, the plain language of the statute only authorizes the Planning Commission to impose public improvement guarantees, and thus the Planning Commission is without authority to impose any bond for a private improvement.

On August 17, 2026, the Court allowed 232 Realty to submit an affidavit from Brian Giroux ("Mr. Giroux"), an engineer from DiPrete Engineering, to the Court. *See* § 45-53-5.1(d). "The Town of Coventry required all drainage infrastructure located outside of the proposed public roadway connecting Areas 2 and 3 of the Project to be constructed, owned and maintained by the developer or its assignee." (Giroux's Aff. ¶ 6.) "The Town Engineer's Bond Worksheet includes $434,850.39 worth of bonded privately owned and maintained infrastructure for Areas 2 and 3 of the Project." *Id.* ¶ 7. Mr. Giroux breaks down the privately bonded items further into the various phases of development. "Based on the Town Engineer's Worksheet, the total cost of bonded private property in Phase 1 is $283,505.41." *Id.* ¶ 10. "Based on the Town Engineer's worksheet, the total cost of bonded private property in Phase II is $53,428.04." *Id.* ¶ 12. "Based on the Town Engineer's worksheet, the total cost of bonded private property in Phase III is $27,512.36." *Id.* ¶ 14. "Based on the Town Engineer's worksheet, the total cost of bonded private property in Phase IV is $45,237.00." *Id.* ¶ 16.

During the November 19, 2025 hearing, Mr. McLean asserts the Planning Commission is following the Town's Code and that they

> "have always bonded for the private drainage infrastructure because there's a direct nexus and connectivity to the water that runs from the roads into the storm drains in the public roadway towards the private infrastructure and the private property. That's been our practice since well before I've been here, and we're going to maintain that practice. The applicant does have the right to seek

> appeals or to seek adjudication of that from a higher court. We think this board should follow our local code." (R. at Ex. N, Hr'g Tr. 45:9-18, Nov. 19, 2025.)

Mr. McLean asserted that they "believe it's not up to this board to" determine whether their Code aligns with state law. *Id.* at 44:25-45:2. The Planning Commission is not authorized to impose private improvement guarantees as its authorizing legislation only grants it the power to impose public improvement guarantees. Thus, although it has been the practice of the Planning Commission to impose such guarantees, doing so as a condition here is an ultra vires act and thus is arbitrary and capricious. The Court therefore requires the Planning Commission to modify the Conditions of Approval 13 to only include public improvement guarantees.

Conditions of Approval 13 sets the "bond for this proposed Comprehensive Permit Application . . . at $3,418,806.87 and a fiscal assurance instrument shall be submitted and approved prior to receiving Final Plan approval." (Compl. Ex. A at 6.) There is no quantity listed for HDPE Pipe 6, under Drainage in Phase I and thus the additional $13,145.00 was erroneously imposed. (Appellant's Mem., Ex. F.) Therefore, the Court finds that the Planning Commission was without authority to impose a bond for an item that will never be built.

Without the private improvement guarantees and the erroneous amount included under HDPE Pipe 6, 232 Realty asserts the following should be the bonds for the project: Phase I: $522,920.39; Phase II: $625,873.56; Phase III: $908,733.55; Phase IV: $951,596.56. (Appellant's Mem. at 19.) The Court concurs.

B

Conditions of Approval 14

Conditions of Approval 14 imposes a "2 [percent] inspection fee associated with this proposed Comprehensive Permit Application" at "$68,376.14 based on the bond amount of

$3,418,806.87" and requires the "inspection fee" to "be paid to the Town of Coventry prior to commencing any construction activity on the site." (Compl. Ex. A at 6.) The Planning Commission argues that the Town's Subdivision and Land Development Regulations (the "Town's Regulations") authorize Conditions of Approval 14. (Appellees' Opp'n at 15-16.) However, unless the General Assembly authorized the Town to impose that regulation, the Planning Commission is not allowed to assert it as a condition of approval against 232 Realty.

In *North End Realty, LLC v. Mattos*, 25 A.3d 527 (R.I. 2011), the Rhode Island Supreme Court explained that fees need to be statutorily and regulatorily authorized with a formula to calculate the fees and parameters "to ensure that the fees do not 'exceed a proportionate share' of the costs incurred by the government entity[.]" *North End Realty,* 25 A.3d at 536-37 (quoting G.L. 1956 § 45-22.4-4(d)(2)). The Planning Commission distinguishes *North End Realty* from the inspection fee because it is not a fee-in-lieu of providing affordable housing, nor an impact fee nor a payment for a general municipal program. (Appellees' Opp'n at 15.)

Section 45-53-4(d)(6), entitled "Fees," reads as follows:

> "Municipalities may impose fees on comprehensive permit applications that are consistent with but do not exceed fees that would otherwise be assessed for a project of the same scope and type, but not proceeding under this chapter; provided, however, the imposition of such fees shall not preclude a showing by an applicant that the fees make the project financially infeasible." Section 45-53-4(d)(6).

Projects of the same scope and type would likely proceed under the Development Review Act. Appellant argues that even if this was under the Development Review Act, that act does not authorize these kinds of fees. (Appellant's Mem. at 25.) In § 45-23-58, the Development Review Act authorizes "[l]ocal regulations . . . may provide for reasonable fees, in an amount not to exceed actual costs incurred, to be paid by the applicant for the adequate review and hearing of

applications, issuance of permits and recordings of subsequent decisions." Section 45-23-58. The Town's Regulations impose "[t]wo percent (2%) of the total amount of the original performance guarantee including all required improvements" as an inspection fee. (Appellant's Mem. Ex. A. at 70.) This flat fee does not account for the "actual costs incurred" by the Town Engineer to conduct the inspections. Although it is a 2 percent fee specific to the original performance guarantee, there are not additional factors to consider in formulating the fee.

Mr. McLean asserts that the Town feels with "the inspection fee, we still feel that the town engineer has still, despite receiving certificates of conformance, has a lot of work to do with inspections of all these. He still goes out on site for the critical stages. He still gets eyes on the ground. He still has to make observations. Our code does explicitly also state that all projects with such bonding are obligated to purvey 2 percent as an inspection fee." (R. at Ex. N, Hr'g Tr. 46:24-47:7, Nov. 19, 2025.) Mr. McLean's assertions do not negate the reality–the Town's Regulations impose a flat fee that does not account for the "actual costs incurred" by the Town Engineer to conduct the inspections. Thus, the imposition of such a fee is arbitrary and capricious.

C

Conditions of Approval 3 and 4

Conditions of Approval 3 requires 232 Realty to "follow the Town of Coventry Inspection Procedures Document dated November 10, 2025 during the construction process" to "provide a Certificate of Conformance for an entire phase of the project prior to receiving a Certificate of Occupancy for any units within the next phase" and "shall provide a Certificate of Conformance for the last phase of the project (#4) prior to receiving the Certificate of Occupancy for the final two units of the last phase." (Compl. Ex. A. at 5.) Conditions of Approval 4 requires the completion of "off-site improvements to Tiffany Road" and for 232 Realty to "submit an associated Certificate

of Conformance consistent with the Inspection Procedures Document prior to [it] receiving the 44th building permit Certificate of Occupancy in Area 3." *Id.* The dispositive issue is whether the Town Engineer's November 10, 2025 "Inspection Procedures Document" is a regulation and thus should have been enacted through the proper channels.[2]

Appellant asserts that the Planning Commission went beyond the scope of their authority when it imposed Conditions of Approval 3 and 4. (Appellant's Mem. at 26-31.) Conditions of Approval 3 and 4 are derived from the Town Engineer's November 10, 2025 "Inspection Procedures Document" which acts as a regulation, although it did not go through the proper promulgation channels. *Id.* at 26, 29-32. According to 232 Realty, these conditions essentially delegate the inspection requirements, which are statutorily and regulatorily the Town's duties, to the engineer of record, all at the expense of the developer. *Id.* at 27. The Planning Commission argues that the Town Engineer's November 10, 2025 "Inspection Procedures Document" is not a regulation of the Town and thus is outside the statutory framework as the Planning Commission incorporating the Document into its decision is not an adoption of the policy as a regulation. (Appellees' Opp'n at 29-30.)

"A legislative rule is the product of an exercise of delegated legislative power to make laws through rules whereas an interpretive rule is any rule an agency issues without exercising the delegated legislative power to make law through rules." *Lerner v. Gill*, 463 A.2d 1352, 1358 (R.I. 1983).

> "To determine whether a rule is to be classified as legislative or interpretive, one must consider the power assigned to the administrative agency. If a statute expressly delegates power to interpret and define certain legislation to an agency, regulations promulgated pursuant to that power are legislative rules having the

[2] The Court does not address 232 Realty's argument that the Inspection Procedures Document impermissibly intrudes on the state's building code framework.

> force of law . . . If the lawmaking branch has not conferred such authority upon the agency promulgating the rule, the promulgation is interpretive and is not to be considered controlling by the courts." *Id.* (internal citations omitted).

The Town Engineer's November 10, 2025 "Inspection Procedures Document" acts as a legislative rule because the Planning Commission used that policy as a basis of imposing Conditions of Approval 3 and 4. If the Planning Commission wants the Inspection Procedures Document to be enforceable against applicants, it needs to allow it to go through the proper procedures to become a regulation. The General Assembly delegated the authority to impose conditions upon the Planning Commission, not the Town Engineer. *See* § 45-53-4(e)(8). "'Legislative rules are valid if they are within the power granted . . ., are issued pursuant to proper procedure, and are reasonable as a matter of due process.'" *In re Advisory Opinion to the Governor*, 732 A.2d 55, 75–76 (R.I. 1999) (quoting *Parkway Towers Associates v. Godfrey,* 688 A.2d 1289, 1293 (R.I. 1997)).

As outlined in § 45-23-53(a), there is a specific process to enact a new regulation and the Town did not follow it in this instance. The Town's Regulations specifically set out the requirements for the adoption and amendment of regulations in Article X. The Town Engineer's November 10, 2025 "Inspection Procedures Document" did not follow that procedure as delineated by the General Assembly nor the Town. Therefore, as the Town Engineer did not have authority to enact his November 10, 2025 "Inspection Procedures Document" and it was not enacted by the proper procedure, the Planning Commission could not impose following it as Conditions of Approval in their decision on the comprehensive permit. Thus, the imposition of Conditions of Approval 3 and 4 was arbitrary and capricious.

IV

Conclusion

The Court finds that substantial rights of 232 Realty have been prejudiced by the Conditions of Approval 3, 4, 13, and 14 and orders that the Comprehensive Permit Decision be remanded back to the Planning Commission with Conditions of Approval 13 and 14 modified to align with this opinion and instructs the Planning Commission to strike Conditions of Approval 3 and 4 from their Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**232 Realty Associates, LLC v. Town of Coventry Planning Commission and Robert J. Civetti, in his capacity as the Town of Coventry Finance Director**
CASE NO:	**KC-2026-0210**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**November 10, 2026**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**Joelle C. Rocha, Esq.**
For Defendant:	**John M. Verdecchia, Esq.**