

**STATE OF RHODE ISLAND
WATER RESOURCES BOARD**

**APPEAL OF GLENN AND MARJORIE
ANDREONI AS TO DECISION OF THE TOWN
OF JAMESTOWN BOARD OF WATER AND
SEWER COMMISSIONERS** :

**NOTICE OF GLENN AND MARJORIE ANDREONI'S APPEAL OF THE
JAMESTOWN BOARD OF WATER AND SEWER COMMISSIONERS' DENIAL OF
THEIR APPLICATION FOR A WATER MAIN EXTENSION AND SERVICE
CONNECTION**

Pursuant to Rhode Island General Laws §§ 46-15-2 and 46-15-2.1 and 490-RICR-00-00-9.5(A)-(B), the Appellants, Glenn and Marjorie Andreoni (together, the “Andreonis”), appeal the Jamestown Board of Water and Sewer Board of Commissioners’ (the “Board”) decision to deny their application to extend the Town’s watermain to service their property. *See* Decision attached as **Exhibit A**.

I. INTRODUCTION

On the eve of the passage of a questionable moratorium prohibiting the submission of new applications, the Andreonis applied for an extension of a water line to service their property of less than 200 feet. In fact, there is an approved water line just one house from the Andreonis—at 68 East Shore Road. The Andreonis submitted their application which addressed all of the standards for such extension established by R.I. Gen. Laws § 46-15-2(b) and provided substantial expert documentation regarding issues with and the condition of the existing well and the lack of feasible options for potable water at the Property. The Board took almost seven (7) months to render a decision on the Andreonis’ application which met the statutory standards from the outset. During this seven (7) month period, the Board acknowledged on the record and even in its decision, that the Andreonis met the standards set forth in statute. Despite this, the

Board proceeded to bring in irrelevant documents, call their own witnesses and introduce exhibits and once again, willfully refused to apply the statutory standards, finding that a 1968 public law establishing the water district allowed the Town to arbitrarily determine who can obtain water service in the Town, depending on who they were, where they were located, when they applied, and in what direction the wind was blowing that day.

Neither the former litigation regarding the previous denial of the 68 East Shore Road Application, nor the 2022 statutory amendments establishing a state-wide standard for these applications, has deterred the Board from applying baseless legal and factual positions to subsequent applications. Here, it is undisputed that the Andreonis met the state standard for their application and had no feasible alternatives for potable water at their property. Despite this acknowledgement and clear evidence, the Board did not apply the state standards, and instead, applied the so-called standards in their 2009 regulations, taking the position that extensions to the rural water district were *prohibited* unless there was a showing such extension would improve water quality and quantity of existing users. Notwithstanding the fact that from 2009-2021, every extension applied for was granted, and this prohibition and condition was never applied, the Board was without authority to disregard the standards set forth in state law and arbitrarily apply this rationale as the sole basis for the denial of the Andreonis' application. Even more telling is the fact that the application was continued for three meetings, even after it was clear all state law standards were met, in order for the Board itself to call their own expert and introduce their own evidence in opposition to the application---in violation and outside the scope of their authority and in violation of the Andreonis' constitutional rights.

For the reasons set forth above and herein, the decision of the Board should not be remanded; rather, it should be reversed, as it is undisputed that the Andreonis met the state law

standards for the application, and the process below was tainted. It would prejudice the Andreonis to remand of their application to a Board that repeatedly acted outside the scope of its duties, abused its discretion, and violated the Andreonis' rights to a fair and impartial hearing. The evidence in the record, and even the decision of the Board is uncontested that the specific and objective standards of R.I. Gen. Laws § 46-15-2(b) were met.

I. PARTIES

1. The Andreonis are record owners of property located at 10 Seaview Avenue in Jamestown, Rhode Island, also known as Parcel Number 7-134 (the "Property"). The Property contains approximately 39,914 sf and is a single family home, with frontage on East Shore Road and Seaview Avenue.

2. The Town of Jamestown Board of Water and Sewer Commissioners ("Board") is a municipal board for the Town created by the General Assembly's adoption of P.L. 1968, ch. 273 and amended by P.L. 1975, ch. 12, with an official address of 93 Narragansett Avenue, Jamestown, R.I. 02835.

3. The Jamestown Town Council members comprise the Board membership, and the members are as follows:

- a. Nancy A. Beye ("Beye") is the President of the Jamestown Town Council and member of the Board, both with an address of 93 Narragansett Avenue, Jamestown, Rhode Island 02835. Beye's personal residence is located in the urban water district of the Town.
- b. Mary E. Meagher ("Meagher") is the Vice President of the Jamestown Town Council and member of the Board, both with an address of 93 Narragansett Avenue, Jamestown, Rhode Island 02835. Meagher's personal residence is located in the urban water district.

- c. Erik G. Brine (“Brine”) is a member of the Jamestown Town Council and member of the Board, both with an address of 93 Narragansett Avenue, Jamestown, Rhode Island 02835. Brine’s personal residence is located in the urban water district.¹
- d. Michael G. White (“Michael White”) is a member of the Jamestown Town Council and member of the Board, both with an address of 93 Narragansett Avenue, Jamestown, Rhode Island 02835. Michael White’s personal residence is located in the urban water district.
- e. Randall White (“Randall White”) is a member of the Jamestown Town Council and member of the Board, both with an address of 93 Narragansett Avenue, Jamestown, Rhode Island 02835. Randall White’s personal residence is located in the urban water district.

II. STATEMENT OF THE TIME, PLACE, AND NATURE OF THE APPEAL.

A. RELEVANT BACKGROUND

The Board manages the Town of Jamestown Water Division (“JWD”) which comprises and has jurisdiction over the entire Town.

1. The Town’s Public Water System

a. Establishment and Infrastructure

In 1888, the leaders of our state in the Rhode Island General Assembly (the “General Assembly”) adopted a public law creating the Jamestown Light and Water Company (“JWLC”) for the purposes of furnishing water and light of any kind in the Town of Jamestown to private persons or the Town itself. *See* 1888 P.L. Ch. 47.² In 1933, the General Assembly adopted

¹ Mr. Brine recused himself from the hearings on this Application and others pending at the same time for some undisclosed reason.

² These documents are being provided to the WRB to take judicial notice of the same, as they are Board records and public documents. *See e.g.*, Rhode Island Rule of Evidence 201; *Hamilton v. Ballard*, 161 A.3d 470, 475, n. 10 (R.I. 2017).

another public law authorizing the Town to establish its own water system, either by purchasing JLWC or another company called Newport Water Corporation. *See* 1933 P.L. Ch. 256.

In 1968, the General Assembly passed a new law, known as Public Law Chapter 273 (“Ch. 273”), which gave the Town permission to establish the Board and authorized it to “construct, operate, maintain, extend, and improve a water works system for the town and to provide an adequate supply of water for the town or any part thereof,” but only if the people living in the Town agreed during a financial town meeting. *See* 1968 P.L. Ch. 273. Chapter 273 also required the Board do everything needed to comport with “constitutional requirements,” even if those steps were not listed in statute. *Id.*

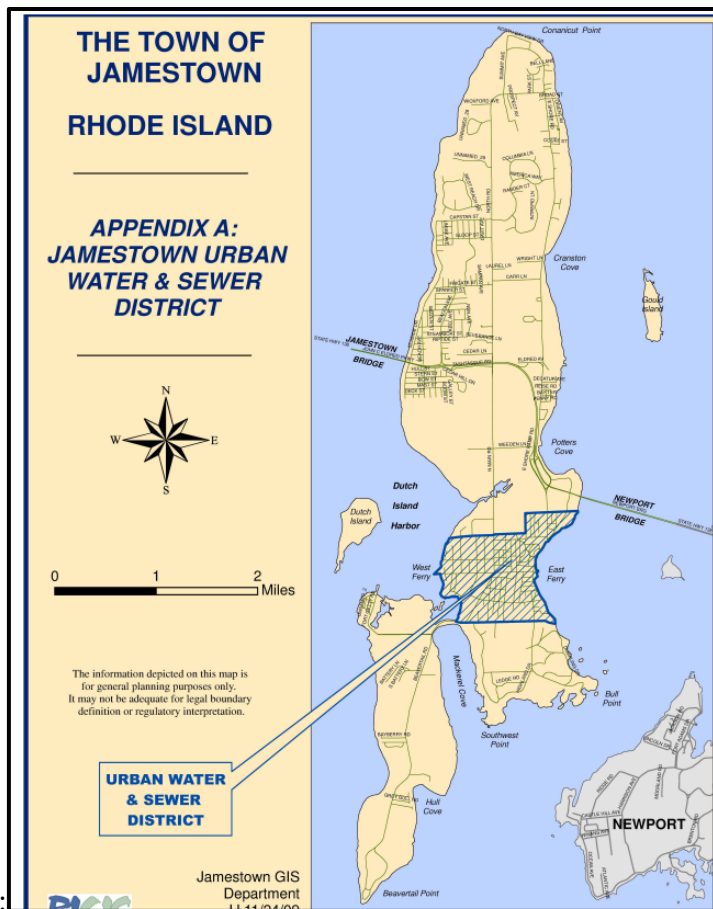
The Town’s water supply system is a public water supply and more specifically a “community water supply system.”³ R.I. Gen. Laws §§ 23-65-1(4) and 23-65-1(11); *see also*, **Exhibit B**, relevant portions of Pare Corp.’s, *Clean Water Infrastructure Replacement Plan: Jamestown Water District*, 3 (2019) (the “2019 Report”); and **Exhibit C**, relevant portions of Jamestown, R.I. 2014 Comprehensive Community Plan (“2014 Comprehensive Plan”). The Board must follow the rules and regulations of the state and federal government and its agencies as a public water supplier. *See e.g.*, R.I. Gen. Laws §§ 39-15.1-1, *et. seq.*; 46-15.3-1, *et. seq.*; 46-15.8-1, *et. seq.*; 46-13-1, *et. seq.*; 46-15-1, *et. seq.*; 46-15.2-1, *et. seq.*; 46-15.7-1, *et. seq.*

The Board administers its public water supply through the town administrator and public works director. **Exhibit B** at 3. The public works department, town engineer, and water division “personnel are responsible for the full implementation and operation of the public water supply

³ The water system is licensed and designated by the State of Rhode Island Department of Health as #1858419.

system.” *Id.* The Board is the governing and hearing body for the Town’s water system. *See id.*

After the Board purchased the Town’s water system, it split the Town into two areas for water service. It designated one central area the “urban water district” (“UWD”) and the other areas the “rural water district” (“RWD”). All areas of the Town that are not part of the UWD are included in the RWD:



See **Exhibit D**, *Rules and Regulations of Water and Sewer Commissioners, as amended* at 1-2. 20 (May 18, 2009). There are various water lines servicing homes throughout the RWD. See **Exhibit E**, relevant portions of Town of Jamestown, Department of Public Works Water Department’s Water Supply System Management Plan 5-Year Update at 3 (Revised Mar. 2018).

The Town’s water supply comes from two reservoirs and eight groundwater wells (only two of which are used), and there is an emergency line across the Jamestown Bridge to North

Kingstown. See **Exhibit B** at 9. The North Reservoir is the Town’s primary water source, the South Reservoir, its secondary source. *Id.* at 6. The North Reservoir, Community Well JR1, and Community Well JR3 are north of the Property and inside the RWD. *Id.* at 7. There are various storage tanks including standpipes included in the water system infrastructure. *Id.* at Figure 3-1.⁴

Both reservoirs are connected to the Town’s water treatment plant, which was put into service in 2009. See **Exhibit E** at ES-2. The water treatment plant, on average, produces 350,000 gallons per day of treated water, with a maximum of 500,000 gallons per day (“gpd”). **Exhibit B** at 9. The plant was part of a 2004 bond for \$6.2 Million, approved by the Town voters specifically for water infrastructure improvements. See 2004 Senate Bill S 3165.⁵

i. Capacity of the system

Rhode Island General Laws §§ 46-15.3-5.1 through 46-15.3-7 require the JWD to adopt a water supply system management plan (“WSSMP”) and to update it every five years. The plan must contain information concerning infrastructure, future projections, and buildout. R.I. Gen. Laws § 46-15.3-5.1(c). As of the date of the submission of the Andreonis’ January 2, 2024 Application, the last update to the WSSMP was in 2018⁶ which provided, in relevant part:

- The safe yield⁷ of the two reservoirs was between 261,000 gpd and 305,000 gpd,

⁴ Each standpipe has usable storage capacity of 700,000 gallons. See **Exhibit E** at ES-2.

⁵ Rhode Island Board of Elections, SUMMARY RESULTS: JAMESTOWN | BOARD OF ELECTIONS, <https://elections.ri.gov/elections/results/2004/generalelection/sumjames.php>
The bond was for the water treatment plant, a second water tower, replacement of water mains, and fire hydrants. See Dotti Farrington, YEAR IN REVIEW - JAMESTOWN PRESS (2018), <https://www.jamestownpress.com/articles/year-in-review/>

⁶ Subsequent to the submission of the Andreoni Application in January 2024, the Town worked on drafts of its WSSMP update. Upon information and belief, that updated WSSMP has since been submitted to the WRB, but the 2018 WSSMP governs the Andreoni Application, which was vested as of January 2, 2024.

⁷ “Safe-yield” is defined as “the annual average daily withdrawal rate which results from the maximum depletion of all usable storage capacity” where the usable storage capacity is characterized by the inflow

- without any transfer pumping⁸ between the reservoirs. **Exhibit E** at 5-1 to 5-2.
- With transfer pumping, the estimated safe yield of the two reservoirs was between 304,000 and 421,000 gpd. **Exhibit E** at 5-2.
- Since the 1990s, several studies were commissioned to explore expanding the public water supply. **Exhibit E** at 5-5 to 5-8.
- Only one improvement has been performed since that time: drilling wells JR1 and JR3, which have been in service since 2000. **Exhibit E** at 5-6.
- As of 2019 there were 1,528 service connections, of which 1,401⁹ were residential connections. **Exhibit E** at 6.
- Despite numerous suggestions in the studies, and despite specific inclusion of this goal in the Town's 2014 Comprehensive Plan, no additional projects have been undertaken since 2000 to explore or expand the supply. **Exhibit E** at 5-5 to 5-8.

Importantly, the 2018 WSSMP contains no prohibitions on extensions or connections in the RWD.

The Town's 2014 Comprehensive Plan ("2014 Comprehensive Plan") noted, in relevant part, that:

- The capacity of the North Reservoir was 283,000 gpd and could be increased to 403,000 gpd;
- The water supply system, at that time, had enough capacity for an additional 273 potential new units and connections;
- The *per capita* residential water use was 41.3 gpd; and
- 1,736 connections to the system could be accommodated at full build-out.

See **Exhibit C**, 2014 Comprehensive Community Plan at 239-41, 262-63.

In a memorandum concerning the Andreonis' previous application for a water line

and outflow of water supply. See **Exhibit E** at 8, Fay, Spoffard & Thorndike, Inc., *Safe Yield Analysis 8-11* (2000), included as part of 2018 WSSMP.

⁸ "Transfer pumping" refers to the transfer of overflow from one reservoir to another (such as from South Reservoir to North Reservoir) through a pipeline in an effort to maximize safe-yield and minimize outflow due to spillage. See **Exhibit E** at 23.

⁹ The number of connections to the system has actually *decreased* over the years. **Exhibit E** at Worksheet #8.

extension, considered by the Board in 2021, the Public Works Director, Michael Gray (“Mr. Gray”) listed two additional important facts. He asserted that the water system’s average daily demand was 152,000 gallons per day. **Exhibit F**, Mem. from Michael Gray, Jamestown Public Works Director to the Board, *RE: Water Extension Application East Shore Road* at 2 (Jun. 15, 2021). He added that only thirty-two (32) new dwelling units have been connected since 2014, leaving two hundred and forty-one (241) connections remaining for the UWD and RWD until reaching total build-out. *Id.*

ii. Capacity of the system

Anyone who wants a water connection or extension in the town must apply for Board approval. See **Exhibit G**, Town Ordinance §§ 74-36 and 74-37. The Board transacts business by the *Rules and Regulations of the Board of Water and Sewer Commission*, which were most recently amended on May 18, 2009 (“Regulations”). See **Exhibit D**. For the first time, that amendment included language in §14(B) which distinguished between water connections and extensions in the RWD.¹⁰ See **Exhibit H**, Town of Jamestown Town Council Meeting for Town, Water and Sewer Matters at 2 (May 18, 2009). Prior to the 2009 amendment, the Board considered both connections and extensions in the RWD under the same standard. *Id.* Connection applications are where the water main exists in front of a property, but the home is not yet tied-in. Extension applications are where the water main has to be brought down the street to the home and then the home is connected to the water supply via the new extended water main. The applicant is responsible for all design and construction costs for extending the water main. After the amendment in 2009 and until

¹⁰ The significance of this difference is discussed in detail below, because prior to the Board’s consideration of the Andreonis’ 2021 application, these different standards had never been applied to other applications.

amendments to state law in June 2022, § 14(B) of the Regulations governing applications in the RWD provided as follows:

- 14B. Rural water districts. All service connections in the rural water district shall be subject to the following conditions:
- a. The applicants shall be subject to the requirements described for connections in the urban district for one- or two-family residential uses.
 - b. The applicants shall show to the satisfaction of the commission that the proposed service connection requested:
 1. Is consistent with the Comprehensive Community Guide Plan adopted December 23, 1991, as amended.
 2. Will not impair the available resources of the urban water district.
 3. Will not reduce the level of fire protection of the community; the property shall not be part of a major subdivision.
 4. Extensions to and within the rural district shall be prohibited.

Nothing herein shall be construed to prohibit or prevent the Board of Water and Sewer Commissioners from making such improvements, including extensions, which shall, in the opinion of the Board, improve the quality or quantity of water furnished to existing water uses.

Exhibit D at 8-9.

b. The Board's previous approval of RWD Applications.

Between 2014-2021, there were only thirty-two total new connections to the system. *See **Exhibit F** at 2.* According to the Board's *own records*, it allowed *at least* sixteen extensions and connections *in the RWD* since 2009.¹¹ Of those applications, four were for extensions.

¹¹ See Board Meeting Minutes at 3-4 (Jun. 20, 2011) (Board approved water main extension for Rodney P. Thomas for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/2103/635446361853470000>; Board Meeting Minutes at 2 (Oct. 7, 2013) (Board approved water main *extension* for Kim et Jeff Wescott for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/437/635443959154200000>; Board Meeting Minutes at 2-3 (Feb. 3, 2014) (Board approved water main *extension* for Jonathan H. Goodman/James Rappaport for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/415/635443961693670000>; Board Meeting

Importantly, neither the alleged prohibition of § 14(B) of the Regulations nor a requirement for a showing that the extension application would improve the quality or quantity of water to existing users was applied to any of the four (4) extensions referenced above. *See id.*

Minutes at 2 (Mar. 3, 2014) (Board approved water main **extension** for David Fitzgerald for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/419/635443962207570000>; Board Meeting Minutes at 1-2 (May 5, 2014) (Board approved water main connection for William Hutchinson for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/427/635443961865530000>; Board Meeting Minutes at 1-2 (Jul. 7, 2014) (Board approved water main **extension** for Norton H Reamer 2002 Trust for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/3931/635538892646000000>; Board Meeting Minutes at 2-3 (Apr. 6, 2015) (Board approved water main connection for Thomas Carton Swett, Trustee, et al. for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/7483/635665106243300000>; Board Meeting Minutes at 2 (Mar. 7, 2016) (Board approved water main connection/extension for Noreen Drexel et William O'Farrell for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/34827/635974567844570000>; Board Meeting Minutes at 3-4 (May 2, 2016) (Board approved water main connection for Noreen Drexel et William O'Farrell for a second property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/37215/636034797097730000>; Board Meeting Minutes at 3-4 (Aug. 16, 2016) (Board approved water main connection for Mark Bard for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/40547/636120477738130000>; Board Meeting Minutes at 3-4 (Mar. 20, 2017) (Board approved water main connection for Davitt Design and Scott and Pam Mosenthal for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/43163/636287337108230000>; Board Meeting Minutes at 3 (Jun. 19, 2017) (Board approved water main connection for Dan and Elaine Ciampa for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/46447/636396852837900000>; Board Meeting Minutes at 2-3 (Apr. 16, 2018) (Board approved water main connection for Patrick Vieira for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/49330/636633788036670000>; Board Meeting Minutes at 3 (Sep. 17, 2018) (Board approved water main connection for H. P. Bunaes for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/52768/636777143131630000>; Board Meeting Minutes at 2-3 (Aug. 17, 2020) (Board approved water main connection for Michael and Shannon Boxer for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/60674/637393183679230000>; Board Meeting Minutes at 4 (Sep. 21, 2020) (Board approved water main connection for Adam et Phyllis Kurzer for property located in the RWD), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/60676/637393183995630000>.

2. The Andreonis' First Application.

The Andreonis first applied in 2021 for an extension under the 2009 Regulations. That application was denied.

3. An Important Change in Rhode Island Law.

a. 2022 Legislation

In the spring of 2022, the General Assembly took decisive action to modernize the framework governing Rhode Island's public water suppliers with forward-thinking legislation (the "2022 Amendments"). *See* 2022 R.I. HB 7782; *see also*, R.I. Gen. Laws §§ 46-15-2; 46-15-2.1. By June of that year, this legislation was cemented into law, setting a new, uniform state-wide standard for all applications seeking connections or expansions to public water supply systems. *Id.* The state-wide standard significantly differed from those set forth in the Board's 2009 Regulations.¹²

Furthermore, acknowledging the dynamic nature of public utilities and the need for a fair adjudicative process, the amendments instituted a crucial appeal procedure to the Water Resources Board ("WRB"). *See* R.I. Gen. Laws § 46-15-2.1. This evolution in the law serves the interests of justice, enabling a more equitable platform where decisions concerning vital water resources can be challenged, thereby aligning the with principles of good governance and transparency that are so critical in contemporary public service.

b. Applications After the 2022 Statutory Amendments.

As this WRB is aware, in July, 2022, just after the effective date of the 2022 Amendments, a property owner one house south of the Andreonis, CLP Trust applied for an extension under the new standards in the 2022 Amendments. Like the Andreonis, CLP had applied and been denied

¹² The only overlapping standard was the need for a showing that there would not be a reduction in the level of fire protection, which is not an issue here.

previously. On August 22, 2022, the Board refused to consider CLP's 2022 application and voted to require CLP to submit a memorandum addressing whether the Board was required to hear the 2022 application in light of the 2021 denial. See Exhibit I, Hr.'g Tr. at 3-5 (Aug. 22, 2022). At both the August 22, 2022, and September 19, 2022, meetings, the Board indicated it did not believe the new statewide standards applied to the Board. See Exhibit I, Tr. 8/22/22 at 5 and Exhibit J, Tr. 9/19/22 at 23.

At its September 19, 2022, meeting, the Board voted not to hear the CLP 2022 application, supposedly applying the doctrine of administrative finality. See Exhibit J at 24. In voting to deny hearing the application, a member of the board stated: "[i]t cannot be the case that the rule now is apply, and if your well doesn't produce, the town is on the hook to provide you water." *Id.* He added, "[i]f that is the requirement tell me, some court." *Id.*

CLP took an appeal to this WRB and filed other legal actions.

c. The Board relents and allows a water main extension to 68 East Shore Road.

In November 14, 2023, the Town voted to settle the CLP litigation, including the appeal to this WRB. As part of the settlement terms, CLP was allowed to extend the water line in East Shore Road to the centerline of its Property at 68 East Shore Road. As part of the Board's public statement on the settlement, it asserted that it would turn its focus to updating its WSSMP and local water service rules in light of the 2022 Amendments. See Exhibit K, Board Statement (Nov. 14, 2023).

Importantly, at the Board's next meeting on November 20, 2023, Mr. Gray acknowledged that the 2022 Amendments have statewide implications for public water supply management.¹³ Responding to this, Board Member Randall White, with backing from the Board Vice-President,

¹³ Board Meeting Minutes at 3 (Nov. 20, 2023), *available at* <https://www.jamestownri.gov/home/showpublisheddocument/81392/638433376624130000>.

initiated a motion. This motion aimed to solicit the Town Solicitor's help in crafting a resolution that would petition the General Assembly for a specific amendment to Rhode Island General Laws § 46-15-2.¹⁴

4. *The 2024 Application*

a. The Andreonis submit their 2024 application

On January 2, 2024, the Andreonis filed an application for water main extension and associated service connection for their Property. The Andreonis sought an extension to bring the water line to the centerline of their Property in East Shore Road, from where the water line approved at 68 East Shore Road is—with just one home in between the two on East Shore Road.

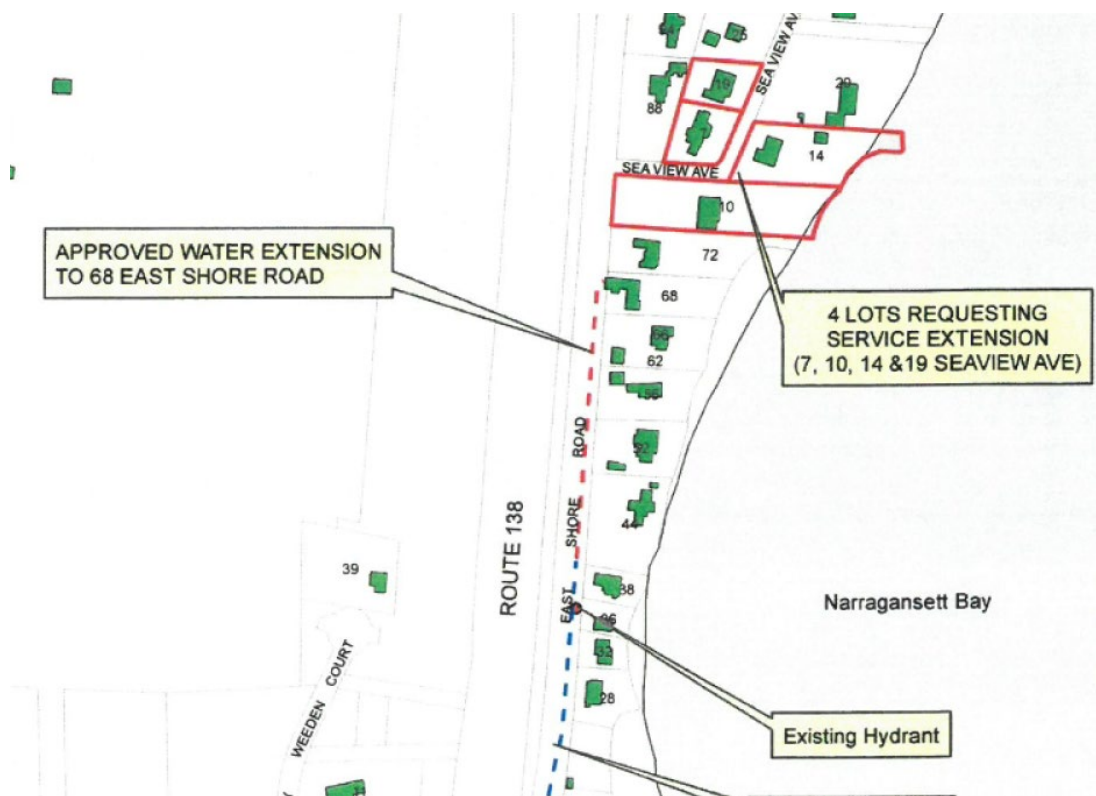


Exhibit O; see also **Exhibit L**, Application materials and map included therein.

¹⁴ *Id.*

The cover letter to the Application notes that the Application was “submitted under the standards established for all public water suppliers, *effective June 15, 2022*, as set forth in R.I. Gen. Laws § 46-15-2.” **Exhibit L**, Application (Jan. 2, 2024) (emphasis in original). The letter further explained “[s]uch legislation was passed in an effort to standardize review by the State’s approximately 400 public water suppliers, while providing them with the flexibility to apply *lower* (not *higher*) standards to such applications.” *Id.* (emphasis in original).

The Application included the following materials:

- A cover letter explaining how the Andreonis meet the standards set forth in Rhode Island General Laws § 46-15-2(b).
- The Board’s completed and executed form application.
- Exhibit 1-A – Planning Board Department Form.
- Exhibit 1-B – Fire Chief Form.
- Exhibit 1-C – Sketch of Proposed Extension.
- Exhibit 1-E – Northeast Water Solutions, Inc. Memorandum concerning issues of water quality and options.
- Exhibit 1-F – Letter from ESS Laboratory.
- Exhibit 1-G – Application Fee.

Exhibit L. The Application also addressed each standard for approval as set forth in Rhode Island General Laws § 46-15-2.

b. The Moratorium.

On the evening of January 2, 2024, the Board implemented a six-month moratorium on processing new applications for water service connections outside the clearly marked UWD area. See **Exhibit M**, Moratorium. This pause comes as a direct consequence of the 2022

Amendments, which the Board believes casts doubt on its authority to confine its water services.

Id. Importantly, the Moratorium provided a vesting provision as follows:

4. Any application(s) for permitting of water service extensions outside of the Urban Water District presently filed with the Town shall not be affected by this moratorium if such application(s) complies with the provisions of such service extension submission filing in effect prior to the adoption of this moratorium.

Id. at 2.

c. The Proposed Statutory Amendment

As set forth in its Moratorium, the Town caused their Senator and Representative to submit legislation which would exempt it from the statewide standards set forth in Rhode Island General Laws § 46-15-2. *See* **Exhibit N**, 2024 – S 2414. That legislation did not pass.

5. *The Town’s Review of the Application.*

A week after the submission of the Application, the Andreonis received a letter from Mr. Gray stating that the Application was “currently under review by Town staff” and that “[y]ou will receive notice from me when the review is complete and the application is scheduled for a water and sewer commissioner’s meeting.” **Exhibit F**, Ltr. from Michael Gray, P.E., Jamestown Public Works Director to Glenn Andreoni, et al., *RE Application for Utility Connection Jamestown Water* (Jan. 9, 2024). The Application was then scheduled for the February 20, 2024 meeting. On February 19, 2024, the Andreonis submitted a one-page plan from DiPrete Engineering showing the locations of wells and septic systems and their respective setbacks in the area, for discussion and presentation at the February 20, 2024 hearing. *See* **Exhibit W**, DiPrete Plan.

a. The February 13, 2024 Staff Memorandum

On February 13, 2024,¹⁵ Mr. Gray issued a staff memorandum concerning the Andreonis' Application, alongside three other applications. See Exhibit O, Mem. from Michael Gray, P.E., Jamestown Public Works Director to the Jamestown Board of Water and Sewer Commissioners, *RE: Water Extension Application East Shore Road* (Feb. 13, 2024). Mr. Gray notes in the memorandum that the Andreonis requested municipal water service because their well provides poor quality water with high salt content, as reported by Northeast Water Solutions, Inc. ("Northeast"). *Id.* at 2. Mr. Gray explained in the memorandum that Northeast determined the well's low yield of 0.6 gallons per minute and a salt concentration of 2220 mg/L make it unsuitable for use. *Id.* Mr. Gray continued noting Northeast dismissed attempts at increasing the well's yield through hydro-fracking due to geological constraints and the risk of further contamination, while the option of drilling a new well is unfeasible because of the Property's location and environmental restrictions. *Id.* Mr. Gray also noted Northeast deemed on-site treatment for the existing well water impractical due to the well's insufficient yield. *Id.*

b. The February 20, 2024 hearing.¹⁶

At the February 20, 2024 hearing, the Andreonis were one of four (4) applicants to be heard on a request for a water line extension. See Exhibit P, Board Minutes at 2 (Feb. 20, 2024). The Andreonis appeared, with their attorney and experts to present their Application. The other applicants' properties were located further north of the Andreonis. *Id.* Other applicants had submitted detailed reports the night of the hearing, and on that basis, Member Randall White, at

¹⁵ The memorandum is misdated as February 13, 2023.

¹⁶ The undersigned counsel just received the transcripts on the eve of the filing of this Appeal. Additional citations to the transcripts will be provided in a supplemental filing pursuant to the WRB's Rules, if additional briefing is necessary.

the outset of the February hearing, sought to continue all four matters collectively, because he wanted additional time to review the reports. *Id.* Over the objection of the Andreonis, their Application was also continued by the Board to an unspecified date. *Id.*

However, later in the February 20, 2024 meeting, the Board unanimously approved an application for a connection in the RWD without testimony, evidence or presentation. *Id.* at 4.

c. April 15, 2024 Board Meeting.

The Andreonis' Application was next considered during the April 15, 2024 Board meeting. See **Exhibit Q**, Board Minutes at 4-6 (Apr. 15, 2024); see also, **Exhibit R**, excerpts from April 15, 2024 Tr. at 70-92. The Andreonis addressed Rhode Island General Laws § 46-15-2(b) standard and provided evidence that they met each standard. *Id.* at 5.

The Andreonis presented their experts: 1) Brian Thalmann, a professional engineer and senior project manager for DiPrete Engineering, who testified concerning the impossibility of constructing a new well on the Property due to the locations of onsite wastewater systems, private wells, and flood zones in the area and at the Property and 2) Robert F. Ferrari, P.E. of Northeast also testified about the diligence, inspections and testing performed at the Property and the lack of any suitable or feasible alternatives. See **Exhibit Q** at 5; **Exhibit R** at 74-87. Ferrari also testified that the Andreonis met the well to depth ratio standard set forth in Rhode Island General Laws § 46-15-2(b)(6)(i). See **Exhibit Q** at 5; **Exhibit R** at 54:9-15. Glenn Andreoni also testified, emphasizing the deterioration of the water supply over the years, his diligence in exploring alternatives with experts, and the lack of potable water to service the home. See **Exhibit Q** at 5-6; **Exhibit R** at 87-92. He explained the water main extension was the only other viable alternative. *Id.*

Despite meeting the requirements under Rhode Island law for a water main extension, the Board voted to continue the matter to their May 6, 2024 meeting. *Id.* at 7. The continuance was based on Member White's need to call his own witness, as shown during the following exchange:

RANDALL WHITE: I'll address it. I intend to call as a witness Michael Gray to speak about all four applications. And so if that answers what you're about to ask why aren't we done with the Andreonis, can't do it tonight. It's going to happen next time.

ATTORNEY ROCHA: Mike Gray is right there.

RANDALL WHITE: I know, but we have a roomful of people. We just don't have the ability to finish this hearing tonight.

ATTORNEY ROCHA: So, the board is going to call its own witness, that's my understanding?

RANDALL WHITE: I'm – I would like to hear from Michael Gray.

ATTORNEY ROCHA: On anything specific to our application?

RANDALL WHITE: It relates to whether or not these applications are consistent with system capacity.

ATTORNEY ROCHA: Which – and that's in the State law.

RANDALL WHITE: That's in the rules and regulations of the – this board.

ATTORNEY ROCHA: Right. And now we have a State law.

RANDALL WHITE: Which, in all due respect, reasonable minds can differ, I think obviates the applicability of that rule and regulation, and I expect to address that through his testimony.

ATTORNEY ROCHA: You're going to address system capacity through his testimony?

RANDALL WHITE: What is that?

ATTORNEY ROCHA: I just don't understand why we need a continuance on, one, the standard that isn't in the statute. And, two, he's here. Your system capacity information is what it is. I can testify to it as well.

RANDALL WHITE: We're not here to debate the applicable law. I recognize you feel strongly about it. You participated in the – as I understand it, the revision of the statute.

ATTORNEY ROCHA: You have – this council has a bill in to amend it. So, I don't think it can now take the position that it doesn't apply, so that's --

RANDALL WHITE: I'm not suggesting that it doesn't apply. Reasonable minds can differ about its reach and whether or not the current rules and regulations of the JWSD are somehow obliterated by the existence of the law. And I respectfully, respectfully suggest that the testimony I'd like to hear is relevant to the four applications and the legalese will be left for another day. We can debate it. We got into this --

ATTORNEY ROCHA: I just have one question. Will I be able to cross-examine Mr. Gray?

RANDALL WHITE: What?

ATTORNEY ROCHA: Will I be able to cross-examine Mr. Gray?

MEAGHER: Yes.

RANDALL WHITE: Sure. Why not?

ATTORNEY ROCHA: My objection is noted for the record.

Exhibit R, Board Hr.'g Tr. at 113:7-115:21 (Apr. 15, 2024).

d. May 6, 2024 Commission Meeting.

The Commission held a second hearing on May 6, 2024. The Town Council minutes from that meeting are devoid of **any** information concerning the two-hour hearing besides the unanimous votes “to continue the water extension applications until the next Board of Water & Sewer Commissioners meeting on May 20, 2024” and “to adjourn from sitting as the Board of

Water [a]nd Sewer Commissioners.” See Exhibit S, Board Meeting Minutes at 2-3 (May 6, 2024).

Nevertheless, the recording and transcript of the hearing tells a far different story from the opaque meeting minutes. Glenn Andreoni (individually, “Mr. Andreoni”) testified during this second hearing as well. Before the Commission, Mr. Andreoni presented a compelling narrative of his tenure as the owner of the Property since 2015, a residence which he uses seasonally and has responsibly maintained and his inability to use the home due to the water issue. See Exhibit T, Hr.’g Tr. at 37-45 (May 6, 2024). While faced with many irrelevant questions from the Board, Mr. Andreoni’s testimony confirmed he met the yield to depth ratio for his Application.

Commissioner Randall White, tasked with impartial decision-making, called his own witness, Mr. Gray, and proceeded to conduct a direct examination of him spanning forty-nine minutes, probing for testimony and evidence upon which to deny the Application. See *id.* at 57-110. As Randall White explained, “[w]hen we adjourned the last time, I had asked to have Michael Gray testify today. I just wanted to suggest to the applicants who are here that I would propose that whatever testimony he offers is applicable to all four of the people who are here, or three who are here, but all four applications.” *Id.* at 56:16-25.

During Randall White’s direct examination of Mr. Gray, Mr. Gray elaborated on the water system’s acquisition from a private entity in the 1960s, its components comprising two reservoirs and a treatment plant. *Id.* at 57-61. Mr. Gray provided insight into the water mains’ layout, historical increments, and distinctions between the UWD and RWD. *Id.* He highlighted financial independence secured through ratepayers, referenced improvements like additional water sources, and discussed safe yield issues, noting that excess demand over safe yield occurs periodically. *Id.* at 62.

On cross-examination by Attorney Joelle Rocha, Mr. Gray testified that the JWD had only experienced a marginal rise to 1,420 residential connections in 2024¹⁷ from 1,401 in 2019. *Id.* at 103:20-104:15. The allowance for the development of 273 new units as per the 2014 comprehensive plan underscores a paced and sustainable expansion. *Id.* at 109:21-110:10; *see also* **Exhibits C and F**. Such methodical progression, averaging only four new connections annually since 2014, supports the position that the water system can prudently support additional growth, including the proposed development at 68 East Shore Road, without compromising its integrity or overwhelming its capacity.

The matter was once again continued for a vote to May 20, 2024.

e. May 20, 2024 Board vote

On May 20, 2024, the Board voted to deny the Application, relying on the argument that extensions were prohibited in the RWD without a showing that such proposed extension would improve the quality or quantity of water to other users—citing to a provision contained in the 2009 Regulations. *See* **Exhibit U**, Board Meeting Minutes at 2-3 (May 20, 2024).

f. The Written Decision.

The Written Decision, formalizing the denial of the water service extension to the Andreonis, was approved through a Board vote on June 17, 2024. *See* **Exhibit V**. On June 28, 2024, the Commission's chairperson, Beye, executed the Decision, which was subsequently mailed and received by the Andreonis by mail on July 5, 2024. *See* **Exhibit A**.

The Decision articulated the Board's rationale, citing several irrelevant considerations. A prominent factor was the geographical placement of the Andreonis' property on Seaview Avenue—a location falling beyond the serviceable boundaries of the UWD. *See* **Exhibit A** at 1.

¹⁷ Mr. Gray had testified to the new draft of the WSSMP and a 2024 buildout plan draft which contained these numbers.

The Decision also highlighted the applicant’s non-ratepayer status, aligning with the Water District’s policy to confer service extensions predominantly within its existing ratepayer domain, the UWD. *See **Exhibit A*** at pg. 2-3. The Board asserted, the suggested service expansion posed potential risks to both the water system’s integrity and its pledge to serve the current user base adequately. *See **Exhibit A*** at pg. 3. The Decision also considered the alleged inherent limitations of the available water supply, notably its dependency on rainfall and the imperative to practice regulated consumption. *See **Exhibit A*** at pg. 2.

Another indispensable—but improper—criterion from the commissioners was the mandate for any system extension to enhance the quality or quantity of water for the present user community, a standard the Board asserted the Andreonis’ Application did not meet or address. *See **Exhibit A*** at pg. 3. The Board waived away the Andreonis’ arguments, primarily rooted in Rhode Island General Laws § 46-15.2(b), because the Board alleged the Application did not take into account the broader communal benefit of their request. *See **Exhibit A*** at pg. 3-4.

III. STATEMENT OF LEGAL AUTHORITY AND JURISDICTION UNDER WHICH THE INSTANT APPEAL IS FILED.¹⁸

A. Appeal Standard and Jurisdiction of WRB.

R.I. Gen. Laws § 46-15-2.1 authorizes an appeal of the denial of an application for an extension of a waterline by an aggrieved party. As set forth in R.I. Gen. Laws § 42-35-15 and the WRB’s Regulations at 490 RICR 00-00-9.7(E), the standard on appeal is as follows:

The Board shall not substitute its judgment for that of the Supplier as to the weight of the evidence on questions of fact. The Board may affirm the decision of the Supplier or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions of the Supplier are:

¹⁸ This section also “reference[s] . . . the particular section(s) of the applicable statutes and rules . . .” 490-RICR-00-00-9.5(B)(3).

1. In violation of constitutional or statutory provisions;
2. In excess of the statutory authority of the Supplier;
3. Made upon unlawful procedure;
4. Affected by other error of law;
5. Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
6. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

B. Legal Argument.

The Board's *sole* basis for denial is their finding that the Andreonis presented no evidence that their extension would improve the quantity or quality of water for existing users--- citing to a sentence in §14(B) of their 2009 Regulations under the "standards" for an extension application were not met. *See **Exhibit A***. The section provides in full as follows:

- 14B. Rural water districts. All service connections in the rural water district shall be subject to the following conditions:
- a. The applicants shall be subject to the requirements described for connections in the urban district for one- or two-family residential uses.
 - b. The applicants shall show to the satisfaction of the Board that the proposed service connection requested:
 1. Is consistent with the Comprehensive Community Guide Plan adopted December 23, 1991, as amended.
 2. Will not impair the available resources of the urban water district.
 3. Will not reduce the level of fire protection of the community; the property shall not be part of a major subdivision.
 4. Extensions to and within the rural district shall be prohibited.

Nothing herein shall be construed to prohibit or prevent the Board of Water and Sewer Board from making such improvements, including extensions, which shall, in the opinion of the Board, improve the quality or quantity of water furnished to existing water uses.

Exhibit D. This is not a finding or requirement under the standard for the extension application set forth in R.I. Gen. Laws § 46-15-2(b), which contains only specific and objective standards.

Importantly, R.I. Gen. Laws § 46-15-2 provides, in relevant part, after listing the standards in (b), that:

A public water supply system governed under this section may provide for *lower* standards for approval for residential property if such standards meet the requirements of the agency’s state-approved WSSMP, and such WSSMP is not expired.

Here, however, the Board applied different and heightened and impossible standards and prohibitions on the Andreonis’ Application. There is no authority for this in state law, and the Board acted well beyond the scope of their duties and authority.

1. The 2022 Amendments establishing a state-wide standard for requests for water supply extensions and service preempted § 14(B) of the Regulations and rendered them inapplicable to such applications.

The 2022 Amendments apply statewide to all public water suppliers by their very terms, mandate and language and the Board had no authority to disregard the same or apply their own standards. The Rhode Island Supreme Court has been clear that “preemption only exists in circumstances in which the municipality would have the authority to regulate a particular subject in the absence of state action.” *K & W Auto., LLC v. Town of Barrington*, 224 A.3d 833, 840 (R.I. 2020) (quoting *Town of Warren v. Thornton-Whitehouse*, 740 A.2d 1255, 1261 (R.I. 1999) (“In both situations, preemption only exists in circumstances in which the municipality would have the authority to regulate a particular subject in the absence of state action.”)). Assuming *arguendo*, that the Board had the authority to regulate the extensions and connections to its water supply, by the 1968 charter cited by the Board, or otherwise, as of June 15, 2024, it was required to apply the state-wide standards set forth in the 2022 Amendments to all extension and connection

applications, unless they decided to pass lower standards for the same. See R.I. Gen. Laws § 46-15-2(b). There is no carve out or exemption from the application of this provision to all water suppliers.

The Rhode Island Supreme Court recognized as far back as 1953 ““that municipal ordinances are inferior in status and subordinate to the laws of the state.”” *Town of E. Greenwich v. O’Neil*, 617 A.2d 104, 109 (R.I. 1992) (quoting *Wood v. Peckham*, 80 R.I. 479, 482, 98 A.2d 669, 670 (1953)). The Court further held ““an ordinance inconsistent with a state law of general character and state-wide application is invalid.”” *Id.* (quoting *Wood*, 80 R.I. at 482, 98 A.2d at 670). There are two methods by which a Rhode Island statute may preempt a municipal ordinance. See *URI Student Senate v. Town of Narragansett*, 631 F.3d 1, 7–8 (1st Cir. 2011) (citing *Amico’s Inc. v. Mattos*, 789 A.2d 899, 907 (R.I. 2002); *Thornton–Whitehouse*, 740 A.2d at 1261).

The first of these preemption avenues is conflict preemption, in which “[a]n ordinance is invalid when it is ‘in direct and material conflict with a state law.’” *State ex rel. City of Providence v. Auger*, 44 A.3d 1218, 1229 (R.I. 2012) (quoting *Town of Glocester v. R.I. Solid Waste Management Corp.*, 120 R.I. 606, 607, 390 A.2d 348, 349 (1978)). When such conflict occurs, a state statute will preempt the local regulation, rendering it ineffective. Terrence P. Haas, *Constitutional Home Rule in Rhode Island*, 11 Roger Williams U. L. Rev. 677, 708 (2006) (“Valid state legislation will always preempt a conflicting local ordinance.”). Moreover, our Supreme Court was clear when it held that “a state law of general character and statewide application is paramount to any local or municipal ordinance inconsistent therewith.” *Thornton-Whitehouse*, 740 A.2d at 1261; *Mongony v. Bevilacqua*, 432 A.2d 661, 664 (R.I. 1981).

The second preemption avenue asks whether ““either the language in the statute or when the [General Assembly] has intended to thoroughly occupy the field.”” *Thornton-Whitehouse*, 740

A.2d at 1261 (quoting *Coastal Recycling, Inc. v. Connors*, 854 A.2d 711, 715 (R.I. 2004)) (further citations omitted). In the instant matter, both avenues lead to the inevitable conclusion that Rule 14(B) is preempted by Rhode Island General Laws § 46-15-2(b). “To determine whether state law preempts a municipal ordinance, [a court] must also consider ‘whether the General Assembly intended that its statutory scheme completely occupy the field of regulation on a particular subject.’” *Auger*, 44 A.3d at 1230 (quoting *Grasso Service Center, Inc. v. Sepe*, 962 A.2d 1283, 1289 (R.I. 2009)). “Generally, state laws of statewide application pre-empt municipal ordinances on the same subject if the Legislature intended that they thoroughly occupy the field.” *O’Neil*, 617 A.2d at 109 (citing *Easton’s Point Associates, Inc. v. Coastal Resources Management Council*, 559 A.2d 633, 636 (R.I. 1989)).

Here, both preemption principals apply---1) §14(B) of the Regulations directly conflicts with the 2022 Amendments and specifically R.I. Gen. Laws § 46-15-2(b); and 2) the passage of the 2022 Amendments along with various other language in Chapter 15 of Title 46 provide clear language that the General Assembly has determined the state will occupy this field with the establishment of statewide standards for such applications.

It cannot be disputed that the JWD is governed under Chapter 15 of Title 46 of the Rhode Island General Laws, among other sections in Title 46. The legislative purpose of Chapter 15 of Title 46 of the Rhode Island General Laws, lists, among other findings for the chapter:

The proper development, protection, conservation, and use of these water resources are essential to the health, safety, and welfare of the general public, and to the continued growth and economic development of the state; . . .

The character and extent of the problems of water resource development, utilization, and control, and the widespread and complex interests which they affect, demand action by the government of the state of Rhode Island in order to deal with these problems in a manner which adequately protects the general welfare of all the citizens of the state; . . .

It shall be the duty of the water resources board to regulate the proper development, protection, conservation and use of the water resources of the state. . . .

It is also not disputed that the JWD is a “water supply system” governed by this chapter. The 2022 Amendments then added (b) with the statewide standards set forth therein, containing the following language:

Notwithstanding any provision of this section to the contrary, a municipal water department, agency, or public water system governed under this section **shall** review applications for plans or work for the extension of supply or distribution mains or pipes in accordance with the following standards:

R.I. Gen. Laws § 46-15-2(b) (emphasis added).

The specific provisions of § 46-15-2(b) demonstrate a legislative intent for a standardized approach to water system expansion, with clearly defined guidelines that Rule 14B cannot override without causing a significant and material conflict. The argument that a 1968 public law creating the JWD which provides that it purchase assets of its privately owned predecessor to provide water supply to the Town or “parts thereof” does not stand to exempt it from *any* law, let alone the 2022 Amendments that created the statewide standard. In fact, without the passage of lesser standards for applications, including those in the UWD, all water service and supply applications are governed by the very high standard set forth in the 2022 Amendments at R.I. Gen. Laws § 46-15-2(b). The proverbial “sky is falling” that narrates the diatribes and direct examinations undertaken by the Board members during the months of consideration of this application and others are highly misplaced. Without the passage of a lesser standard after the 2022 Amendments, *all* residential homes looking to connect to the water supply system must show, among other things:

(i) The existing or proposed well for the property does not meet the well industry standard as described in the department of environmental management regulations for “yield per depth of well chart” which is required by the department of health for a dwelling unit; and

(ii) Due to the unique characteristics of the property that the drilling of a new well is not feasible.

R.I. Gen. Laws § 46-15-2(b).¹⁹

The Board must recognize that the overarching legislative framework is designed to facilitate equitable access to water services while ensuring consistency with the municipality's water supply management plans. By imposing its own stringent and arbitrary limitations, the Board has not only overstepped its authority but also obstructed the clear mandate set forth by state law—an overreach that undermines both legislative intent and the public interest. The statute does not authorize heightened or conflicting standards to be applied by water suppliers for the extension of supply or water main pipes, and in fact states that “[a] public water supply system governed under this section” may only “provide for *lower* standards for approval for residential property” under certain circumstances. Therefore, §14(B) was preempted by the 2022 Amendments and R.I. Gen. Laws § 46-15-2(b) as of June 15, 2022, when it was signed into law. The Board was without any authority whatsoever when it disregarded R.I. Gen. Laws § 46-15-2(b) and applied its own standards which had been superseded two years before.

2. A Remand to the Board would be futile and prejudicial to the Andreonis and the WRB should grant the Appeal and reverse the Decision of the Board.

Pursuant to 490-RICR-00-00-9.4(d), the WRB holds discretionary power to remand an appeal if the Supplier, in this instance the Board, fails to address the standards of R.I. Gen Laws § 46-15-2 in its decision. However, remanding this case to the Board in this instance would unjustly delay justice, fail to remedy the ongoing dispute, and prejudice the Andreonis. The Board has

¹⁹ This, however, has not been the case. Even during the February 20, 2024, meeting, the Board granted a connection to a to-be-constructed home in the RWD because a line already was located in the frontage of the street the home was to be located on. See **Exhibit P** at p. 4. The Board did not apply the heightened 2022 Amendments in R.I. Gen. Laws § 46-15-2(b) nor did it require any evidence that those standards were met before unanimously granting the application approval.

unequivocally indicated that they do not consider the standards of § 46-15-2(b) applicable to their review process, as evidenced by board members who have actively opposed such applications during deliberations.

Our Supreme Court has been clear that “parties who are subject to administrative proceedings have the right to an expeditious agency decision and judicial decision.” *Kyros v. Rhode Island Dep’t of Health*, 253 A.3d 879, 887 (R.I. 2021). With that rule in mind, the court has “acknowledge[d] that there are instances in which a remand to an administrative agency may not be the most appropriate remedy[,]” including those cases in which a remand **would not** “**‘further the interests of justice * * * [or] provide decisive new information.’**” *Id.* (emphasis added) citing *Champlin’s Realty Associates v. Tikoian*, 989 A.2d 427, 449 (R.I. 2010) (quoting *Easton’s Point Association, Inc. v. Coastal Resources Management Council*, 559 A.2d 633, 636 (R.I. 1989)).

Here, the interests of justice would not be served by a remand.

- a. *The Board willfully failed to apply the standards set in Rhode Island General Laws § 46-15-2(b).*

The Board has been abundantly clear that it has no intention of enforcing and apply the state law standards, and rather, they continue to apply the standards set forth in the 2009 Regulations. See **Exhibits A, I, J, Q-W**. Whether the Board is entirely disregarding state law, as it appears in the decision, which fails to even address the standards, or whether they are applying their own old Regulations in addition to the state standards is unknown, but either way is an abuse of discretion and in violation of state law and well-established case law as set forth above. The irony of the Town voting to introduce legislation to exempt them from the state law standards, but then arguing it does not have to apply those same standards should not be lost on the WRB. See **Exhibit N**. It took over a month and a half to get a hearing on the application, and then the Board

continued the application from February to April. However, by the end of the presentation of the Application in April, at the latest, there was no doubt the Andreonis met all applicable standards to warrant approval. Instead, the Board made it its mission for the next two months, to act outside the scope of their authority, and violate every requirement of a fair and impartial proceeding. A remand would only result in continued denials from a Board resistant to statutory directives, further perpetuating an exhaustive pattern of delays for the Andreonis whose property is unable to be utilized.

The June 28, 2024 Decision states that:

Your legal counsel presented two experts and one layperson testimony in support of the proposition that your property complied with the requirements of R.I. General Laws 46-15.2(b), Sections 1-7. Neither you, nor any of the other applicants, addressed, offered testimony, or presented any evidence concerning the relevant requirements of the Jamestown Water and Sewer Board Rules, 14.B.b.4; to wit, how and whether your application to extend water outside of the Urban Water District would “improve the quality or quantity of water furnished to existing water [users]”. [sic]

Exhibit A at 3. The evidence or lack thereof regarding benefits to the current water system is a red herring; the real issue is the Board’s misalignment with state law, which aims to support equitable treatment.

Given that the legal grounds for the decision conflict with state law, and there is no indication that a revisitation of facts would alter their interpretation of these laws, remanding the matter would serve no productive purpose. The law is clear, and our client should not be deprived of the opportunity for water service extension due to a narrow and restrictive local policy.

The Andreonis’ earnest quest to avail themselves of crucial water services, sanctioned by Rhode Island General Laws § 46-15-2(b), has been met not with the impartiality one would expect from a governing body but rather with a persistent defiance to state law by the Board. This is not merely an administrative oversight; it is a deliberate and reiterated pattern of conduct that

underserves both the public interest and legislative intent. The Board’s entrenched position, unaltered by the law’s clear mandate, reflects a bias against the expansion of essential services, a stance they show no indication of revising.

- b. *The Board’s proceedings on the Application were tainted and in violation of the Andreonis Due Process Rights and the application should not be remanded for further proceedings.*

A remand in these circumstances would not be appropriate because both the Decision and the Board’s actions were in “violation of constitutional . . . provisions” and completely “arbitrary.” R.I. Gen. Laws § 42-35-15. The Board acted entirely inappropriately and in violation of the Andreonis’ rights when it called its own witness, conducted a prepared direct examination of him for almost an hour and introduced evidence at its May hearing. See **Exhibit R**, April Transcript at 113-115; **Exhibit T**, May 6, 2024 Transcript at p. 56 through 101.

²⁰²¹ An administrative tribunal acts in a quasi-judicial capacity when it affords the parties substantially the same rights as those available in a court of law, such as the opportunity to present evidence, to assert legal claims and defenses, and to appeal from an adverse decision. *Town of Richmond v. Wawaloam Rsrv., Inc.*, 850 A.2d 924, 933–34 (R.I. 2004) citing *State of R.I. v. Tucker*, 657 A.2d 546, 549 (R.I. 1995). Here, the Board was acting in that very capacity.

Moreover, “when an administrative agency carries out a quasi-judicial function, it has an obligation of impartiality on par with that of judges.” *Wawaloam Reservation, Inc.*, 850 A.2d at

²⁰ The transcripts were ready on the eve of the filing of this Appeal, and the Andreonis’ appeal will be supplemented with additional transcript citations within thirty (30) days to the extent necessary.

²¹ The decision states that Mr. Gray “appeared and presented a report to the Board concerning the Town’s water supply and distribution system” and then goes on to summarize this alleged “report.” See **Exhibit A** at page 2. It is clear that while the Board wants to characterize this testimony as happenstance, in fact, as set forth in the transcripts, Mr. Gray was examined by the Board, who called him as a so-called witness, and then proceeded to ask him questions---many of which were based on documents he did not draft.

933. Under the Fourteenth Amendment, administrative tribunals must not be “biased or otherwise indisposed from rendering a fair and impartial decision.” *Champlin's Realty Assocs. v. Tikoian*, 989 A.2d 427, 443 (R.I. 2010) citing *Davis v. Wood*, 444 A.2d 190, 192 (R.I.1982); *see also* *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980). The same agencies are entitled to a presumption of honesty and integrity, which may be overcome through evidence that “the same person(s) involved in building one party's adversarial case is also adjudicating the determinative issues.” *Champlin's Realty Assocs.*, 989 A.2d at 443 citing *Kent County Water Authority v. State (Department of Health)*, 723 A.2d 1132, 1137 (R.I.1999) (citing *La Petite Auberge, Inc. v. Rhode Island Board for Human Rights*, 419 A.2d 274, 285 (R.I.1980)). Our Supreme Court has been clear that an agency adjudicator must not become an “advocate or participant.” *Champlin's Realty Assocs.*, 989 A.2d at 443 citing *Davis*, 427 A.2d at 337.

Here, it is abundantly clear that not only has the Board refused to apply state law, but it is incapable of rendering a fair and impartial decision. Therefore, a remand, especially in light of the fact that there is no evidence or testimony to refute the fact that the Andreonis meet the standard set forth in R.I. Gen. Laws § 46-15-2(b), is not in the interests of justice in this appeal.

c. *It is undisputed that the Andreonis meet the standards set forth in R.I. Gen. Laws § 46-15-2(b).*

The appeal and the Andreonis' application should not be remanded because the evidence in the record is undisputed that the Andreonis met all standards of R.I. Gen. Laws § 46-15-2(b). The sole basis for the denial was the application of the Board's old regulations, which were superseded by state law amendments creating the standards set forth in R.I. Gen. Laws § 46-15-2(b) as set forth and argued above. In fact, the Board's Decision admits as much, stating “[y]our legal counsel presented two experts and one layperson testimony in support of the property that your property complied with the requirements of R.I. General Laws 46-15.2(b), Sections 1-7.” *See*

Exhibit A, Decision at 3. Additionally, the Board members acknowledged this at the April 2024 hearing.

The first statutory standard the Andreonis were required to and did meet was that the application was not prohibited by the specific language of the latest water supply system management plan (“WSSMP”) of the public water supply system, which was the 2018 WSSMP. *See* R.I. Gen. Laws §§ 46-15-2(b)(1); **Exhibit E** (2018 WSSMP). It is undisputed that there is no prohibition against the Andreonis’ Application in the WSSMP, nor was this argument made by the Board, nor is there such a finding in the decision.

The second statutory finding requires that the Applicant comply with the design and construction standards and specifications established by the public water supply system for the sizing and location for the infrastructure. *See* R.I. Gen. Laws § 46-15-2(b)(2). At the outset in the Andreonis’ Application, they acknowledge and agree to this condition. *See* **Exhibit L**.²²

The third standard requires a showing that the proposed extension will not reduce the necessary level of fire protection for the community. *See* R.I. Gen. Laws § 46-15-2(b)(3). The Board requires, as part of its application, the Fire Chief to fill out a form making this finding.²³ Such form was submitted with the Andreonis’ Application. *See* **Exhibit L**.

The fourth standard requires that all water main and service connection materials, construction, and inspection required shall be at the sole cost and expense of the applicant. *See* R.I. Gen. Laws § 46-15-2(b)(4). At the outset in the Andreonis’ Application, they acknowledge and agree to this condition. *See* **Exhibit L**.

²² The Andreonis also acknowledged all these conditions and requirements at the April, 2024 hearing.

²³ Again, this was the only standard referenced in both the Regulations and R.I. Gen. Laws 46-15-2(b).

The fifth standard requires that the public water supply system shall be granted an easement in a form acceptable to them which shall permit the maintenance, repair, or replacement of water lines and all other related activities. *See* R.I. Gen. Laws § 46-15-2(b)(5). At the outset in the Andreonis' Application, they acknowledge and agree to this condition. *See* **Exhibit L**.

The sixth item to meet was that the Andreonis had to show that the existing or proposed well for the property does not meet the well industry standard as described in the department of environmental management regulations for “yield per depth of well chart” which is required by the department of health for a dwelling unit. *See* R.I. Gen. Laws § 46-15-2(b)(5). The expert documentation submitted as part of the Andreonis' Application proves this standard, which was expounded upon and testified to by the expert, Robert Ferrari at the April 15, 2024, hearing. *See* **Exhibits L** and **R** at p. 72-84. Mr. Gray, as part of his Memorandum, had provided the Board with the DEM regulations which listed the well to depth standard referenced in R.I. Gen. Laws § 46-15-2(b)(6)(1). *See* last page of **Exhibit O**. In the Northeast Water Report submitted with the application, it notes that the well depth is 194.8”, with a yield of 0.6 gallons per minute. *See* **Exhibit L**, Northeast Water Solutions Report at p. 1, 6. The handout from Mr. Gray in **Exhibit O**, shows that a yield of 1 gallon per minute requires a depth of 300 ft, and goes down to 450 ft at a yield of .5 gallons per minute. The regulations note that “special caution should be exercised in coastal areas because of potential saltwater intrusion.” *Id.* This factor is noted in the Northeast Water report and Mr. Ferrari's testimony. *See* **Exhibit L** and **Exhibit R** at 72-84. Additionally, the fact was specifically noted in a back-and forth between the Board members and the Andreonis' expert on April 15, 2024:

Councilor Randall White: Does it not meet the standard both—you suggested that there—as you see it there are two standards. . . But that there is the yield of

Robert F. Ferrari:

well per depth. It doesn't meet that standard for sure, correct?

It does not meet the yield standard. It does not meet the water quality standard.

The last item that the Andreonis had to show was that due to the unique characteristics of the property, the drilling of a new well is not feasible. This was shown, at the outset, in the report of Northeast Water Solutions submitted with the Application on January 2, 2024, and further expounded upon by Mr. Thalmann and Mr. Ferrari during his testimony at the April 15, 2024 hearing. See Exhibit L and Exhibit R at 74-84.

There was no testimony or evidence to contradict any of these standards. Therefore, to remand the matter would be to tilt at windmills, to engage in an exercise of needless formalities in the face of the Board's irrevocable stand. This, the Rhode Island Supreme Court itself would acknowledge, is a judicial cul-de-sac where the path of remand does not serve justice or yield novel insights that could influence the outcome. *Kyros*, 253 A.3d at 887 (citations omitted). It is set in the Court's precedent that such a fruitless remand must be avoided. *Roger Williams College*, 572 A.2d at 63.

WHEREFORE, the Andreonis respectfully request that the WRB reverse the decision of the Board, as the Andreonis have been prejudiced because the administrative findings, inferences, conclusions, or decisions of the Supplier are:

1. In violation of constitutional or statutory provisions;
2. In excess of the statutory authority of the Supplier;
3. Made upon unlawful procedure;
4. Affected by other error of law;
5. Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
6. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The Andreonis reserve their right to seek fees under the Equal Access to Justice Act codified at R.I. Gen. Laws § 42-92-1 *et. seq.*

Respectfully submitted,

**GLENN ANDREONI AND MARJORIE
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By and through their Attorneys,

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