STATE OF RHODE ISLAND WATER RESOURCES BOARD
IN RE: STEPHEN ZIMNISKI AND SUZANNE GAGNON

REPLY BRIEF OF APPELLANTS

A. The unconditional power that Commissioners allege is granted by one word of P.L. 1968 Chap. 273 is contrary to the Rhode Island Constitution and law.

The Board of Water and Sewer Commissioners for the Town of Jamestown (hereinafter "Jamestown" or "Commissioners") self-servingly conflates the grant of authority in P.L. 1968 Chap. 273 with a right of unfettered authority and discretion without legislative oversight or guidance. Such an unconditional delegation of legislative power would be constitutionally repugnant. *See* City *of Warwick v. Firemen's Assoc*, 106 R.I. 109, 117 (R.I. 1969) ("It is settled in this state, of course, that there may not be an unconditional delegation of legislative power.") The grant of any discretion in P.L. 1968 Chap. 273 does not authorize the Commission to then act without regard to state statute.

> "[D]elegation of the Legislature's powers to administrative agencies is constitutionally permissible provided the powers are transferred in expressly defined channels." *Opinion to the Governor*, 112 R.I. 151, 158 (R.I. 1973)(citing *City of Warwick v. Firemen's Assoc*, 106 R.I. 109, 112-13 (R.I. 1969) ("it is within the prerogative of the legislature to vest administrative boards or public bodies or officers with some portion of the legislative power where such action is necessary to give operative effect to the antecedent legislation. We are of the opinion that when the legislature, in an exercise of its law-making authority, enacts a statute the purpose of which is to secure to the public some right or benefit, it may delegate to an appropriate agency or officer some residuals of its legislative power in order to permit the selected agent to accomplish the ends contemplated in the original legislation. Of course, this is not to say that the legislature may abdicate its duty to legislate. Where the purposes of the antecedent legislative enactment may be best accomplished through the employment of an agent acting in its stead, the legislature may delegate to that agent a sufficient portion of its power to enable it to make the statute operative.")

Further, it "is well established that cities and towns have no power to enact legislation except in reliance upon those powers delegated to them from time to time by the General Assembly." *Vukic v. Brunelle*, 609 A.2d 938 (R.I. 1992). And, when the "right to exercise a portion of the state's sovereignty is delegated to a municipality by the General Assembly, this authority may be utilized only to the extent of the power conferred." *Id.* (holding that delegation of the state's power to municipalities to pass ordinances regarding dogs was not a plenary one and was **bounded by the scope of the state's own legislation**.).

As the power of the Commission is only the portion of power that was expressly delegated to the Commission from the state, this undermines any argument that the Commission is the "exclusive" or "sole" judge of extensions to the exclusion of the legislature from which it derives its power. "Even if a local government is authorized to act through home rule or a delegation of authority from the General Assembly, those localities may not enact ordinances that are "preempted" by state law." *Narragansett 2100 Inc. v. Town of Narragansett*, C. A. WC-2024-0372 (R.I. Super. Oct 02, 2024)(citation omitted).

B. Commissioners argue a non-existent conflict in legislative enactments to impermissibly avoid the harmonious application of Rhode Island law to Appellants' applications.

The facetious "conflict" between the two legislative enactments invoked by the Commissioners in their objection does not exist. There is clear harmony with the two provisions at play here. The General Assembly not only provided the Commission the authority 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" (*Exhibit E,* P.L. 1968 Ch. 273), but it also provided certain standards which must be included in any review or determination regarding extensions. R.I. Gen. Laws §46-15-2(b).

> If at all possible, legislative enactments should be read in harmony.
>
> It is 'an especially well-settled principle of statutory construction' that when two laws are in *pari materia* , the Court will harmonize them whenever possible…. Even if the laws appear at first to be inconsistent, the Court will make every effort to construe the provisions 'in such a manner so as to avoid the inconsistency.'… **This rule of construction applies even though the statutes in question [may] contain no reference to each other and are passed at different times."**

Purcell v. Johnson, 297 A.3d 464, 471-471 (R.I. 2023)(citations omitted)(emphasis added.) Despite the arguments of Appellees, it is clear that R.I. Gen. Laws §46-15-2(b) need not specifically reference P.L. 1968 Chap. 273.

The suggestion that the harmonization of the two legislative enactments is possible only if the standards of R.I. Gen. Laws §46-15-2(b) are applied *after* the town of Jamestown makes a determination, without any regard to R.I. Gen. Laws §46-15-2(b) standards but utilizing its own standards, is in direct contradiction to the purpose of R.I. Gen. Laws §46-15-2(b) which "**provides the standards** for reviewing applications for plans or work for the extension of supply or distribution mains or pipes" *See* Legislative History, Rhode Island General Assembly (emphasis added). Further, as evidenced by the circumstances in this matter, such an interpretation would render the statute superfluous.

As cited by the Rhode Island Superior Court, the United States Supreme Court has held:

> "[the] classic judicial task of reconciling many laws enacted over time, and getting them to `make sense' in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute." This is particularly so where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand. As we recognized recently in *United States v. Estate of Romani,* 'a specific policy embodied in a later federal statute should control our construction of the [earlier] statute, even though it has not been expressly amended.'"

Andreozzi v. Brownell, C.A. No. KC03-267 (R.I. Super. 2004)(citing *Food and Drug Administration v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143, 146 L. Ed. 2d 121, 120 S. Ct. 1291 (2000)).

The Commissioners argue that a grant of discretion and power means that any further statutory guidelines are inapplicable. This is not plausible. Under this line of thinking, for example, the rationale would mean that because Jamestown had been granted the ability and discretion to exercise eminent domain, (*see* P.L. 1968 Chap. 273, Sec. 5, "**may**…acquire by eminent domain…") Jamestown could exercise its right to acquire by eminent domain any real property without adherence to the laws of the state, including §42-64.12-1 *et.seq*. and R.I. Gen. Law §39-15-1 *et. seq*. Such an interpretation is clearly flawed.

C. Commissioners' reliance on P.L. 1968 Chap. 273 to argue a sole and exclusive right to determine who gets water is a flawed interpretation of the enabling legislation.

Commissioners attempt to impart the discretion inherent in the word "may" in P.L. Chap. 273, Section 4 with meaning much beyond the simple word, impermissibly reading in a non-existing grant of "sole" and "exclusive" jurisdiction. As discussed above, such unfettered discretion as is implied by the Commissioners' objection contravenes state law. Any analysis of the purpose and interpretation of the act is best informed by the terms of the actual legislation. The manner of statutory, or legislative, interpretation has been detailed in the holdings of the Rhode Island Supreme Court.

> "[I]f there is an ambiguity in the statute… employ the maxims of statutory construction to discover the intent of the Legislature…. A statute is ambiguous if one of its words or phrases is susceptible to more than one meaning. … [P]resume that the General Assembly intended to attach significance to every word, sentence and provision of a statute."

Middle Creek Farm, LLC v. Portsmouth Water & Fire Dist., 252 A.3d 745, 751 (R.I. 2021)(citations omitted).

As an initial matter, to give significance to every word, sentence and provision, the title of the legislation is "An Act providing for a Public Water Supply in the Town of Jamestown." It is not an Act providing for a public water supply within the pre-existing assets of the Jamestown Water Company, or an Act providing for a public water supply within any specific district. The scope of the Act is the entire Town of Jamestown. In many cases, the legislation goes on to further describe powers and abilities of the Commissioners to address "the purposes of this act." *See* Exhibit E, highlighted portions. The title of the legislation is plainly that the public water supply for the entirety of Jamestown are the "purposes" of the Act.

In contrast to the "purposes of the act," the authority to adopt by-laws or rules is **for the board's** [Commission's] **transactions of its affairs**. P.L 1968 Chap. 273, Sec. 2, p. 1145. The distinction shows the massive flaw in Appellee's argument that the rules promulgated by the Commission are legislative rather than interpretive. As Appellants argued in their brief, the regulations promulgated by the Commission pursuant to P.L 1968 Chap. 273 are clearly interpretive.

The very legislation relied upon by Appellee indicates that the intent of P.L 1968 Chap. 273 was to require the adequate supply of water to the Town of Jamestown. Specifically, the legislation provides: "In case of non-payment of any water rates or charges… [Commission] **need not supply water again** thereto until the water rates and charges or interest thereon have been paid in full." P.L 1968 Chap. 273, Sec. 7, p. 1150. Giving meaning to the words of this provision would suggest that in the absence of non-payment of any water rates or charges, the Commission *would* need to supply water. Further, supply capacity of the Commission was not a consideration in regard of whether the Commission "need not supply water." The Commission's argument that they may decide without reference to any state legislation who gets water and who doesn't in the Town of

Jamestown suggests the absurd result that they could also shut off water of certain customers at their whim based upon supply issues.

According to the Commissioners' objection memorandum, no Town funding has ever been used to support the water district and the water district is financially independent from the Town. These conclusions are factually wrong for the following reasons.

The "FY 2023 Jamestown Annual Financial Report" details Town expenditures and fund balances, including the Water Fund. The Appellants reference the Town's financial report to rebut the assertion that "E. Appellants' claim of inequity based on supposed status as taxpayer is unfounded." *See* Commissioners' Memorandum in Support pp. 26-28. Appellants provide relevant highlighted pages from this report as Exhibit G, attached hereto. A review of the highlighted financial report items shows that the Appellants do, in fact, pay taxes to the Town that are then used directly to pay for the Town's Public Works salaries, and that certain Interfund Transfers are being completed into the Water Fund from the Town's taxpayer general revenue.

The Public Works Department is responsible for the Town's Municipal Water Treatment Facility, which includes its Water Division:

> **"**The Water Division is responsible for the treatment and distribution of drinking water to the municipal water district." https://www.jamestownri.gov/town-departments/public-works/public-works-news; https://jamestownri.gov/town-departments/public-works/water-sewer-division

The Commissioners' objection memorandum also incorrectly recites §8 of P.L. 1968 Chap. 273 for the proposition that the Town is not "obligated under any bonds or notes incurred by" the water district. However, §8 means only that any debt incurred by the water district shall not be included with the Town's capacity to borrow money. This is made clear by the Town's own annual financial reports:

TOWN OF JAMESTOWN, RHODE ISLAND
NOTES TO FINANCIAL STATEMENTS
June 30, 2023

NOTE 2- STEWARDSHIP, COMPLIANCE, AND ACCOUNTABILITY

Legal Debt Limit - The Town's legal debt margin as set forth by State Statute is limited to three percent of total assessed value, which approximates $101,818,420. As of June 30, 2023, the Town's debt was under the debt limit by $100,373,420. The long-term debt reported in the Water and Sewer Funds, as well as other debt such as that incurred by specific authority from State Legislature, are exempt from the three percent limitation.

Further, P.L. 1968 Chap. 273 includes language that the Commission may spend funds acquired for it by the Town.:

Expenditure of funds.

In addition to the funds hereinafter provided, the board is authorized to expend for the purposes of this act such sums as may be appropriated therefor by the town.

Therefore, taking P.L. 1968 Chap. 273 and giving every word meaning, so as to avoid absurd results, shows that the provision of water supply to all Jamestown residents was contemplated by P.L. 1968 Chap. 273.

As acknowledged by Appellee, P.L. 1968 Chap. 273, has been amended several times. (P.L. 1968, Ch. 273 is appended to Appellants' Brief as Exhibit E.) Jamestown fails to cite P.L. 1972 Chap. 249. *See* Exhibit F. This amendment to P.L. 1968, Chap. 273, explicitly provides that Jamestown plan for, fund and undergo "projects" to **extend** and replace the town's water mains. P.L. 1972 Chap. 249; Section 23 of P. L. 1968, Chap. 273.

> "Is authorized from time to time to extend and replace the town's water mains, herein called "project," and, regardless of whether the funds for the construction of such project or projects were obtained under this act or under any other general law or special act, the said board of water commissioners **shall**, to the extent described below, assess the cost of any such project or projects upon the owners of the estates in the town which abut that portion of any street or highway in or along which any

> water line constituting any portion of such project or projects may be located or which otherwise specially benefit from such project or projects…."

Id. (emphasis added). The word shall is mandatory in governing the assessment for the undertaking of projects. Nowhere in the amendment is any suggestion that the Commissioners can determine the necessity or non-necessity of such projects. In fact, the amendment provides: "The board of water commissioners may, from time to time, determine the number of annual installments in which assessments thereafter made under this act shall be paid…" It would make no sense that the legislature specifically described and granted permission for the commission to determine the number of annual installments, but silently conferred the power to withhold town water from tax paying constituents of Jamestown based upon the geography of the residence within the Town.

D. Arguments in regard to pre-emption apply to the regulations enacted by the Commissioner without regard to the source of any such regulation.

Appellants agree that R.I. Gen. Laws §46-15-2 does not "preempt" P.L. Chap. 273; both enactments of the Rhode Island General Assembly can clearly be read in harmony. What R.I. Gen. Laws §46-15-2 <u>does</u> preempt are the contrary regulations of the Commission.

Jamestown expends much of its argument on establishing the limited supply capacity of Jamestown water. However, as explicitly addressed in Appellant's memorandum, R.I. Gen. Laws § 46-15-2(b) contemplates the issues faced by Jamestown with limited capacity. *See* (b)(7). Despite Appellee's arguments to the contrary in the objection, R.I. Gen. Laws §46-15-2(b) addresses limited capacity and reflect a value determination that residential properties without access to adequate well water supplies were priorities. *See* R.I. Gen. Laws §46-15-2(b). It is only for commercial uses/properties in such areas which "shall be governed by the rules established for such connections by the public water system." *See* R.I. Gen. Laws §46-15-2(b)(7) ("For applications located within a public water supply system with limited capacity, applicants for

commercial uses/properties shall be governed by the rules established for such connections by the public water supply system, which shall be in accordance with the system's approved WSSMP.")

Contrary to the arguments advanced by the Commission in their objection, Appellants do not advance any argument that Sec. 46-15-2(b) nullifies and preempts the Commission's right to make a determination, but rather, gives standards under which such a determination must be made. This is a familiar statutory process to provide defined channels of the exercise of legislative power. Further, the statute provides that a "public water supply system governed under this section may provide for **lower standards** for approval for residential property." This is in line with the discretion provided to the Commission, but limiting the standards to those which are LOWER than established by statute.

Finally, Appellee does not attempt to address the fact that by resolution, the Town of Jamestown endorsed the very interpretation of R.I. Gen. Laws §46-15-2(b) that is advanced by the Appellants. This indicates just how disingenuous Appellee's argument is in attempting to usurp the role of the legislature and disregard the prevailing state statute in favor of its own aims. (R.I. 1982). A restriction of water supply only to certain areas within Jamestown is not a valid exercise of police power. "A city or town council, whose responsibility it is to enact local ordinances, is not immune from this restriction." *Id.* Water supply is a critical component of both health and welfare: the Rhode Island Supreme Court held that "[m]aintaining a public water supply and requiring that builders construct extensions to the town's public water system falls squarely within [the municipality's] police power. *Mill Realty Associates v. Crowe*, 841 A.2d 668 (R.I. 2004).

For all the reasons hereinbefore stated, the Appellants respectfully request that the WRB reverse the decision of Jamestown as contained in its denial letter issued in response to the Appellants' application.

Respectfully submitted,
THE APPELLANTS
BY THEIR ATTORNEY

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CERTIFICATION

The undersigned party hereby certifies that, on the 17th day of January, 2025, this document was filed and served via electronic mail to the Water Resources Board and service list for this matter.

/s/ Marisa Desautel