

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: February 20, 2026)

MYRA A. DURFEE, DANA S. BLAKEY :  
and JOHN AND JANE DOES, being :  
property owners and residents who reside :  
within the 200' radius of the property at :  
issue located at 141 Power Road, :  
Pawtucket, RI, :  
*Appellants,* :

v. :

C.A. No. PC-2025-02834

KAREN KOLODZIEJ, MONIQUE :  
RENAUD, ADAM GREENMAN, :  
JONAS BRUGGEMANN, and ALBERT :  
J. VITALI, JR., in their capacities as :  
Members of the Planning Commission of :  
the City of Pawtucket, Rhode Island, :  
and MAKO ENTERPRISES, LLC and :  
ELEVATOR PROPERTIES, INC., :  
Applicants for relief, :  
*Appellees.* :

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**DECISION**

**LANPHEAR, J.** Before this Court is the appeal of Dana S. Blakey and other abutters from a decision of the Pawtucket Planning Commission granting preliminary plan approval to Mako Enterprises, LLC and Elevator Properties, Inc.'s adaptive reuse project. Jurisdiction is pursuant to G.L. 1956 § 45-23-71.

## I

### Facts and Travel

On February 24, 2025, Mako Enterprises, LLC and Elevator Properties, Inc. applied to the Commission for preliminary plan approval of an adaptive reuse project on property located at 141 Power Road in Pawtucket. (CR at 4.)<sup>1</sup> The property is a 22,230 square foot lot zoned residential single-family. Applicants proposed converting an existing office building into seventeen residential apartment units and one office. The Commission held one public hearing on April 15, 2025 and approved the project by a 4-1 vote, subject to conditions.

In support of their proposal, applicants submitted a signed development plan review application, an application checklist, a written narrative outlining the project, floor and elevation plans, an existing conditions plan, and other materials. The development plan review application form listed “Mako Enterprises LLC & Elevator Prop Inc.” as the applicant and owner. An electronic signature appears underneath the words “Owner’s Signature authorizing development restriction and certifying application contents as correct.” *Id.* at 5. On March 27, 2025, Mako Enterprises, LLC and Elevator Properties, Inc. conveyed the property by warranty deed to 141 Power Road, LLC. *See* Appellants’ Ex. C.

On April 2, 2025, the Pawtucket Technical Review Committee (TRC) reviewed the submitted materials and recommended the Commission approve the Application subject to conditions. The TRC concluded: the development would be consistent with the goals of the City’s Comprehensive Plan and would implement the purposes of development plan review; the proposal complies with all applicable provisions within the City of Pawtucket Zoning Ordinance, Supp. No.

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<sup>1</sup> The certified record (CR) in this case is a forty-four page document without page numbers. Citations to the record are this Court’s pagination of that document.

80 (Mar. 6, 2025) (the Ordinance); the proposal complies with all submittal requirements for development plan review; and the proposal meets design requirements and performance standards as provided in the Ordinance.

The TRC made findings of fact to support its recommended conclusions. With respect to consistency with the Comprehensive Plan, the TRC found that the project would “[e]ncourage infill development that reflects the built character of the surrounding area” and “[p]rovide Pawtucket residents from all socio-economic groups with safe, decent and affordable housing.” CR at 31. With respect to compliance with design requirements and performance standards, the TRC found that the property “is accessible by Power Road and Smithfield Avenue[,]” that parking is provided and accessible, and that “[c]onverting the use of this building to residential will make its use more compatible with the other uses in this zone.” *Id.*

The Commission held a public hearing on April 15, 2025. Although a stenographer was present at the hearing roll call, she did not transcribe the proceedings relevant to this Application. The hearing was held in-person and virtually via Zoom and recorded on a Zoom audio file. On June 30, 2025, at Appellants’ request, the stenographer transcribed that audio file. Appellants have submitted this transcript as an exhibit, but it is not a part of the record for this appeal because it was not certified as such.<sup>2</sup>

The certified record includes an abutters’ map, a list of abutters, and the notice of the hearing on City letterhead dated March 31, 2025. It also includes a “Notice of Decision” signed May 6, 2025 and the April 15, 2025 meeting minutes. In the decision, the Commission makes the

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<sup>2</sup> See G.L. 1956 § 45-23-71(a) (“The authorized permitting authority shall file the original documents acted upon by it and constituting the record of the case appealed from, or certified copies of the original documents, together with any other facts that may be pertinent, with the clerk of the court[.]”).

same conclusions as the TRC with findings of fact and conclusions of law. CR at 34-36. The minutes reveal that, during the hearing, “[s]everal neighbors expressed concerns about parking, traffic, and the project’s density.” *Id.* at 42. One of the Commissioners stated the Commission was only reviewing the proposed development, and the neighbors’ traffic concerns should be discussed with the City Council. A motion to approve the Application passed with a 4-1 vote. Appellants timely appealed to this Court on May 29, 2025.

## II

### Standard of Review

Under § 45-23-71(a), as enacted by P.L. 2025, ch. 289, § 3, “[a]n aggrieved party may appeal . . . a decision of the planning board” for review by this Court. On review,

“[t]he 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).

### **III**

#### **Analysis**

##### **A**

#### **Whether the Commission Erred in Approving the Application When Title was Transferred**

Appellants suggest the Commission acted contrary to law and in excess of its authority because the owner of the property, 141 Power Road, LLC, is “an essential party to the [application],” but was not before the Commission when it approved the Application. (Mem. of Appellants in Supp. of Appeal 7.) As noted, Applicants conveyed the property to 141 Power Road, LLC after filing the Application and before the April 15, 2025 hearing.

Appellants do not point to any authority indicating that a change of ownership following the certification of an application renders the new owner an essential party to an administrative hearing. The Application identified the applicants as Mako Enterprises, LLC and Elevator Properties, Inc., the then-owners of the property, and an electronic signature appears on the Application in an area designated for the owner’s signature. While the presence of the present owner is the safer course, the Commission’s approval without the new owner’s signature does not nullify the Commission’s decision.

##### **B**

#### **Whether Notice of the April 15, 2025 Hearing was Improper**

Appellants next contend the Commission’s approval was erroneous because notice of the April 15, 2025 hearing was improper. First, Appellants claim notice was improper because the notices sent on March 31, 2025 stated that the applicants were Mako Enterprises, LLC and Elevator Properties, Inc., but by then the property had been conveyed to 141 Power Road, LLC. Second,

they aver that “some neighbors who reside within the 200’ radius of the property testified that they did not receive notice.” *Id.* Applicants claim the notice was proper.

Again, Appellants reference no authority supporting their position that a change in ownership following a completed application invalidates the notice provided. No law requiring notice of a public hearing requires the identification of the property owner. *See* § 45-23-42(1) and Pawtucket City Planning Commission Land Development and Subdivision Regulations, § V, Art. B; § XI, Art. C (Jan. 16, 2024). The notices distributed on March 31, 2025 state Mako Enterprises, LLC and Elevator Properties, Inc. are the applicants and the proposed project is located at 141 Power Road, Pawtucket, Rhode Island. That is sufficient notice to alert the public, and the Commission committed no error in this respect.

Second, the law requires that notices be sent, not received. *See* § 45-23-42(1). A presumption of regularity attaches to acts by municipal officials: “sworn officers of the law are entitled to the presumption that their official acts have been properly performed, until the contrary is proved.” *Elliott v. Town of Warren*, 818 A.2d 652, 657 (R.I. 2003) (internal quotations omitted). The certified record includes an abutters’ map and list of abutters within the 200-foot range. Although the ideal course would have been to have a municipal officer swear and testify that notice was distributed, the record materials suffice to raise the presumption of regularity and place the burden on the Appellants to prove the municipal officers did not mail the notice. *Glatter v. Zoning Board of Review of The Town of Barrington*, No. PC-2022-04496, 2025 WL 1006554, at \*5 (R.I. Super. Mar. 26, 2025).

The Commission received no sworn testimony at the April 15, 2025 hearing. While some objectors stated that they had not received notice, this Court cannot conclude that notice was not sent or the Commission erred in holding notice requirements were satisfied.

Moreover,

“[p]ersonal attendance at a meeting of a government body constitutes a waiver of the right to object to any defect concerning the notice of any proceedings that occur at that meeting, unless ‘the person who raises the issue of the defect in notices be in some way disadvantaged or aggrieved by such defect.’” *Gardner v. Cumberland Town Council*, 826 A.2d 972, 980-81 (R.I. 2003) (quoting *Graziano v. Rhode Island State Lottery Commission*, 810 A.2d 215, 222 (R.I. 2002)).

Here, Appellants attended the April 15, 2025 hearing yet do not assert they were disadvantaged or aggrieved by any notice defect.

## C

### **Whether the Commission’s Decision Permits Judicial Review**

Appellants claim the decision of the Commission should be reversed because it does not contain factual findings and conclusions of law that allow for judicial review. Applicants insist that the Commission properly found the facts and rendered a decision supported by substantial evidence.

It is the role of this Court to determine

“whether the [Commission] members resolved the evidentiary conflicts, made the prerequisite factual determinations, and applied the proper legal principles. Those findings must, of course, be factual rather than conclusional, and the application of the legal principles must be something more than the recital of a litany. These are minimal requirements. Unless they are satisfied, a judicial review of a board’s work is impossible.” *Bernuth v. Zoning Board of Review of the Town of New Shoreham*, 770 A.2d 396, 401 (R.I. 2001) (quoting *Irish Partnership v. Rommel*, 518 A.2d 356, 358-59 (R.I. 1986)).

Appellants assert the Commission’s decision should be vacated. In *Sacchetti v. Ferland*, No. PC-2016-0880, 2025 WL 1172237 (R.I. Super. Apr. 16, 2025), the Superior Court vacated the decision of a zoning board of appeals because its decision contained insufficient factual findings. There,

the certified record on appeal did not include a hearing transcript and failed to state any findings of fact. On appeal, “[t]he Court [was] left to wonder” what persuaded the board to make its decision. *Id.* at \*3.

Here, the Commission satisfied the “minimal requirements.” *See Bernuth*, 770 A.2d at 401. Although the April 15, 2025 hearing transcript is not a part of the certified record, the TRC report and the Commission’s decision reiterating the findings in the TRC report include sufficient findings of facts to enable judicial review. The Commission found that the project design was consistent with the goals of the city’s Comprehensive Plan because it “provide[s] Pawtucket residents from all socio-economic groups with safe, decent and affordable housing” and the development “reflects the built character of the surrounding area.” (CR at 35.) The Commission further explained that the proposal meets the applicable design requirements and performance standards because the property is accessible via two adjacent roadways, sufficient parking is provided, and converting the building to a residential use will make its use more compatible with the other uses in the zone. Unlike *Sacchetti*, this Court is not left to wonder why the Commission made its decision; rather, the decision includes findings of fact sufficient to enable a judicial review.

The Commission took no sworn testimony during the hearing, and the Applicants offered none. The transcript of the Zoom audio file contains fifty-seven notations that a statement was “inaudible,” twenty-five notations of “multiple people talking,” and thirty-five statements from one or more unidentified speakers. *See generally* Appellants’ Ex. A. Unlike decisions of zoning boards of review under G.L. 1956 § 45-24-61, applications for land development projects do not expressly require the participation of a stenographer. *Compare* § 45-24-61(a) *with* § 45-23-63. But the teachings of our Supreme Court almost sixty years ago bear repeating today:

“although there is nothing in the enabling act requiring a zoning board to make a stenographic record of hearings before it, it is equally true that nothing in the act prohibits parties appearing before it from making, or causing to be made, at their own expense, stenographic recordings of such hearings. . . . We believe that a practice of this nature will be of great aid to the parties involved in such matters, as well as to the court, in the furtherance of justice in zoning cases.” *Iannuccillo v. Zoning Board of Review of Town of Warren*, 103 R.I. 242, 245, 236 A.2d 253, 255 (1967).

The assistance of a stenographer would have facilitated justice in this case. As the Supreme Court explained in *Iannuccillo*, applicants are encouraged to provide for the live transcription of testimony by a stenographer when a municipality fails to provide one itself. *Iannuccillo*, 103 R.I. at 245, 236 A.2d at 255; see *Highland Ridge Farm, LLC v. Town of Tiverton Zoning Board of Review*, No. NC-2023-0260, 2025 WL 1086870, at \*6 (R.I. Super. Apr. 3, 2025) (“[L]ive sworn testimony in the presence of the factfinder and subject to cross-examination is the gold standard for witness testimony.”).

Despite this Court’s conclusion that the Commission satisfied these minimal requirements, the Court insists municipal officers and applicants should treat future applications with greater formality. The Commission apparently excused the stenographer even though objectors to the Application were present at the hearing. Although Appellants later acquired a transcript of the Zoom audio file, that transcript was not certified as part of the record for this appeal. A review of the Zoom transcript reveals a chaotic hearing bereft of procedural formalities which inspire public confidence in the quasi-judicial actions of administrative agencies. Such records risk the success of the application, belittle the importance of the regulatory function, and besmirch the significant contributions of the local commissioners.

## **IV**

### **Conclusion**

For the reasons set forth herein, the appeal is denied. The decision of the Pawtucket Planning Commission is affirmed.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Durfee, et al. v. Kolodziej, et al.

**CASE NO:** PC-2025-02834

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** February 20, 2026

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

**ATTORNEYS:**

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