STATE OF RHODE ISLAND

NEWPORT, SC. **SUPERIOR COURT**

(FILED: June 9, 2026)

ARLENE M. REGO & FRANK F. REGO, in their capacity as Co-Trustees of The Frank F. Rego and Arlene M. Rego Family Revocable Trust, u/d/t dtd. December 11, 2006, *Appellants*,	:	
v.	:	**C.A. No. NC-2024-0471**
EDWARD LOPES, LUKE HARDING, RYAN TIBBETS, KATHLEEN WILSON, CHRIS O'CONNELL, and DAVID GARCEAU, in their Official Capacity as Members of the PLANNING BOARD of THE TOWN OF PORTSMOUTH; and JOHN CARLONE, *Appellees*.	:	

DECISION

REKAS SLOAN, J. Before this Court is an appeal by Arlene M. Rego and Frank F. Rego, as Co-Trustees of the Frank F. Rego and Arlene M. Rego Family Revocable Trust (collectively, Appellants). Appellants appeal a decision (Decision) of the Planning Board of the Town of Portsmouth (Board) granting John Carlone's (Applicant) preliminary plan application for a five-lot minor subdivision located at 22 & 24 Dexter Street, Portsmouth, Rhode Island, Assessor's Plat 31, Lot 4 (Property). Jurisdiction is pursuant to G.L. 1956 § 45-23-71. For the reasons set forth below, Appellants' appeal is denied, and the Board's Decision is affirmed.

I

Facts and Travel

A

Application and Properties

Applicant submitted a preliminary plan application to convert his Property into a five-lot minor subdivision (Subdivision) with a cul-de-sac street extension. Certified R. (R.) at 11-16, 184-192. The Property is in a residential R-20 zoning district. *Id.* at 218. Appellants own 2856 East Main Road, Portsmouth, Rhode Island, Assessor's Plat 31, Lot 2, which abuts the Property. *See* R. at 52, 185, 219; *see also* Mem. of Appellants Arlene M. Rego & Frank F. Rego, Co-Trustees (Appellants' Mem.) 2.

B

The Board Hearing

On September 12, 2024, the Board held a public hearing on Applicant's preliminary plan application. R. at 218. Applicant's engineer David Manoni (Mr. Manoni) of Groundbreaking Designs, LLC testified about the details of the Subdivision and the state and local permits and approvals already obtained. *Id.* Board members asked about the drainage line and its connection to Dexter Street and East Main Road and also asked about emergency access. *Id.* at 218-19. Mr. Manoni stated that the project would not increase drainage flow rates, and the Portsmouth Town Planner and Administrative Officer Lea Hitchen[1] (Ms. Hitchen) confirmed that the Fire Marshal was satisfied with the Subdivision. *Id.*

[1] The record identifies Ms. Hitchen as serving as the Town Planner and Administrative Officer for the Board. R. at 16, 196. This Court will expound on the significance of her position later in this opinion. *See infra* Section III.B.2(i).

Appellant—Frank F. Rego (Mr. Rego), an abutter, opposed the application. He questioned whether the proposed drainage system would work, described existing rainwater run-off into his yard, raised concerns about shallow shale at a depth of five feet below the surface, impact to wildlife (specifically, great horned owls and groundhogs), retention-basin maintenance, pest control, and the homeowners' association. *Id.* at 219. Board member Edward Lopes (Mr. Lopes) and Mr. Manoni responded by explaining that the homeowners' association binds lot owners within the Subdivision to maintain the basin and related stormwater components. *Id.* Mr. Manoni testified that the existing twelve-inch concrete pipe drainage system will be improved to an eighteen-inch reinforced concrete pipe within the Town of Portsmouth's right-of-way, and the Town would be responsible for the maintenance of the pipe. *Id.* at 199, 219. Additionally, Mr. Manoni indicated that the basin would be dry 99.9 percent of the time, noting that during a one-year storm event, the water elevation would not rise above the crushed stone surface so it will not be a breeding ground for mosquitos and other insects. *Id.* at 219. Mr. Manoni also shared that the Rhode Island Department of Environmental Management (DEM) approved the septic design as well as the drainage system and that he, alongside DEM representatives, witnessed fifteen test holes dug to depths of eight to nine feet without hitting bedrock. *Id.* Further, Mr. Manoni noted the animal species that Mr. Rego expressed concern over are not legally designated as "endangered species," but the great horned owl is protected by the Migratory Bird Treaty Act of 1918 which prohibits killing and capturing migratory birds and that the Subdivision will not lead to harm or fatalities of that species. *Id.*

Another abutter, Jennifer Gardner, asked about a barrier to the retention pond given the presence of pets and children in the area, whether a nearby cherry tree would be preserved, and whether exterior lighting was proposed around the cul-de-sac. *Id.* Mr. Lopes and Mr. Manoni

addressed those concerns: a chain-link fence would be required if the basin reached a certain depth; the grading was designed to preserve the cherry tree; and street lighting was not required. *Id.* No other abutters spoke. *Id.*

Finally, the meeting minutes reflect an averment that the Town Planner's Office Staff Report (Staff Report) concluded the Subdivision was a "by-right project not requiring any relief or waivers" and "[a]s designed it meets the required lot sizes, frontage[,] and minimum building area requirements." *Id.* at 220. The Board voted 5-1 to grant preliminary plan approval and to delegate final plan approval to the Administrative Officer, incorporating the findings of fact from the Staff Report. *Id.*

C

The Board's Decision

One of the issues raised by Appellants is the adequacy of the Decision; therefore, this Court will briefly summarize its relevant content. *See infra* Section III.A. The Decision was executed by Ms. Hitchen on November 5, 2024. R. at 198-202. The first section includes, *inter alia*, findings of fact demonstrating that Applicant procured the required state and local permits, stormwater and wastewater approvals, public works and fire department review, the project's compliance with dimensional standards, that the engineering and design of the Subdivision's specifications are sound, and that the project is in conformity with Portsmouth's Comprehensive Community Plan. *Id.* at 198-200. The next section details the record evidence supporting the Board's vote to grant the preliminary application and then goes on to enumerate conclusions of law supported by said findings of fact and evidence in the record. *Id.* at 200-01.

II

Standard of Review

The Superior Court's review of a planning board decision is governed by § 45-23-71(d), which provides:

> "The court shall not substitute its judgment for that of the board of appeal or permitting authority as applicable as to the weight of the evidence on questions of fact. The court may affirm the decision of the board of appeal or permitting authority, as applicable 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 are:
>
> "(1) In violation of constitutional, statutory, ordinance, or planning board regulations 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(d).

It is the function of this Court to "'examine the whole record to determine whether the findings of the [planning board] were supported by substantial evidence."' *Lloyd v. Zoning Board of Review for the 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)). The term "'[s]ubstantial evidence . . . means 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."' *Lischio v. Zoning*

Board of Review of Town of North Kingstown, 818 A.2d 685, 690 n.5 (R.I. 2003) (quoting *Caswell v. George Sherman Sand & Gravel Co.*, 424 A.2d 646, 647 (R.I. 1981)).

This Court may not "substitute its judgment for that of the [planning] board if it can conscientiously find that the board's decision was supported by substantial evidence in the whole record." *Apostolou*, 120 R.I. at 509, 388 A.2d at 825. If there is such evidence, a board's decision will stand. *Prete v. Parshley*, 99 R.I. 172, 176, 206 A.2d 521, 524 (1965). This Court is restricted from making its own findings of fact, weighing the evidence, or determining the credibility of witnesses. *See Munroe v. Town of East Greenwich*, 733 A.2d 703, 705 (R.I. 1999).

III

Analysis

A

Adequacy of the Board's Decision

1

Parties' Arguments

First, Appellants argue the Board's Decision to approve the preliminary plan was made under error of law pursuant to § 45-23-71(d) because the Board failed to "match" each *specific* finding of fact with the "legal elements" required under § 45-23-60. (Appellants' Mem. 4-7.) The Board responds that the Decision contains adequate factual findings, identifies the supporting record materials, adopts the Staff Report, and a land use decision need not match each fact to each piece of competent evidence in the record and to each statutory conclusion in a rigid one-to-one format. (Appellees' Reply Br. in Opp'n to Administrative Appeal (Appellees' Reply Br.) 1-3.)

2

Section 45-23-60

A brief review of the statutory scheme controlling the findings of fact requirements and the prescribed steps to complete a land use decision is helpful. Both parties cite to § 45-23-60 to demonstrate that the Board either included or failed to include the requisite findings of fact in its Decision. That statute requires the approving authority to address the purposes of § 45-23-30 and make positive findings on five standard provisions before approving a minor subdivision:

> "(a) All local regulations require that for all administrative, minor and major development applications the approving authorities responsible for land development and subdivision review and approval shall address each of the general purposes stated in [§] 45-23-30 and make positive findings on the following standard provisions, as part of the proposed project's record prior to approval:
>
> "(1) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;
>
> "(2) The proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance;
>
> "(3) There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;
>
> "(4) The subdivision, as proposed, will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable. . . . and
>
> "(5) All proposed land developments and all subdivision lots have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered in compliance with this requirement.
>
> "(b) [Except for administrative subdivisions,] [f]indings of fact must be supported by legally competent evidence on the record

> which discloses the nature and character of the observations upon which the fact finders acted." Section 45-23-60(a) and (b).[2]

Further, the Rhode Island Supreme Court has long held that planning boards are "'required to make findings of fact and conclusions of law in support of its decisions [so they] 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)). It is the duty of the Board to find the facts, apply them to the law, and render a decision in writing. *Id.* In contrast, this Court's charge on appeal is to "'decide whether the board members resolved the evidentiary conflicts, made the prerequisite factual determinations, and applied the proper legal principles.'" *Id.* (quoting *Irish Partnership v. Rommel*, 518 A.2d 356, 358-59 (R.I. 1986)). Moreover, this Court must determine if the findings are "'factual rather than conclusional, and [that] the application of the legal principles [is] something more than the recital of a litany.'" *Id.* (quoting *Irish Partnership*, 518 A.2d at 358-59).

This Court is satisfied that the Board's Decision meets the requirements of § 45-23-60 and relevant case law. The Decision does more than recite the statutory findings. It enumerates a series of factual findings addressing state permits and approvals, including DEM stormwater and Rhode Island Pollutant Discharge Elimination System approvals, the water-main extension approval from the Portsmouth Water and Fire District, the replacement of existing twelve-inch concrete drainage pipes with eighteen-inch reinforced concrete pipes, upgrades to the onsite

[2] G.L. 1956 § 45-23-60 was amended by P.L. 2025, ch. 258, § 3 and P.L. 2025, ch. 289, § 3, effective June 27, 2025. Because Applicant submitted his application in August 2024, R. at 16, this Court cites to § 45-23-60 as codified on the date of his submission. *See East Bay Community Development Corporation v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1144 (R.I. 2006) (finding that in the absence of a clear legislative expression that a statutory amendment had retroactive effect, the "law in effect at the time when the applicant . . . submitted its application for a permit to [a] zoning board" applied).

wastewater treatment system, Portsmouth Fire Department review and approval, Portsmouth Department of Public Works review and approval, its compliance with building area requirements and other R-20 lot standards, and its alignment to the Comprehensive Community Plan. R. at 198-201. Further, the Decision includes a detailed list of record evidence supporting approval, including correspondence, meeting minutes, DEM approvals, the Stormwater Management Report, and the Best Management Practices Operation and Maintenance Plan, the Staff Report, and other authorizations and documentation supporting the preliminary application's advancement. *Id.* at 200-01.

Additionally, this Court is satisfied that the Board's Decision is not merely conclusory, but is factual and adequately incorporates proper legal principles rather than reciting a litany. *See Bernuth*, 770 A.2d at 401. Each factual finding is substantiated by an approval or determination by Applicant's expert or a municipal body and/or includes design specifications—all of which are contained in the record. R. at 198-201.

Appellants are correct that a planning board must, at least, incorporate "factual determinations and appl[y] appropriate legal principles in such a way that a judicial body might *reasonably discern* the manner in which the board had resolved evidentiary conflicts." *See Cranston Print Works Co.*, 684 A.2d at 691 (emphasis added). But § 45-23-60 does not require a mechanical one-to-one match between each item of evidence and each positive finding. The question is whether the Board made findings supported by legally competent evidence sufficient to permit this Court to understand the basis for the approval. *See id.* On this record, it did.

Moreover, the stormwater concerns raised by Mr. Rego do not change that conclusion. The Board had before it the project engineer's expert testimony, DEM approvals, the Stormwater Management Report, and the Best Management Practices Operation and Maintenance Plan. R. at

198-201, 218-20. The Board was entitled to credit that evidence, and this Court may not reweigh it. *See* § 45-23-71(d).

Taken as a whole, the Decision, through its express recitation of Applicant's process and procurement of requisite permits, enumeration of factual findings, and reference to relevant legal principles, renders the Decision adequate. R. at 198-202. Further, the incorporation of the findings in the Staff Report, *id.* at 201, 204-13, and the testimony of Applicant's expert, Mr. Manoni, in support of the Subdivision as well as his response to abutters' concerns at the hearing only bolsters its adequacy and compliance with the requirements under § 45-23-60. *Id.* at 218-21; *see supra* Section I.B.

Further, this Court disagrees with Appellants' characterization and reliance on *Boon Street Presby, LLC v. Town of Narragansett Zoning and Platting Board of Review*, No. WC-2018-0489, 2021 WL 408948 (R.I. Super. Feb. 1, 2021). *Boon Street Presby, LLC*, 2021 WL 408948, at *18; *see* Appellants' Mem. 5. Appellants contend that case is demonstrative of its position that the Board failed to "match" its findings of fact with evidence on the record. *Id.* However, the trial justice in *Boon Street Presby, LLC* never uses the term "match" and, more importantly, the Court's overall conclusion on the issue was not about the incongruity between findings of fact and legal reasoning, but rather that the planning board's written decision was clearly erroneous because it was factually inaccurate, misstated what occurred at the planning board hearing, and the record was entirely "void of the factual findings necessary to support the [d]ecision." *Boon Street Presby, LLC*, 2021 WL 408948, at *17-18 ("There were absolutely no facts stated to support the conclusion."). Here, the Board made findings and identified supporting evidence in the record.

Likewise, this Court disagrees with Appellants' interpretation of *Siciliano v. Town of Exeter Zoning Board of Review*, No. WC 03-0292, 2006 WL 557148 (R.I. Super. Mar. 2, 2006). *Siciliano*, 2006 WL 557148, at *4. Appellants assert *Siciliano* is another example where a board failed to produce an adequate decision because it did not "match findings to a conclusion." (Appellants' Mem. 4-5.) However, *Siciliano* turned not on the presence or absence of a match between findings of fact and legal reasoning, but because the decision "was conclusory in nature and contained no findings of fact on issues pertinent to the application . . . ." *Siciliano*, 2006 WL 557148, at *4. Here, the Board's Decision contains factual findings on the issues relevant to the five statutory requirements and was not merely conclusory in nature.

Unfortunately for Appellants, these cases do not support their contentions. The decisions therein were remanded because they included deficient findings of fact and not because of a failure to match findings of fact to conclusions of law. *See Boon Street Presby, LLC*, 2021 WL 408948, at *18; *Siciliano*, 2006 WL 557148, at *4. That said, in general, it would behoove the Board, in service of the public and future applicants, to expound its legal conclusions moving forward. Specifically, this Court urges the Board to dedicate more space for legal reasoning and by separately aligning its factual findings with the record evidence and each applicable legal standard within the four corners of its decisions, which may stave off future lawsuits. But the absence of that format does not make the Decision legally deficient. It just lengthens the judicial review process. Thus, this Court is "prompt[ed] . . . once again to advise [planning] boards . . . to seek the assistance of their legal advisers in the decision-writing process." *May-Day Realty Corp. v. Board of Appeals of City of Pawtucket*, 107 R.I. 235, 240, 267 A.2d 400, 403 (1970).

Because the Decision contains enough factual findings and record references to permit judicial review, remand is not required. Accordingly, the Board's Decision is not in contravention of § 45-23-60 and not affected by error of law. *See* § 45-23-71(d)(4).

B

The Landscape Plan Requirement

1

Parties' Arguments

The next issue concerns Chapter 236 of the Portsmouth Town Ordinances, known as the Land Development and Subdivision Regulations (the regulations). *See* Appellants' Mem. 9; Appellees' Reply Br. 3. Appellants argue that Applicant failed to submit a landscape plan[3] with his Subdivision application in violation of Article V, § A and Article X, § J of the regulations. (Appellants' Mem. 9.) Appellants concede Applicant could have submitted his application without a landscape plan if the Board granted him a waiver pursuant to Article XIII, § D of the regulations; however, they contend that because the Board did not grant a waiver or modification, it engaged in unlawful procedure by approving the application without the landscape plan. *Id.*; § 45-23-71(d)(3).

The Board contends Ms. Hitchen, as the Administrative Officer, had authority to determine that the landscape plan submission was unnecessary for review. (Appellees' Reply Br. 3.) Specifically, the Board notes that Article III, § C.3(a) of the regulations allows an Administrative Officer to at his/her "discretion to waive or allow later submission of any minor submission requirements, [provided that such] information is deemed to be unnecessary for proper review of the application by the Planning Board." *Id.* (internal quotation omitted).

[3] The regulations refer to "landscaping plan" and "landscape plan" interchangeably. For consistency this Court will use "landscape plan." *See* Article X, § J.

Conspicuously, the Board omitted the remainder of § C.3(a) which states, "[s]uch decision shall be in writing only." *See* Article III, § C.3(a). This Court takes the Board's reference to the August 20, 2024 "certificate of completeness" of the preliminary application as an argument that Ms. Hitchen's certification at the end of the six-page checklist satisfies the writing requirement to waive the landscape plan. Appellees' Reply Br. at 4; *see* R. at 16.

The Board outlines the connection between statutory and local regulatory authority which provide Ms. Hitchen with discretion over the requisite application materials. The Board directs this Court to § 45-23-33 specifying that "local regulations consist of the regulations and other text, together with charts, graphs, appendices and other explanatory material" including, pursuant to § 45-23-33(17), the "[s]pecification of all application documents and other documents to be submitted." In tandem, the Board notes § 45-23-38(b) requires "applicant[s] requesting approval of a proposed, minor subdivision . . . shall submit to the administrative officer the items required by the local regulations" which is reflected in the regulations under Article V, § B.2. That provision states an applicant "shall submit to the Administrative Officer the items required by the Application Checklist for Minor Land Developments and Minor Subdivisions." Article V, § B.2. Finally, the Board ties the scheme together by noting Article III, § C.3(a) of the regulations gives Ms. Hitchen the authority and discretion to determine whether application materials are "unnecessary for proper review of the application by the Planning Board." Article III, § C.3(a). However, pursuant to Article III, § C.6(a) of the regulations, the Board retained authority to subsequently require the submission of such materials that the Administrative Officer deemed unnecessary or to correct an error if needed to make an informed decision. Article III, § C.6(a).

The relevant facts are not disputed. Applicant marked the landscape-plan item on the preliminary application checklist as "N/A." R. at 14. The Administrative Officer then certified

the application as complete on August 20, 2024. R. at 16. The Board did not request a landscape plan before approving the preliminary plan.

2

Waiver Process

After reviewing the parties' arguments, this Court considers the decisive question to be whether Ms. Hitchen, as the Administrative Officer, had the authority to deem the landscape plan as unnecessary for approval and whether that determination is uniquely different from concluding the requirement is waived, which would necessitate a written decision pursuant to Article III, § C.3(a).

The regulations make clear that applicants for minor subdivision proposals need to submit a landscape plan. Article X, § J.1(a) (stating "[a] landscape plan shall be submitted to the Planning Board for all land development and subdivision applications subject to their approval at the preliminary review stage of minor subdivision"). Item four of Section D of the preliminary application checklist leaves a checkbox for a "[l]andscaping plan to show all significant proposed clearing of land, limits of clearing, removal of existing vegetation, revegetation and/or landscaping on street rights-of-way and upon individual lots if part of proposed subdivision improvements." R. at 14. The parties do not disagree that the requirement applies to Applicant. *See* Appellants' Mem. 9; Appellees' Reply Br. 4.

Applicant marked that item as "N/A" and the Administrative Officer later certified the application as complete. R. at 14, 16. That certification reflected an administrative determination that the missing landscape plan did not prevent proper review. Even if the "N/A" designation is treated as a waiver of a minor submission requirement, Article III, § C.3(a) authorized the Administrative Officer to make that determination when the information was unnecessary for the

Board's review. The certification of completeness, the checklist, and the Staff Report supplied a written record of that determination. See R. at 14, 16, 201, 204-13.

i

Administrative Officer

Section 45-23-32(1) defines an administrative officer as:

> "The municipal official(s) designated by the local regulations to administer the land development and subdivision regulations *to review and approve qualified applications and/or coordinate with local boards* and commissions, municipal staff, and state agencies as set forth herein. The administrative officer may be a member, or the chair, of the planning board, an employee of the municipal planning or zoning departments, or an appointed official of the municipality." Section 45-23-32(1) (emphasis added).

This provision not only clarifies who is eligible for the role, but it details the officer's authority to review and approve land use applications and coordinate the approval process with the applicable public entities. *Id.* In tandem, the local regulations reflect the same scope and authority: "The Administrative Officer shall be appointed by and serve at the pleasure of the Planning Board [and she] shall oversee and coordinate the review, approval, recording and enforcement provisions of these [r]egulations." Article XII, § A.2; *see* Article II, § B (stating the same). The regulations give the Administrative Officer discretion to waive or allow later submission of minor submission requirements deemed unnecessary for proper review by the Board. Article III, § C.3(a).

That is what occurred here. By certifying the application as complete after the checklist identified the landscape-plan item as "N/A," the Administrative Officer permissibly determined that the application could proceed. R. at 14, 16. Moreover, if she had determined that, by the scope of the Subdivision application, such a plan was needed, she could have either declined to sign off on the certification or request the landscape plan from Applicant. R. at 16; *see* Article

III, § C.3(a). As a failsafe, if the Board did not agree with the Administrative Officer's decision, they had authority to request the landscape plan if needed, but it did not do so. *See* Article III, § C.6(a).

On this record, the Administrative Officer's certification was a permissible determination that the missing landscape plan did not prevent review. The Board then reviewed the application at a public hearing, heard public comment from abutters, considered drainage, maintenance, grading, vegetation, and related concerns, adopted the Staff Report, and approved the application. That process was not unlawful.

ii

Writing Requirement

Second, having concluded the landscape plan requirement is waived, this Court notes that Ms. Hitchen and the Board never produced an independent written decision for the waiver—ostensibly in contravention of Article III, § C.3(a). Again, that regulation states, "[s]uch decision shall be in writing only[,]" but does not clarify what the writing should look like. *Id.* Neither the Board's written Decision, R. at 198-202, nor the certification of completeness explicitly address the waiver of the landscape plan. *Id.* at 16.

However, § 45-23-32(5) defines the certification of completeness as "[a] notice issued by the administrative officer informing an applicant that the application is complete and meets the requirements of the municipality's regulations, and that the applicant may proceed with the review process." Section 45-23-32(5). This Court takes that statute to suggest an Administrative Officer's issuance of a certification of completeness serves as written indicia that the application adhered to the requisite regulations, conformed to the submission process, and is ripe for the Board's review. *See id.*; *see also* § 45-23-36(c) (noting the certification of completeness or an

administrative officer's determination of application deficiencies must be made in writing and sent to the applicant). There appears to be no reason why Ms. Hitchen's certification of completeness does not qualify as a "writing" waiving the landscape plan requirement in conformity with Article III, § C.3(a).

Given her authority as the Board's Administrative Officer, the certification avers Applicant's compliance with the regulations; as such, it demonstrates that Applicant's use of "N/A" to signal the landscape plan was not applicable to his Subdivision and therefore Ms. Hitchen properly recognized the inapplicability of the requirement or that it was unnecessary for review.

Moreover, while this Court acknowledges that Article XIII, § D.2 of the regulations seemingly limits waiver requirements for a development plan when those requests are placed before the Board, because this Court concludes the certification of completeness served as a written waiver of the landscape plan, Ms. Hitchen has, in essence, set off that consideration from the Board. As previously noted, she invoked her discretion pursuant to Article III, § C.3(a) to "waive . . . any minor submission requirements, provided that such information is deemed by [her] to be *unnecessary for proper review of the application by the Planning Board*." Article III, § C.3(a) (emphasis added). In other words, Ms. Hitchen has authority to streamline or otherwise waive application requirements in preparation for the Board's review.

The Staff Report authored by Ms. Hitchen reinforces that conclusion by (1) identifying the application as "by right[,]" (2) explaining the Subdivision's conformity with regulations, (3) specifically stating that the "project requir[ed] no relief or waivers," and (4) averring to the Board the adequacy of Applicant's submission. R. at 204-13. Additionally, the Board's Decision incorporated the Staff Report's findings. R. at 201. Those writings are enough to satisfy Article

III, § C.3(a). Although it should be noted that the better practice would be a separate written notation stating that the landscape-plan item was not applicable or was waived and briefly explaining why.[4]

Finally, the record, and specifically the Board hearing, demonstrates the redundancy of a landscape plan given the Subdivision application was approved after a thorough and scientific consideration of its impact. *See supra* Section I.

In sum, Applicant's "N/A" in response to the applicability of a landscape plan on item four of Section D of the preliminary plan application checklist and Ms. Hitchen's subsequent certification of completeness qualify as a proper use of her authority and waives the requirement. Further, no Board member requested a landscape plan, and the hearing record does not show that a landscape plan was necessary to decide the application. Therefore, the Board's Decision was not made on unlawful procedure. *See* § 45-23-71(d).

IV

Conclusion

For the foregoing reasons, Appellants' appeal is **DENIED** and the Decision of the Board is **AFFIRMED**. The parties shall confer and present an appropriate order and judgment for entry in accordance with this Decision.

[4] The Staff Report includes a section headed "Required Relief/Waivers" and states the "project requir[ed] no relief or waivers." R. at 212. Applicant takes this to mean no waiver was needed. This Court anticipates Appellants would contend it demonstrates unlawful procedure because the written waiver was improperly omitted. *Compare* Appellees' Reply Br. 3-5 *with* Appellants' Mem. 9. However, to state an application requirement is not required is the same as waiving it—the rest is splitting hairs. Therefore, this Court's analysis of whether Ms. Hitchen and the Board properly produced a written waiver decision flows from this conclusion.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Rego, et al. v. Lopes, et al.**
CASE NO:	**NC-2024-0471**
COURT:	**Newport County Superior Court**
DATE DECISION FILED:	**June 9, 2026**
JUSTICE/MAGISTRATE:	**Rekas Sloan, J.**
ATTORNEYS:	
For Plaintiff:	**Tanner L. Jackson, Esq.**
For Defendant:	**Americo M. Scungio, Esq.** **Kevin P. Gavin, Esq.** **Joseph S. Larisa, Jr., Esq.**