

RHODE ISLAND WATER RESOURCES
PREHEARING BOARD

Summations of Appeals of Decisions of
Jamestown Board of Water and Sewer
Commissioners

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HEARING

MARCH 12, 2025  
10:30 A.M.

235 PROMENADE STREET  
PROVIDENCE, RI 02908

ELIZABETH GREELEY  
CERTIFIED COURT REPORTER

APPEARANCES

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Andreoni:

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On Behalf of the Appellants, Paul and Gail  
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Commissioners:

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1     BEFORE :

2         RUSSELL HOUDE

3         MEREDITH BRADY, CHAIRPERSON

4         ZAKARY KINZELL

5         MATTHEW SMITH, COUNSEL

6         CATHLEEN CRAWLEY, ACTING MANAGER

(HEARING COMMENCED AT 10:31 A.M.)

MS. BRADY: Good morning, everybody. I'm going to call this meeting of the Water Resources Board Prehearing Panel to order. We do have one audience member remote. One of the parties could not attend in person, but we won't be interacting with them remotely. We will just be using Zoom both to -- I'm going to actually start again with the recording. We have another alternate recording through Zoom. They can hear the proceedings.

If everybody could make sure, I'm trying to speak up. Hopefully everybody can hear me. I tend to have a loud voice anyway. If people can try to speak up and not talk to their papers, that would be ideal. A couple of small administrative matters, let's do the Infrastructure Bank, who loaned us this conference room, a favor, if you could stick your water on the coaster. There are a couple of piles here throughout the room. That would be terrific. Just make sure we're not going to leave a mark behind.

This is the prehearing panel. We are a subgroup of the Water Resources Board. Our mission is to come up with a recommendation for the full Water Resources Board. We will not be making a decision. We will be trying to come up with another time for a public

1 discussion and findings at a future date. We  
2 originally set that for April 8, but the Town cannot  
3 make that date.

4 So at the end of this meeting we will be talking  
5 about setting a date to make sure that we move forward  
6 with this process. Also, if you would bear with us,  
7 this is our first time with this Prehearing Panel and  
8 moving through this regulatory process with passage of  
9 a state law in 2022. We had to develop regulations  
10 for this particular process, and this is the first  
11 time we're exercising those regulations. So bear with  
12 us while we get our bearings here today.

13 I'd like to just do a go-round and have everybody  
14 introduce themselves. I know many of the people in  
15 the room right now. Let's make sure. So I'm Meredith  
16 Brady, chairing the Prehearing Board. I'm the head of  
17 the Division of Statewide Planning, also a member of  
18 the Water Resources Board itself.

19 MR. CRAWLEY: Cathy Crawley, I'm the  
20 acting general manager for the Rhode Island Water  
21 Resources Board, also an employee of the Division of  
22 Planning.

23 MR. SMITH: Matthew Smith, deputy chief,  
24 human services, Department of Administration. Part of  
25 my assignment is the Water Resources Board, so I'm

1 here with all you lovely people.

2 MR. DESAUTEL: Good morning, Marissa  
3 Desautel. I represent Stephen Zimniski and Suzanne  
4 Gagnon.

5 MR. MINEAU: Good morning, Michael  
6 Mineau. I'm here on behalf of Jeffrey Saletin and  
7 Deborah Saletin.

8 MS. DANIELS: Kathlees Daniels, here on  
9 behalf of the Town.

10 MR. INFANTOLINO: Christian Infantolino  
11 on behalf of Gail and Paul Frechette.

12 MS. ROCHA: Good morning, Joelle Rocha on  
13 behalf of the Andreonis.

14 MR. KINZELL: Zakary Kinzell, member of  
15 the Water Resources Board.

16 MR. HOUDE: Russ Houde, member of the  
17 Water Resources Board.

18 MS. BRADY: Can we get the back wall,  
19 please?

20 MR. MYHERN: Ryan Myhern, here with  
21 Joelle on behalf of Mr. & Mrs. Andreoni.

22 MS. ARCE: Julissa Arce, here with Joelle  
23 on behalf of the Andreonis.

24 MR. ANDREONI: Glenn Andreoni, the  
25 applicant.

1 MR. SALETIN: Jeffrey Salatin, an  
2 applicant.

3 MR. FRECHETTE: Paul Frechette, an  
4 applicant.

5 MR. RUGGIERO: Peter Ruggiero, the Town  
6 solicitor in Jamestown.

7 MR. MELLO: Ed Mello, Town administrator  
8 in Jamestown.

9 MR. GRAY: Mike Gray, public works  
10 director, Jamestown.

11 MS. QUEWEZANCE: Kendra Quewezance, with  
12 Marissa Desautel for Mr. Zimniski and Ms. Gagnon.

13 MS. BRADY: I'm going to run through  
14 briefly, we did the call to order and introductions.  
15 Today's order looks like we're doing the final  
16 summations. Each of the applicants, or their lawyer,  
17 will have 10 minutes apiece, then we'll do a 20-minute  
18 period for the Town. We have set aside from 11:40 to  
19 12:30 for board members' questions and discussion.

20 We have on our agenda that we could take  
21 potential action, which would be making that  
22 recommendation from the panel to the board today. I  
23 don't know that we will get to that. We want to make  
24 sure -- there's been a lot of paperwork sent back and  
25 forth. We want to make sure we're focussing on all

1 the appropriate points.

2 There has been a handout provided, I think, to  
3 everyone at the table which has the map, which we also  
4 have up on the screen behind our stenographer. You  
5 can certainly refer to that, if you need to. I  
6 thought it would be good -- I think geographically. I  
7 don't know about the rest of you. I thought it would  
8 be good for people to see the subject matter in front  
9 of you today.

10 So with that, I don't know if the parties have  
11 talked amongst yourselves and figured out who is going  
12 first.

13 MS. ROCHA: One point of clarification on  
14 this map, because this isn't consistent with how the  
15 rural water district is defined. We're all in the  
16 north, which is also the rural water district. It's,  
17 rather than all four of us raising this issue --

18 MS. CRAWLEY: We believe it is consistent  
19 with the 2018 water supply system management map.

20 MS. ROCHA: There may be a typo in that  
21 plan. The regulations define the rural water district  
22 as everything that isn't in the urban water district.  
23 There is a map in the regulations.

24 MS. CRAWLEY: Okay. We did receive this  
25 from the Town, so we will make that point.



1 MS. ROCHA: Okay, thank you.

2 MS. BRADY: Thank you for that  
3 information. That is appreciated. I don't know  
4 amongst those, amongst the applicants, have you had  
5 any conversation about who is going first with the  
6 ten-minute summation?

7 MS. ROCHA: I think we just assumed the  
8 order.

9 MS. BRADY: That's fine. I didn't know  
10 if we needed to change it from the order in any way.

11 MS. ROCHA: Thank you, all, for being  
12 here and for bearing with us all on these, I guess,  
13 feet of paperwork on this. As you know, we're here  
14 before you on this appeal under the very same 2022  
15 statutory amendments, which are front and center to  
16 the issue in this appeal.

17 Those 2022 statutory amendments did two things:  
18 One is create a statewide standard applied to all  
19 public water suppliers when it came to determinations  
20 on extensions of water supply. The second one was to  
21 create this appeal process. I can appreciate -- I  
22 almost had the first one. Now I still have the first  
23 one.

24 We had previously filed an appeal, but like the  
25 Chairwoman said, there were no regulations, and we

1 eventually settled that first appeal. Despite the  
2 hundreds and thousands of whatever it is pages of  
3 briefings and exhibits in this appeal, it really is  
4 simple. The appeal before this board is whether the  
5 decision of the local Jamestown board was arbitrary or  
6 capricious or an abuse of discretion, erroneous or in  
7 violation of the law.

8 As this board reviews the local board's decision  
9 under 46-15-2(b), that is specific in your appeals  
10 standard, it cites that section with the standards,  
11 that Section 2(b) in the law. There is no dispute  
12 that this board has jurisdiction over the water  
13 district as a public water supplier under Chapter 15  
14 of the law, under various other chapters as an  
15 oversight authority, along with other state agencies  
16 like the Department of Health.

17 To provide some quick background of this section  
18 where the standards exist, you know, the first part of  
19 46-15 talks about that the water district cannot  
20 expand beyond their jurisdiction without approval from  
21 this board. The second section said, except for  
22 within their boundaries, or which has been determined  
23 by the courts to be the municipal boundaries, they do  
24 not need the Water Resources Board approval.

25 What happened in 2022, and I was at those

1 hearings, was the General Assembly passed a statute  
2 saying you can review those applications, but we're  
3 going to provide some applicable standards. Water  
4 suppliers, you can do less than here, but this is the  
5 heightened burdens that we're going to apply  
6 statewide. It is a high burden, as we'll talk about  
7 in a minute.

8 The really simple question is, did my clients  
9 meet those standards? That, as far as I can see, as  
10 far as the record can tell, is undisputed. We meet  
11 every single one of those standards from the record,  
12 from testimony in the record of experts. The question  
13 before the board is the fact that we were denied  
14 despite meeting those standards, is it an abuse of  
15 those, is it arbitrary and capricious?

16 The appeal should begin and end with that  
17 analysis. Instead, most of this paper is the local  
18 board's attempt at a very twisted journey that it's  
19 taken the board, the applicants and the public to do  
20 everything in their power to not apply the 2022 state  
21 law standards. In fact, there's never been an  
22 instance since 2022 that they have applied those  
23 standards.

24 The whole basis for a denial is the application  
25 of the local board's own standards, which went into

1 place in 2009. In 2009 those regulations were amended  
2 for purposes of the rural water district. They began  
3 to distinguish between connections and extensions in  
4 the rural water district. They provide this pretty  
5 convoluted standard. You have to do this, this. You  
6 know, you cannot impact fire.

7 Then they say, but extensions are prohibited.  
8 Then there is a catch-all at the end that says, but  
9 when we feel like it and feel like you might be  
10 helping existing users, we can allow an extension.  
11 What really happened from 2009 to 2021 is every  
12 extension that was applied for was granted. That  
13 standard is nowhere in those records.

14 Fast-forward to the first appeal that was before  
15 you that you didn't get to hear was the CLP trust,  
16 which is about 100/150 feet from my client's line.  
17 That should have, we should have been in the same  
18 situation, but that matter settled. So the argument  
19 from the Town is that those regulations still apply.

20 As I read the argument, it is that the board, the  
21 local board has some heightened authority to, before  
22 we even get to these state standards, say are we going  
23 to allow the extension in the first place? That this  
24 1968 public law, which is simply an authorization for  
25 the board to exist in the first place, similar to a

1 charter of any other public water supplier, town,  
2 quasi governmental agency that sets up a board or an  
3 entity in that sense, their reliance on, is two parts  
4 in that public law, which says the board can provide  
5 water to the Town, or parts thereof, is the first  
6 citation.

7 The second citation is that in the Town's --  
8 sorry, we're going to say Town and board  
9 interchangeably -- is that they can enact local  
10 regulations is basically what the Town says. That  
11 language actually in the public law says that the  
12 board shall adopt bylaws for the transaction of its  
13 affairs, which is substantially different. It's  
14 voting, membership, things like that.

15 Back in 1968 that was because the council was not  
16 the board membership. That's all it does. It talks  
17 about bonding and taxes and things like that. What  
18 the local board has attempted to do in this is make  
19 that public law into something it very much is not, or  
20 language that is not there.

21 They conflate their local regulations as  
22 effectively as this heightened special authority,  
23 which is not in the public law at all. Public law  
24 does not speak about standards or beyond that.  
25 Moreover, there is no conflict between the 2022

1 amendments, state law and the public law. There are  
2 zero conflicts. It says you can provide water to the  
3 Town or parts thereof.

4 The 2022 state law doesn't say you can provide  
5 water to the entire Town. In fact, it's a very high  
6 burden. You need to show you can't dig a well. You  
7 need to show all these other requirements. What's  
8 baffling is the arguments that well, no, we get to  
9 decide at first before we apply the standards whether  
10 we're going to allow the extension under this  
11 arbitrary, are you going to improve water quantity and  
12 quality?

13 But the first standard in state law is, is that  
14 extension prohibited in your water supply management  
15 plan? I'll tell you what the Town hasn't been since  
16 2022, because they haven't applied the law. They  
17 don't intend to apply the law. There is no water  
18 existing management plan amended to address the 2022  
19 law immediately, until later on when they're in  
20 litigation and realize, as you can see from the  
21 settlement states and the moratorium that I attached,  
22 that they have a problem.

23 Well, there is no language prohibiting these  
24 extensions in the water supply management plan. So  
25 what's happening with the Town's position is they want

1 to say the 1968 public law gives us all this authority  
2 that isn't in there. They want to mix it in with  
3 water supply management plan regulations. They want  
4 to confuse all three. There are very specific  
5 authorities, each of them, that don't rise to the  
6 level of a superseding, of superseding public law.

7 At the end of the day -- and much more is in the  
8 briefing. You know, I want to be conscious of my  
9 brothers and sisters who have arguments as well, but  
10 it really is that simple. It really is are we going  
11 to read a public law -- and this has pretty  
12 significant implications. Are we going to read a  
13 public law so broadly that state law doesn't apply?

14 There is no conflict. The regulations, the  
15 standards and state law apply when an extension is  
16 applied for. The Town has never prohibited  
17 applications for extensions, but for this moratorium  
18 that doesn't apply to us.

19 You heard a lot -- I'll end with this: You'll  
20 hear a lot in the Town's brief about we have a  
21 capacity issue. This is the end of the universe.  
22 This is going to end it. This is why that state  
23 standard is so high and why it can be less for  
24 districts that have plenty of water.

25 We have to show a significant burden, and we've

1 met it here. But the Town has taken no actions across  
2 the board if there is a true capacity issue to stop  
3 new construction. They are within that authority to  
4 do that under state law, including law that passed  
5 last year. Anybody in the urban district on a vacant  
6 lot can build whatever they can build without any  
7 limitations on, such as here.

8 You have existing houses, such as my clients,  
9 that cannot function based on technical and expert  
10 information, and have no other feasible options. Not  
11 that that's the standard. The standard is can we dig  
12 a well elsewhere, and do we meet the well and depth  
13 ratio standards. That is undisputed.

14 I think bringing back to center that we meet the  
15 state law standards, that should be the end of the  
16 discussion. I appreciate all of your time.

17 MS. BRADY: Thank you very much. Well  
18 timed. We'll move on now. We are going to move on to  
19 the Frechette appeal.

20 MR. INFANTOLINO: Christian Infantolino.  
21 I'm with Morneau and Murphy. I do represent Paul and  
22 Gail Frechette, 19 Seaview Avenue. First I want to  
23 second everything on the testimony that Joelle has  
24 said regarding the state law and how it interplays  
25 with the Act. She hit the nail on the head. I don't



1 think that needs to be reiterated.

2 The next thing I want to say is regardless of  
3 that, this state law, my clients back pattern (sic) is  
4 a textbook reason on why this state law was  
5 unanimously voted, to protect citizens from a  
6 municipality and its ability to arbitrarily decide who  
7 does and does not get water regardless of need.

8 My clients purchased the property in August 2015.  
9 Beginning in '16, they began experiencing well water  
10 issues, both saltwater intrusion and limited flow.  
11 They did work with Precision Well and Pump Service,  
12 Inc., a professionally licensed company, specializes  
13 in wells. They determined because the well was having  
14 saltwater intrusion, and the proximity of the  
15 neighboring wells, they weren't able to hydrofrack to  
16 improve the well quality on the first well. A second  
17 well would be the best option to put on the property.

18 They went and they had a second well done. That  
19 was finished about March of 2017, came in at a depth  
20 of 300 feet, and gave a flow rate of a gallon per  
21 minute, which is the minimum standard of the state, a  
22 gallon per minute. Shortly after the completion of  
23 the well, my clients began experiencing flow issues  
24 again. In 2024, they had another flow rate done.  
25 Their well rate was now .075 gallons per minute, less

1 than a tenth of a gallon a minute. Ten times below  
2 the industry standard.

3 Their flow rate is so low that they can't do a  
4 load of laundry and wash dishes in a 24-hour period.  
5 They collect water from the shower while it's warming  
6 up to flush the toilets. Upon finding out that the  
7 flow rate was so low, they went back to Precision Well  
8 to determine what options to do.

9 Based on professionals, my clients don't have  
10 enough space. They have a quarter acre of property to  
11 drill a third well. Due to saltwater intrusion from  
12 the first well, proximity of the neighboring wells,  
13 hydrofrack was out of the question, not an option.  
14 There was testimony, testimony put on by a  
15 professional engineer, Robert Ferrari as well.

16 The testimony from Precision Well, it was  
17 determined there was no other reasonable place to  
18 drill a third well to the property, and connecting to  
19 municipal water was the best option for my clients to  
20 have safer drinking water. January 2, 2024, my client  
21 filed an application for a utility service connection  
22 as provided by the Town and pursuant to the General  
23 Law 46-15-2.

24 My client did provide testimony showing that they  
25 met all of the strict criteria of the state law. The

1 application was not prohibited by the specific  
2 language by the water supply management. In fact, the  
3 Town did not include prohibitive language in the  
4 newest 2024 plan, which would have allowed them to be  
5 exempt from the requirements.

6 My clients agreed to comply with design and  
7 construction standards of the water supply. The fire  
8 chief signed off on the application, showing that the  
9 extension did not reduce the necessary fire level. My  
10 clients agreed to an easement of the water supply to  
11 permit maintenance and repair.

12 They provided flow reports, as we just mentioned,  
13 showing the rate of .075 gallons per minute. They  
14 also put on the testimony from the PE showing that  
15 there was no other reasonable place to put a well on  
16 the property.

17 Even though my clients clearly presented  
18 testimony and evidence to meet all of the rigorous  
19 standards, the Town stretched the hearings over a  
20 period of seven months, making a final arbitrary  
21 decision to deny my clients' application.

22 On July 26, 2024 my clients filed an appeal to  
23 the above-mentioned denial from the Town Water  
24 Commission to connect to the municipal water to this  
25 board underneath this board's rules and regulations,

1 under the 46-15-2 regulations. Memorandums were then  
2 filed on behalf of the appellant on October 17, 2024  
3 and January 17, 2025.

4 It's clear from the record, including the appeal,  
5 the memorandums, the testimony and discussions that  
6 the evidence submitted that my client clearly met all  
7 of the standards and criteria under the state law.  
8 The Town's arbitrary decision should be reversed. The  
9 Town has prejudiced the applicants through the  
10 administrative findings, inferences, conclusions and  
11 decisions made on the record.

12 It is also arbitrary and capricious and an abuse  
13 of discretion, clearly made upon a lawful procedure  
14 and affected by the other errors of law. It's crystal  
15 clear through the actions through the Town of this  
16 process, they do not intend on applying the relevant  
17 state law.

18 Rather through the decisions and memoranda, the  
19 Town's suggesting the law does not apply to them at  
20 all. In fact, through a resolution in 2025-01, the  
21 Town has requested the Jamestown senate and house  
22 representatives to introduce bills to exempt Jamestown  
23 from the law itself. Not a clarification of the law,  
24 but a straight up exemption. They've done it now  
25 three times. There was just another one put forward

1 in collaboration with New Shoreham.

2 The only reason the Town puts forward the  
3 astronomical ask for, to be the only municipality  
4 exempt from state law, to claim that there's capacity  
5 issues. This claim is made on incorrect assumptions.  
6 If this claim has any validity, why did the Town  
7 significantly expand its service area in its proposed  
8 2024 water supply management system plan, therefore  
9 increasing the number of buy rate users?

10 And why, if the system has capacity issues, did  
11 Town councillors, the same people who make up the  
12 Town's Water Commission, just support a \$50,000 bond  
13 to install a new water main related in the existing  
14 rural district solely for the saline center at Fort  
15 Getty Park? It's not a residential use. It's a  
16 commercial use, with no limitations for rinsing boats,  
17 bathroom usage, or any other limitations on what water  
18 use can be used for.

19 The Town has the water. They just don't want to  
20 give the water to our clients. For all these reasons  
21 mentioned, along with the information provided, my  
22 clients respectfully request this committee recommend  
23 to the board to reverse the decision of the Town and  
24 award my clients to extend and connect a waterline to  
25 the property.

1 MR. BRADY: Thank you very much. We'll  
2 move on now to Zimniski and Gagnon, please.

3 MS. DESAUTEL: Good morning, Marissa  
4 Desautel. I represent Suzanne Gagnon and Steven  
5 Zimniski, homeowners at 7 Seaview Avenue in Jamestown.  
6 I echo the sentiments already expressed by my brother  
7 and sister with respect to arguments that they're  
8 making about state law and the Commission's reliance  
9 on public law and their own regulations to try to  
10 overcome that state law.

11 As you're aware, I think all of us are asking for  
12 the board to reverse the Jamestown Water and Sewer  
13 Commission's denial of their applications. The  
14 decision to deny for all of us violates state law,  
15 exceeds the Commission's authority and ignores the  
16 evidence that was actually presented.

17 For purposes of summation here today, I'm going  
18 to go over the main points that were included in our  
19 two memoranda, and obviously we're relying on that  
20 which has already been submitted. Point number one,  
21 the facts for my clients' case shows unfair treatment.  
22 My clients applied for a water connection on  
23 January 2, 2024. They had a similar 2018 report as my  
24 brother and sister were talking about, from a company  
25 called Well Works proving that their well didn't meet

1 the state yield standards.

2 The Town acknowledged receipt of that report, but  
3 then imposed a moratorium on new connections  
4 February 2, 2024. The hearing was delayed first to  
5 April 15, then to May 6 because the Commission claimed  
6 that my clients' report was missing, only to admit the  
7 next day they actually found it. On June 28, 2024 the  
8 Commission denied the application, again, falsely  
9 saying that the report was never actually found.

10 The state statute that we're arguing about here  
11 today, the Water Resources Management Act is clear for  
12 single-family homes, a supplier shall approve a water  
13 extension if the well fails yield standards and a new  
14 one isn't feasible. The Well Works report that I  
15 mentioned proved that first prong, that my clients'  
16 well could not meet yield standards.

17 Also in evidence is a July 10, 2024 inspection by  
18 Precision Wells confirming that no new well can be dug  
19 on this property. It seems that Precision Wells might  
20 be doing work for more than just my clients on this  
21 matter. Meanwhile, the Town approved a water  
22 extension 400 feet away at 68 East Shore Road, outside  
23 of the urban water district, to settle a lawsuit. My  
24 clients' property is only 400 feet away from that  
25 property that was approved, yet the Commission claims

1 that no such water extension approval actually exists  
2 in their pleadings.

3 Point number two, what has already been talked  
4 about, Rhode Island state law trumps Jamestown local  
5 regulations. The Commission focuses on their limited  
6 capacity to provide water as grounds for denying my  
7 clients' application, but the state water resources  
8 management statute addresses those exact concerns and  
9 actually provides guidelines for how limited water  
10 supply should be managed.

11 The statute prioritizes residential properties  
12 over commercial properties without access to adequate  
13 well water. The Commission is then required to follow  
14 standards when making determinations about water  
15 distribution. The law mandates approval, but the  
16 Commission relied on their local regulations, banning  
17 extensions to a so-called rural district.

18 That rule cannot stand in the face of state law.  
19 Rhode Island law preempts conflicting local  
20 regulations. I'm not talking about the public law.  
21 I'm talking about the Town's local regulations. The  
22 Supreme Court in the Town of East Greenwich versus  
23 O'Neil says state statute must carry more weight than  
24 local regulations.

25 In this case, the local Water Resources Act



1 actually sets the standard. This is no rural district  
2 exception. Getting to the public law that the  
3 Commission relies upon, it's from 1968. The argument  
4 the Commission makes is that this public law from 1968  
5 grants them unfettered power to decide who gets water,  
6 and that is a decision that they are making free from  
7 any kind of legislative oversight.

8 Again, Rhode Island law is clear. Legislative  
9 power cannot be unconditionally delegated.  
10 Municipalities yield only the power expressly granted  
11 by the General Assembly. In this case, that power is  
12 bounded. It's not plenary. The Commission, in one of  
13 their memos, also invents a conflict between this  
14 public law from 1968 and the state Water Resources  
15 Management Act to dodge what we call harmonizing of  
16 the two laws.

17 But as the Rhode Island Supreme Court has said in  
18 *Purcel C. Johnson*, we must read statutes in harmony  
19 whenever possible, even if they are enacted at  
20 different times, which is what we have in this case.  
21 Public law of 1968 authorizes the Commission to extend  
22 water systems, while the Water Resources Management  
23 Act sets mandatory standards for reviewing extensions.  
24 There is no clash there. These provisions co-exist.

25 The Commission even admitted in January 2024,

1 resolution that my brother and sister have already  
2 referenced, that the statute in place requires service  
3 beyond their limited area. They tried for an  
4 exemption through House Bill 7345. It failed. I hear  
5 a new exemption is being attempted for this  
6 legislative session.

7 Point three, evidence was ignored with  
8 respect to my clients' particular situation. The  
9 denial letter that you have from the Commission skips  
10 mentioning my clients' Well Works report and the  
11 report of the Precision Wells Company. The denial  
12 letter also doesn't apply the standards contained in  
13 the Water Resources Management Act, which indicates  
14 that under this board's rules, Rule 9.4(d), you may  
15 remand or reject the decision for that failure alone.

16 Specifically, your rule 9.4(d) says  
17 the board may remand or reject an appeal of the  
18 supplier if its final decision failed to provide  
19 written evidence that it applied the standard of  
20 review as set forth in Rhode Island General Law  
21 46-15-2(b). Supplier must also provide the board with  
22 a full written assessment of the relevant sections of  
23 its current approved water supply system management  
24 plan as it applies to the supplier's final decision.

25 That was not done

1 here. You've got a denial letter that could be  
2 rejected on its face. But if you actually continue to  
3 look at the evidence put forth by my clients in this  
4 case, the Town's own comprehensive plan and their  
5 water supply management plan actually supports  
6 extending the water near Seaview Avenue. The East  
7 Shore Road extension that was put in place as a result  
8 of settlement proves that it's feasible. On  
9 August 19, 2024 the Town said that water use had  
10 dropped 700,000 gallons from 2022 to 2023. The Town  
11 also said that ratepayers would experience a rate hike  
12 because of this. So adding my clients' extension  
13 arguably, plus the other applicants' extensions, would  
14 ease that burden, improving water quality and  
15 potentially quantity for all users. That goes even  
16 for the Town's own local regulations, that comes right  
17 from their regulations, not from the state law.

18 Lastly, fairness and precedent demand relief  
19 here. The assertion that the water district operates  
20 without oversight or financial support from the Town  
21 is simply wrong. The Commission actually collects  
22 taxes from my clients to fund the drinking water  
23 system. The public law from 1968 references this, as  
24 well as the 2023 Jamestown financial report.

25 A review of the Town's financial report items

1 show that my clients do, in fact, pay taxes to the  
2 Town that are then used directly to pay for the Town's  
3 public works salaries, and that certain interfund  
4 transfers are being completed into the water fund from  
5 the Town's taxpayer general revenue.

6 In the case of Middle Creek Farm versus  
7 Portsmouth Fire District, the Rhode Island Supreme  
8 Court ruled if you tax someone, you must serve them.  
9 My clients pay taxes, but they're denied water, at the  
10 same time that new developments and short-term rentals  
11 are being approved. That's not equitable. That is  
12 completely arbitrary.

13 I find the Town, as my brothers and sisters are  
14 speaking, we're all using the phrase arbitrary.  
15 That's what the Town did to all of us, selected  
16 criteria that was beneficial to them and ignored state  
17 law and their own regulations. Under the board's own  
18 rules, you can reverse the decision if you find that  
19 it violates law, exceeds authority, or prejudices  
20 property owners' rights. My clients' case does all  
21 three.

22 Commission ignored the Water Resources Management  
23 Act, clung to an invalid role, botched procedure,  
24 dismissed the evidence and taxed my clients for the  
25 water fund. My clients need water. They've proven

1 it. It's in evidence. The law requires it. So we  
2 respectfully request that the Commission's decision be  
3 reversed and that the board grant my clients'  
4 connection request. Thank you.

5 MS. BRADY: Thank you very much. We've  
6 got three down, one to go. We have the Saletin  
7 appeal.

8 MR. MINEAU: Thank you. Again, Michael  
9 Mineau on behalf of the Saletins. I'll try to be  
10 brief, so as not to recite too much of what was  
11 contained in the preceding presentations. I would  
12 like to make a couple of overarching points, though.

13 First, on this alleged conflict between the  
14 so-called special act from 1968 and the 2022  
15 amendments to the state law, as we've outlined and  
16 briefed extensively, that special act is essentially  
17 an enabling law that granted autotomy to the  
18 Commission or Town with respect to managing the water  
19 supply, but the Town is not exempt from those  
20 statewide standards, as clearly evidenced by the  
21 Town's recent multiple attempts to pass legislation  
22 which would exempt the Town specifically.

23 So on the one hand, the Town's primary argument  
24 is that these standards do not apply to the Town, or  
25 that it may choose to not apply them in its

1 discretion. But on the other hand, it's clear that  
2 the Town is well aware that those standards do apply,  
3 or should apply. To address those statutory standards  
4 specifically with respect to the Saletins' appeal, as  
5 we again outlined extensively in the brief which I  
6 will rely on in principle, the Saletins over the  
7 course of several hearings presented ample evidence  
8 and testimony which was supported by a report from  
9 Northeast Water Solutions, which other applicants also  
10 had used.

11 That report, and I'll just read a couple of short  
12 sections from it, clearly confirms that the yield of  
13 safe drinking water under applicable state and federal  
14 standards was grossly inadequate. That the possible  
15 alternatives were simply not feasible at the  
16 14 Seaview Avenue property, which my clients own.

17 Specifically, Mr. Farrari from Northeast Water  
18 Solutions found, quote, there is no expectation that  
19 hydro fracturing would measurably increase the well  
20 yield, and would likely degrade water quality due to  
21 increased seawater intrusion. With respect to a  
22 potential new well, as my clients confirmed along with  
23 their experts, this property simply does not have a  
24 feasible location for a new well.

25 Additionally, the possibility of a reverse

1 osmosis system was evaluated. It was determined that,  
2 quote, the well has insufficient capacity to meet the  
3 RO feed water requirements for sufficient duration to  
4 satisfy the water demands. Furthermore, there is very  
5 strong evidence that the disposal of the RO reject  
6 water is further degrading the water quality in the  
7 underlying aquifer.

8 Additionally, the Saletins had provided as part  
9 of the record, which is also part of the appeal  
10 package that was submitted, a record from Jay Lemmy  
11 Wells and Water Systems from July of 2023 confirming  
12 on two different occasions out of many more which my  
13 clients had experienced well issues on, that on one  
14 occasion, quote, well was empty, recovery rate of well  
15 is inadequate to run reverse osmosis system in home  
16 while recovery 1 GPM, 3 GPM needed to run reverse  
17 osmosis system. There was another service call from  
18 August of that year that just stated no water, same  
19 issue.

20 Turning to the standards set forth in 46-15-2(b),  
21 the first of those is that the application must not be  
22 prohibited by the specific language of the latest  
23 water supply system management plan. As outlined in  
24 the proceeding presentations, there is no such  
25 prohibitive language in the applicable WSSMP. So

1     therefore, my clients clearly meet that standard, and  
2     their application should not have been prohibited or  
3     denied based on that standard.

4             Number two, the application must comply with the  
5     design and construction standards and specifications  
6     established by the public water supply system for  
7     sizing and location. My clients clearly satisfied  
8     that standard as evidenced by the record over the  
9     course of these multiple hearings, the expert  
10    testimony and reports that were provided in connection  
11    with their application.

12            Number three, the extension shall not reduce the  
13    necessary level of fire protection for the community.  
14    Interestingly, not only was it specifically written on  
15    the Saletans' application in a comment from the  
16    Jamestown fire chief, that the request will not reduce  
17    the level of fire protection, but it was also  
18    specifically noted by the fire chief that a fire  
19    hydrant was needed in the area.

20            In this case, the extension would have actually  
21    improved fire safety in the area, because it would  
22    have allowed for another hydrant to be closer to the  
23    homes in this area.

24            Number four, all water main and service  
25    connection materials, construction and inspections



1 shall be at the sole cost and expense of the  
2 applicant. That standard was clearly satisfied here,  
3 as the applicants were going to pay for the extension,  
4 and each of them would have paid for any connection at  
5 their individual properties. That was confirmed in  
6 the record.

7 Number five, the public water supply system shall  
8 be granted an easement in a form acceptable to them.  
9 Clearly, there was no issue with the Saletans or any  
10 of these other folks granting such an easement for  
11 maintenance to the Town.

12 Number six has two parts to it. This is  
13 applicable to single-family residential lots.  
14 Subsection 1 is that the existing or proposed well  
15 does not meet the well industry standards as described  
16 in the Department of Environmental Management  
17 regulations for yield per depth of well chart, which  
18 is required by the Department of Health for dwelling  
19 units.

20 That language is important here because the Town  
21 was very critical of an issue, perceived issue with  
22 the Saletans' application, in that if you just look at  
23 the raw flow rate, it was above the minimum standard.  
24 However, as clearly demonstrated by their experts, the  
25 flow rate was, the raw water was clearly contaminated

1 of an insufficient characterization to meet those  
2 Department of Environmental Management and Department  
3 of Health standards.

4 The second subpart, it's number six, due to  
5 unique characteristics of the property, the drilling  
6 of a new well is not feasible. Again, they clearly  
7 demonstrated that the property cannot accommodate a  
8 new well in a feasible location. That's just due to  
9 unique characteristics of the property, its size, its  
10 proximity to the brackish water, and other issues that  
11 were identified.

12 Further down in that statute, it's clear from the  
13 language used that the Water Resources Board shall  
14 enforce the provisions of this section. So what we're  
15 asking is not for a remand here. I believe that a  
16 remand would not be the appropriate remedy for the  
17 Saletans or any of these other folks. One of the  
18 reasons for that is that the Town clearly has  
19 demonstrated that its position is that these standards  
20 do not apply to the Town and/or the Town can  
21 selectively choose when it wishes to enforce these  
22 standards.

23 That is contrary to the intention of these  
24 legislative amendments of 2022, which are statewide  
25 standards that are supposed to apply in every

1 municipality. Again, going back to number one, the  
2 Town clearly could have adopted language in the WSSMP  
3 to enable the Town to prohibit extensions in the rural  
4 district.

5 The Town's supplemental filing kind of dances  
6 around this issue and attempts to tie together  
7 language from the regulations and other sections of  
8 that plan, which could conceivably be construed to  
9 support the Town's argument. However, I don't think  
10 that this board needs to go through such an exercise,  
11 because the clear, plain language of that plan does  
12 not expressly prohibit these extensions outside of the  
13 urban district.

14 Again, just going back to this issue about  
15 harmonization and the cases that we cited in support  
16 of that, the Town's position, if sanctioned by this  
17 board, would essentially create a loophole that would  
18 allow for other municipalities to proceed in the same  
19 way that the Town has here, determining that the  
20 statewide standards are not really uniform statewide  
21 standards and that they can be selectively applied or  
22 enforced based upon separate regulations that those  
23 municipalities may have, but not addressing the  
24 specific requirement that it's the language of that  
25 water supply management plan that's operative. That's

1 the mechanism that a municipality has to prohibit  
2 extensions, should it choose to do so.

3 Finally, we cited numerous cases on the  
4 preemption doctrine and various preemption theories  
5 which apply. It's clear that the Town's regulations  
6 are directly preempted in this instance. Even if  
7 direct preemption did not apply, the state has clearly  
8 demonstrated an intent to occupy this field, even in  
9 an instance where a field may only be portionally  
10 occupied, field preemption still applies.

11 With that said, we have met the standards for  
12 reversing the Town's decision. We'd ask that that be  
13 the remedy that's applied in this instance. That the  
14 decision of the Town be reversed. That the Saletans'  
15 application be approved. Thank you.

16 MS. BRADY: Thank you very much. Now  
17 we've come to the point in this discussion where we  
18 will turn it over to the Town. You will have a  
19 20-minute block in which to make your response and  
20 comments.

21 MS. DANIELS: Kathleen Daniels, I'm here  
22 on behalf of the Jamestown Board of Water and Sewer  
23 Commissioners. I want to start with, you know, as far  
24 as responding to everything, I think I want to present  
25 the case, then I will try to hit some of the points

1 that were made in going through the full argument on  
2 this.

3 We have briefed this. Everyone has briefed this.  
4 You have the exhibits to it. There was a hearing  
5 below. The hearing below is what is before this panel  
6 as well, before the board as far as what was  
7 presented. I'm not going to sit here and try to  
8 regurgitate everything that has been previously  
9 presented. Obviously, not as my brothers and sisters  
10 have done, I'm going to do the same thing, just try to  
11 quickly summarize and hit some points.

12 I have to say I disagree that this is a simple  
13 question as to whether the particular elements of the  
14 amendment have been met, because the question starts  
15 with, do we get there? In order to get there, we have  
16 to just ignore the Enabling Act, special act that  
17 granted the Jamestown Board of Water Commissioners the  
18 authority, and this is the language that everyone is  
19 asking the board to ignore, the determination of  
20 whether, the language is actually they may decide --  
21 excuse me, they may expand or improve the system to  
22 any parts there of the Town.

23 Of course, I paraphrased it a little bit. But  
24 it's expand or improve. It's permissive language;  
25 they may do it.

1           Now, I also heard throughout and through all the  
2 pleadings that the board is trying to take the  
3 position that they are an island of themselves is the  
4 language used at one point. We don't have any  
5 oversight. That is so far beyond the truth that it's  
6 kind of questionable where it comes from.

7           Because of the fact that this board has followed  
8 the mandates of the state statutes, they have a board,  
9 they have a water management plan. The whole point of  
10 a Water Resources Board is to monitor resources and to  
11 make plans for it. That is what the Town has done.  
12 They've implemented that through the Water Resources  
13 Board -- excuse me, through the water management plan.

14           The authority to determine what available  
15 resources they have and where to extend the resources  
16 is outlined within there. It clearly states in there  
17 that they don't have it right now.

18           Now, I have to start with, I want to go back a  
19 little bit, because I think part of the misperception  
20 or the different sides of this is the perception that  
21 the whole island of Jamestown is part of the water  
22 system. They're not yet. They're not yet. The  
23 reason is the Board of Water Commissioners were  
24 authorized to buy a private water company. It was a  
25 small area of the village of Jamestown. It was a

1 particular area. That is why they were granted the  
2 right to determine how, where to go after that fact.

3 At this point, and it's reflected, I think you  
4 brought out the maps as well, it's reflected in the  
5 the water management plan that the current service  
6 area is what is called the urban district, and there  
7 are certain additional aspects of it. In order to  
8 determine whether or not an extension would be granted  
9 and to apply these amended provisions, you have to  
10 first make the determination of whether the system can  
11 accommodate.

12 Noticeably absent from this amendment is any  
13 consideration of whether the system can accommodate  
14 it. I suggest that the reason for that is because  
15 it's recognizing that there has to be the first  
16 instance, a determination of the services through the  
17 water management plan in conjunction with the Water  
18 Resources Board is whether or not they can expand.

19 There has been some discussion here today -- I'm  
20 going to jump a little bit. These things kind of fold  
21 into what I'm saying. There is discussion as far as  
22 there being a increase in water supply in the past  
23 couple of years. Respectfully, this Water Resources  
24 Board and the Board of Water Commissioners, they can't  
25 be so short-sighted as to say we've had great water

1     this past year, so... They cannot do that.

2             The whole point is to plan and make  
3     accommodations and to ensure that we don't end up like  
4     they did in '93. They have to be sure that we have,  
5     try to break down the five months out of the year that  
6     they are short of water and they are exceeding the  
7     safe yield. They are taking steps to do that.

8             You can't -- that's like saying I had a windfall  
9     in my work this past month and I received extra money.  
10    I'm going to go out and buy a \$300,000 car. Oh, that  
11    windfall doesn't keep coming next year. Something  
12    happened at work, maybe work fell off. I'm still  
13    stuck with that purchase of the vehicle that I still  
14    have to pay. That's what would happen here. Simply  
15    because there's been supply recently does not mean  
16    that the supply is going to be there.

17            This board has the statutes which, where I get  
18    back to saying we think we're not subject to them. We  
19    are subject to them, and we have followed them,  
20    because we have made a determination. I believe it's  
21    based upon the drought record is the appropriate,  
22    drought level, which we determine the safe yield.  
23    That drought record, that is all laid out in the water  
24    management plan.

25            I would further add on that, before I get too far



1 off, just very quickly, the challenges as to the  
2 ability to supply water, those are challenges to the  
3 plan. Those aren't challenges that the resource, the  
4 Commissioners can make a determination on, on an  
5 individual application because they have, they are  
6 governed by that plan.

7 I also want to jump to the, getting back to the  
8 interaction between the statute, the special act and  
9 the plan along with the regulations. I've heard  
10 conflicting accusations as far as one says we claim it  
11 conflicts, one says we fail to harmonize. Our  
12 position is, I want to make sure it's clear, our  
13 position is there has to be an attempt to harmonize.  
14 I think that can be harmonized. We laid it out in our  
15 briefing. It can be harmonized if it's recognized  
16 that this district is identified as the urban  
17 district.

18 While geographically we have the right to go out  
19 further, that does not put us into the statute until  
20 that determination is first met. That determination  
21 can't be met without a full analysis, as I laid out in  
22 the water resource -- excuse me, in the water  
23 management plan.

24 There was a claim saying that we're saying there  
25 is a conflict. We're saying no, it is not a conflict.

1 That's where you have to start. There is not a  
2 conflict, try to harmonize. If you cannot harmonize,  
3 the way you can harmonize is by recognizing that. But  
4 if you can't, then you're actually governed by state  
5 statute. State statute says when there is a special  
6 act that's in conflict with the general act, the  
7 special act controls. That's not something that the  
8 Commissioners came up with. That is something the  
9 General Assembly has dictated.

10 Even though that special act dates back to 1968,  
11 it has never been repealed, never been changed to  
12 restrict. There's been amendments, I will say that.  
13 It's never been changed to restrict the authority of  
14 the Commissioners to determine whether or not it  
15 should be expanded, the system should be expanded.

16 There was reference to grants being issued and  
17 revenue by the water supply. Yes, there have been  
18 grants. There have been grants over the years.  
19 That's all toward the improvement, part of their  
20 ability to seek and improve the system, if they can.  
21 That's what the grants' goal is.

22 I point out that, you know, some of this is  
23 coming information being shared now. You know, it  
24 wasn't before the board to be fully vetted. I do want  
25 to respond to it. I also want to quickly respond to

1 the statements as far as the taxes. As we laid out in  
2 our briefing, the Jamestown Water Board is an  
3 enterprise fund. It is fully funded by itself.  
4 The director does serve a dual purpose, so there are  
5 public works money in the Town budget, but that is not  
6 for the water supply aspect of it. It is fully  
7 funded.

8 In order to get to the amendments and whether or  
9 not they apply to this, you have to first, in my mind,  
10 you have to first say that special act is old. No  
11 good, off the books. It quite simply can't be, it  
12 can't be. That is where they started and end their  
13 authority.

14 There was also reference to other extensions of  
15 the water main over the years. I have to take strong,  
16 strong -- I can't disagree more with the fact that  
17 there were no standards applied to those. Those  
18 weren't presented before the Commission, but I can say  
19 that the, and I see Joelle is nodding. I will simply  
20 say maybe she attached it to something. I say I am  
21 familiar with some of those.

22 I will say, for example, there was one where  
23 there was a 2-inch line. The 2-inch line got improved  
24 to a 6-inch line. That created a benefit to the  
25 current existing system. I say that that's a

1 statement that has been outlined in the regulations.  
2 I'll get to that in a second. There was another  
3 situation where it was a 4-inch line. The 4-inch line  
4 got improved to a 6-inch line, which was another, that  
5 was part of the water main extension, which was  
6 another benefit to the system.

7 The reference to any settlements that came up,  
8 settlement of cases happened for a number of reasons  
9 for different bases that do not and cannot dictate the  
10 future actions of a board. They are controlled by  
11 the, by their statutory enabling. They're controlled  
12 by the water management plan. They're controlled by  
13 the regulations, as well as the state statutes.

14 So to say that we weren't, that we do not believe  
15 that, that for some reason, I think it was language  
16 used at some point that was, there was a presumption  
17 that we don't want to give water. I think the water  
18 management plan, I think the fact grants are getting  
19 issued, not just a single one that we referred to  
20 today, by the others, the improvements to the system  
21 shows that the board wants to give water.

22 They want to give water. They can't do it in a  
23 vacuum. They cannot say, oh, you know what? Yes,  
24 you're close here. You're only 150 feet. We're going  
25 to go ahead and add you. They have to have set

1 standards. The regulations have identified those  
2 standards for the board.

3 Now, there's been talk about the real conflicts  
4 between the regulations and the end of state statute.  
5 The regulations are there only as an embodiment of the  
6 authority for the board through the special act. The  
7 special act says you have to, because you're going to  
8 run this water system and you're going to take all  
9 these steps, do what you need to do, as far as all of  
10 the details outlined therein.

11 In order to effectuate that, the board, if the  
12 board didn't have the regulations, then we would be  
13 sitting here saying you have no standards to apply.  
14 So the regulations are simply the embodiment of those  
15 special acts, authority.

16 I just want to quickly jump to the claims of  
17 preemption. We outlined that actually in our  
18 memoranda. In order for there to be preemption, we  
19 have one party saying there is no conflict, we have  
20 another party saying there is a conflict. There is a  
21 conflict, because it overrides it. The fact of the  
22 matter is the standard for preemption is identified in  
23 our brief. It just has not been met in this case.

24 I'm reading as I talk. I apologize, give me a  
25 second here. Bottom line is rather than it being a

1 simple question of whether these applicants have met  
2 the standards, the board took the reasoned approach,  
3 which is, I have a regulation that controls our  
4 actions. The regulation was passed because of the  
5 special act. The water management plan has determined  
6 what we need to do.

7 At this point in time -- I correct that. The  
8 water management plan of 2018 was in existence at the  
9 time. That water management plan specifically said  
10 there is no plan for future development because,  
11 excuse me, they have a goal to plan for the future,  
12 such that the water supply system is not extended  
13 beyond its capacity in order to provide safe, clean  
14 drinking water.

15 The public system is currently drawing greater  
16 volume than the safe daily yield of the North Pond.  
17 It further states, 2.10, because of the water supply  
18 limitation, there is no ability to service the entire  
19 Town, the entire island with water at this time. The  
20 existing system is limited in scope, geographically to  
21 the village area of Jamestown, and is not capable of  
22 extending beyond the current water service area.  
23 That's in the plan that was approved by this.

24 That doesn't mean that there are not steps being  
25 taken to attempt to improve that, to improve the water

1 supply, to extend beyond what it currently services,  
2 but they have an obligation to make sure currently  
3 that the existing users have ample water.

4 The accusation that we've presented a doomsday  
5 situation and that, you know, it hasn't happened,  
6 that's the whole point of planning. That's the point  
7 that the state statutes that we're being accused of  
8 not following, but we do follow, has required us to  
9 take that into consideration. It is, the state  
10 statute requires the plan to be based upon the safe  
11 daily yield and determine what can we do.

12 That being said, in making this determination, it  
13 comes down to whether or not this board, Water  
14 Resources Board or the General Assembly can dictate to  
15 the Jamestown Water Commissioners that -- dictate, I  
16 should say amend the special act by implication and  
17 say no, you don't any longer have the authority to  
18 determine whether to expand or improve the system.  
19 You don't have the authority to determine whether or  
20 not you can actively and safely provide water to the  
21 current users who, as I point out, currently five  
22 months out of the year there is not enough in the safe  
23 yield. That is in the water management plan.

24 In reaching the conclusion in this case, all I  
25 could think of is, I'm dating myself here, Justice

1 Weisberger, Chief Justice Weisberger. I was clerking  
2 at the time. He had a very routine question he asked  
3 during oral arguments. His question centered on what  
4 are you asking us to do. Not only does it affect you,  
5 but how is it going to affect anyone in the future.  
6 How is it going to affect the cases moving forward?

7 I think that is what the Water Resources Board,  
8 that is what the Town board -- I'll also point out  
9 quickly, we're interchanging the word town, but it is  
10 the Town's Sewer and Water Commissioners. When we ask  
11 that question in this case, if we were to say that the  
12 only determination of whether to expand the district,  
13 to expand the service area is not determinative by the  
14 board, but is determined by those elements in the  
15 amendment, which doesn't give any consideration to  
16 that, then here's a scenario that would be thrown out  
17 there.

18 What if someone on the outer reaches comes before  
19 the board and says my well, and legitimately so, my  
20 well is depleted; I don't have water. Under this  
21 standard, you have to connect me. They have the money  
22 to pay for that extension, even though it's further  
23 out. What is the result of that?

24 That's what they're asking this board to decide,  
25 to say, Town Commissioners, you are wrong; you have to



1 give it to them. The result is we have a water main  
2 extension going all the way out to the end, and under  
3 the management plan, under the regulations as applied,  
4 every piece of property along that water main has the  
5 right to then connect to the system.

6 There is a water main extension going in front of  
7 your property under the current regulations and the  
8 rules that they follow, the properties along that  
9 water main have the right to connect to that  
10 automatically. The increase to the system would not  
11 just be that one piece of property at the end with the  
12 one house with the one bedroom. It would be everyone  
13 along that line.

14 You also have to consider how does this apply to  
15 other districts that are similar, which are, this is  
16 not the Providence water supply system which has no  
17 question that they have years and years, record  
18 drought I believe is much lower -- higher, whatever it  
19 might be. You have Block Island, Harrisville, North  
20 Kingstown, Richmond. You have all of those smaller  
21 things.

22 I personally live in Richmond. I'm not anywhere  
23 near the line. If my well should fail, do I have the  
24 right to connect to Richmond regardless, and everyone  
25 along my line? So I think that's where we start. We

1 are not saying, we are not controlled by the Water  
2 Resources Board. We are not saying we have no  
3 oversight. We never said that. As a matter of fact,  
4 our actions in the past have clearly shown that we  
5 agree with that.

6 What we are saying is that before you apply this  
7 amendment that went in three, three years ago, time  
8 flies, that amendment that got put in, you have to  
9 determine whether or not, how it interacts, I should  
10 say, with the other provisions. You can't read it in  
11 a vacuum. That's what they're asking you to do, to  
12 read it in a vacuum. You, quite simply, can't do  
13 that.

14 The statute cited in our memo is that you can't  
15 do that. You have to read them in harmony. The  
16 statute says if you can't read them in harmony, the  
17 special dominates, the special takes precedence. I  
18 would ask that you find that they did have a valid  
19 basis to deny these applications. They were faced  
20 with the regulations, special act and the water  
21 management plan to support all the same. I ask that  
22 you affirm the decision.

23 MS. BRADY: Thank you. All right. We've  
24 been at this quite awhile now. Would anybody like to  
25 take a quick five-minute break, use the facilities,

1 stretch your legs?

2 I know we're getting to the point where we'll ask  
3 questions. It's morning. People have had water and  
4 coffee. It might be worth taking a quick break and  
5 come back to the table and ask some questions.

6 MR. SMITH: Let's keep going. We're on a  
7 roll.

8 MS. BRADY: Now we've approached the part  
9 of the agenda where we're going to now be asking some  
10 questions. I would ask whether either the panel  
11 members, they have questions they would like to ask to  
12 any of the appellants or to the Town at this point? I  
13 know our lawyer does have some questions he would like  
14 to ask.

15 MR. SMITH: Only after the board members.

16 MR. HOUDE: I have a general question.  
17 Can anybody confirm that this map is, in fact,  
18 accurate?

19 MS. DANIELS: This is the one, I believe,  
20 attached to the water management plan.

21 MR. GRAY: Mike Gray, public works  
22 director. That depicts what is presented in the water  
23 system supply management plan. That is showing where  
24 basically the districts have water.

25 Joelle is correct in the regulation, in that the

1 rural district is any, any of the land outside of the  
2 urban, so above that blue-shaded area is essentially  
3 the district, by our regulation. What that is  
4 depicting is where water exists, basically.

5 MR. HOUDE: So if you go outside the  
6 urban water district and extend the water main, does  
7 that also expand your urban water district, changes  
8 this map?

9 MR. GRAY: It expands the district.

10 MS. ROCHA: I'll object to that response.  
11 There are lines, I think there is a map in the water  
12 supply management plan showing all the lines outside  
13 the water district. There are some up north, and  
14 there are some down Beavertail, which is a ground  
15 area. The urban water district has stayed the same.  
16 They haven't expanded.

17 MR. HOUDE: We have infrastructure owned  
18 by the Town that is out of the urban water district?

19 MS. ROCHA: Yes.

20 MR. HOUDE: There are Town facilities  
21 outside the urban water district?

22 MS. CRAWLEY: I would like to ask for  
23 clarification on this. When we're talking about  
24 lines, I believe we're talking about some distribution  
25 extensions and some transmission lines that exist

1 mainly to take water from the source to the  
2 distribution area. I want to make that clarification.  
3 Is that correct?

4 MR. GRAY: That is correct. There are  
5 transmission lines and distribution lines. What we're  
6 referring to the district essentially is distribution  
7 of water. So an extension of a main is essentially  
8 expanding distribution.

9 MS. CRAWLEY: We're talking mostly 2- and  
10 4-inch lines?

11 MR. GRAY: Larger than that. Sized for  
12 fire protection as well.

13 MS. CRAWLEY: Okay.

14 MR. HOUDE: In the past ten years have  
15 you had need to implement any water conservation or  
16 outdoor water use restrictions?

17 MS. DANIELS: Yes, I believe it's on a  
18 yearly basis, approximately three to five months at a  
19 time. Mostly during the peak year. I believe that  
20 information is also contained in the water management  
21 plan.

22 I could pull it up for you, if you would like.  
23 I'm sure it's in there, describing how much and when.  
24 I believe it's a yearly event. I'm sure it is.

25 MR. HOUDE: Since 2018, that was the last

1 approved water supply management plan, have you  
2 allowed growth outside of the urban water district?  
3 Have you expanded the water district since 2018?

4 MS. DANIELS: Do you mean as far as a  
5 water main extension?

6 MR. HOUDE: The water main extension.

7 MS. DANIELS: There has been one water  
8 main extension on East Main Road that happened in the  
9 '22/'23 time frame. That was part of that settlement  
10 that was referenced by Attorney Rocha. The  
11 additional, I don't believe there were any others, no.  
12 There weren't any others since 2018.

13 MR. HOUDE: Have you denied any other  
14 applicants since 2002?

15 MS. DANIELS: We denied that initial  
16 case. There was actually, I believe, three other  
17 applicants that same day that were denied. Only one  
18 took an appeal. There might have been four.

19 MS. ROCHA: Includes us.

20 MR. HOUDE: Do you have any current  
21 applicants that are undecided at this point?

22 MS. DANIELS: I will refer to  
23 Mr. Gray.

24 MR. GRAY: No. There is one for Monday  
25 night's meeting for a connection where there is an

1 existing main.

2 MR. HOUDE: In the urban water district,  
3 or where it's currently serviced?

4 MR. GRAY: It was sewer. I shouldn't say  
5 that. No, we do not.

6 MR. HOUDE: What criteria do you utilize  
7 when looking at a water main request for water main  
8 extension or service?

9 MS. DANIELS: The regulations. Actually,  
10 I believe it's 14(a) and 14(b) dictate those criteria.  
11 14(a) refers to the water main extensions in the urban  
12 district, then 14(b) applies to the rural district.  
13 Because as of now, because of the water plan and the  
14 regulations, it's been prohibited.

15 The only criteria is if they can present  
16 something, they give themselves an out, so to speak.  
17 If they present something that would show it would be  
18 an improvement to the existing users. By way of  
19 example, there are a couple of cases from years ago  
20 where they, person wanted to extend the water main.  
21 There was a 2-inch line at one point, 4-inch line.

22 They replaced the entire line and made the  
23 current, current water main was turned into a 6-inch  
24 line which improved the water quality and, I believe,  
25 the fire services at one point, too, is another

1 instance.

2 MR. HOUDE: Another question. You  
3 mentioned an easement, or someone mentioned an  
4 easement that would be granted. Are these, was it  
5 Seaview Lane; are these public rights-of-way?

6 MS. DANIELS: I believe they are.

7 MS. ROCHA: Yes.

8 MR. HOUDE: They're Town roads?

9 MS. ROCHA: Yes.

10 MR. HOUDE: If an extension was granted,  
11 would the Jamestown water district assume  
12 responsibility?

13 MS. DANIELS: I believe that is the  
14 process. Paid for by the applicants, and then once  
15 it's completed and approved and inspected, it reverts  
16 to the ownership of the water district itself. They  
17 are responsible, obviously, from there. The  
18 individual, as you know, the individual homeowners are  
19 responsible from the connection lines to the main.

20 MR. HOUDE: Correct. I'm not  
21 understanding that an easement would be necessary.

22 MS. DANIELS: I don't know what that  
23 referred to.

24 MR. IINFANTOLINO: The easement is in  
25 reference to the actual connection. You have the line



1 running past the house. The main runs past the house.  
2 Connection line comes off the main. If anything were  
3 to happen between the connection line and the main  
4 line on the applicants', say, property, there would be  
5 an easement, so if there was maintenance needed to be  
6 done or repair done to that line.

7 MR. HOUDE: That's private property.

8 MR. IINFANTOLINO: That's why the  
9 easement would be granted, so the Town would have  
10 easement over the --

11 MR. HOUDE: It's private property. It's  
12 not the Town's responsibility.

13 MR. IINFANTOLINO: My understanding is  
14 that easement is for those purposes.

15 MS. ROCHA: Otherwise, I would agree, it  
16 doesn't make any sense.

17 MR. HOUDE: Okay. I was consumed by the  
18 wording of the easement.

19 MS. ROCHA: Can I add one point of  
20 clarification, because I don't want there to be any  
21 confusion? There have been connections in the rural  
22 district granted since the period, including one on  
23 the night of one our other hearings.

24 MS. DANIELS: That's accounted for as  
25 well. The distinction between connection and

1 extension, if the extension is there, then properties  
2 along the line can connect. They have their own  
3 standards for connection. That was kind of my point  
4 when I gave my example.

5 Once that extension goes in, those connections  
6 may be allowed. Once the extension runs in front of a  
7 property --

8 MR. HOUDE: Okay. So we're looking at,  
9 is it four residences? Does each have a failed well  
10 at this juncture?

11 MS. ROCHA: Ours does.

12 MR. IINFANTOLINO: Ours does.

13 MS. ROCHA: Yes, all of them.

14 MR. HOUDE: At one time they were viable  
15 wells; they were permitted?

16 MS. ROCHA: Yes.

17 MR. IINFANTOLINO: Yes.

18 MR. HOUDE: Nobody knows why all of a  
19 sudden they're not viable?

20 MS. ROCHA: The experts, at least in my  
21 case, the same expert in three of them testified as to  
22 all the technical details about why they've gone down,  
23 or what exists now. I won't attempt to summarize  
24 that.

25 MR. HOUDE: Do we know in each instance

1     how long that well was viable for?

2                   MS. ROCHA: I know in my case for the  
3     Andreonis, when they purchased in 2015, it had been,  
4     it was fine. They were able to close, you know,  
5     finance the property. Then in the last, we applied in  
6     January 2024, so in the year prior to that, the water  
7     went downhill. At least that's my case.

8                   MS. DESAUTEL: That's my understanding,  
9     too.

10                  MR. IINFANTOLINO: In our case, the  
11     second well was completed in 2017. By 2024, it's  
12     producing less than a tenth of a gallon per minute.

13                  MR. HOUDE: Have there been  
14     investigations as to why these wells all failed in  
15     close proximity or simultaneously?

16                  MR. MINEAU: I think one of the issues  
17     referenced in those reports is degradation over time,  
18     which has resulted in the raw water quality being so  
19     poor that, again, some have pure flow rate issues in  
20     general. Even if there is technically sufficient raw  
21     flow of water, the quality of that water does not meet  
22     the requisite state standards.

23                  One of the issues that Mr. Farrari discussed in  
24     the report was how over time for technical reasons  
25     that I am probably not qualified to opine on there's

1    been a significant degradation overall in the quality  
2    of the water, in addition to diminished flow issues  
3    that are also discussed.

4                   MR. HOUDE:  Are there other properties  
5    with wells on Seaview Avenue that haven't failed?

6                   MS. ROCHA:  Yes.

7                   MR. HOUDE:  That's it.

8                   MR. KINZELL:  I just had some questions  
9    back to the regulation that we talked about in 2009,  
10   specifically the point that it was noted there are  
11   four extensions between 2009 and 2021, but in your  
12   regulation for 2009 you did prohibit extensions, per  
13   that guidance.  Do you have any comment on that  
14   reasoning?

15                   MS. DANIELS:  Yes, those are the ones I  
16   was referring to as far as the improvement to the  
17   system itself, to the current existing users.  I don't  
18   have the exact cases before me.  I can't say that  
19   happened and this case happened with the other case.

20                   I can say generally by my knowledge of it, the  
21   improvement was made by increasing the water main  
22   leading up to it.  So, for example, not a perfect  
23   example, suppose this is a water main and Ms. Crawley  
24   wants to add to it, but the water main stops here at  
25   Marissa.  She offered, because the line here was

1 2 inches or 4 inches, she improved the water main  
2 extension from here all the way and it kept going to  
3 her property. She made an improvement to the current  
4 system.

5 Although it was prohibited, because there was an  
6 improvement to the system, it was allowed in several  
7 situations. I think there's been reference, it  
8 wasn't, the standards weren't applied. You have to  
9 look at the facts, just because it doesn't say it,  
10 similarly look at the facts of it. Facts of it  
11 support that there was an improvement. I don't think  
12 there is any dispute to that.

13 MS. ROCHA: Point of reference, there is  
14 a dispute to that. I have attached those approvals as  
15 Exhibit M to my brief. There was a request in only  
16 one out of those four, it was a 2-inch line proposed  
17 and a 2-inch line existing. They asked them to  
18 increase it to 4 inches. There was no request for any  
19 of us to upgrade or do something else.

20 It's a fun standard to say you have to improve  
21 the system when the holder of that information averse  
22 to any improvement is not you. Those are attached.  
23 Those records are attached. That was in one out of  
24 the four. The remaining three do not mention the  
25 standard, the prohibition, or anything in the record.

1 MS. DANIELS: I would like to add on to  
2 that. First of all, applicants do not bring their  
3 applications to the Commissioners in a vacuum. There  
4 are meetings and discussions along that line.

5 Secondly, the claim that there isn't, I think  
6 you're going to look at the background, I respectfully  
7 disagree, because I haven't looked at them in quite a  
8 bit of time. I do know, I think there was one that  
9 had a fire hydrant out there. I believe there were at  
10 least two others that improved.

11 Even though it doesn't specifically delineate,  
12 even though the records of the meetings itself said  
13 this is going to improve it. There were improvements  
14 made based upon the facts. I'll defer to the record.  
15 I have not looked at them personally in quite awhile.

16 MR. SMITH: The Town is conceding the  
17 record is devoid of any mention of any reason for the  
18 improvements in those other three cases?

19 MS. DANIELS: I'm not conceding.

20 MR. SMITH: They're attached. The  
21 representation is attached. That's what I'm saying.  
22 I read them. If the Town has any other evidence,  
23 we'll take it.

24 MS. DANIELS: I will say some of what was  
25 submitted was the Commissioners, the minutes, which

1 don't give the full planning, et cetera, of what  
2 actually occurred. If it's necessary, I'll go back.  
3 I don't know if it exists because of the time frame.

4 MS. ROCHA: I have the full records. If  
5 the board requests them, they are attached to a  
6 Supreme Court brief. I gave the minutes. I have the  
7 full records. I can represent there is nothing in  
8 them.

9 MR. SMITH: Do you want the full record?  
10 Yes.

11 MS. ROCHA: There was a public records  
12 request, so I will be happy to send them.

13 MR. KINZELL: Back to the 2009  
14 regulation. So at that time when that regulation was  
15 passed, did Jamestown know of issues with their water  
16 usage and that there would need to be limits on this?

17 MS. DANIELS: I'm going to have to defer  
18 to the management plan. I think the history of what  
19 happened, I believe from my knowledge, I wasn't around  
20 for that. I assume the regulation passed in 2009. I  
21 think the history outline in the water management plan  
22 itself describes the past issues and problems with the  
23 water system, including the fact, I believe it was '93  
24 where they had to actually truck water in.

25 MR. KINZELL: Yes, the National Guard

1 came in. I read that. Speaking on that, so I really  
2 want to mention here, so if you knew at that time per  
3 the management plan that there could have been an  
4 issue, especially with capacity, has there been any  
5 work to provide additional capacity, expansions to  
6 allow more users expecting that, you know, per your  
7 assessment, that there is going to be more requests  
8 obviously, more connection requests, more extensions?  
9 What has Jamestown done?

10 MS. DANIELS: That's also outlined in the  
11 management plan itself. I'm not going to be able to  
12 say I can tell you everything. I do know off the top  
13 of my head, I know there was approximately eight  
14 wells, I forget the time frame, eight wells drilled in  
15 an attempt to gain further supply. Of those, though,  
16 there were only two that offered any type of viable  
17 water supply.

18 Of those two, they could not, I believe there are  
19 some restrictions on the usage of them. Where the  
20 second one is determined it's not worth using it,  
21 because we have to shut down the first one, which was,  
22 I believe that's the analysis. It's in the water  
23 management plan itself that describes that.

24 I apologize if I don't have the full details.  
25 Mike Gray might be able to answer that.



1 MR. KINZELL: Back to that. You know,  
2 digging more wells is generally like one of the first  
3 things that we talked about as a first step. As we're  
4 seeing multiple wells with saltwater intrusion and,  
5 you know, failures, is there any discussion or talk, I  
6 didn't see it in the water management plan, of  
7 expansions to other towns that are close by in order  
8 to provide water?

9 Because we know that, number one, you have agreed  
10 to allow other people to connect to it, which is  
11 expanding on that. Your 2024 build-out plan, you do  
12 expect a substantial increase of connections  
13 supposedly.

14 MS. DANIELS: The reason for the  
15 substantial increase is because of the recent change  
16 in the zoning laws, which the ADUs, you know, are  
17 permitted. Those are actually coming in now where  
18 there has been an increase in the urban district  
19 itself of the ADUs.

20 As far as seeking other sources outside the  
21 island itself, there is currently an emergency line  
22 connected to North Kingstown. The problem that runs  
23 into this, I will defer to Mr. Gray if you would  
24 accept him, my understanding is they all run into,  
25 they're running into the same problem as Jamestown,

1 which is they also have their own obligations to meet  
2 and plan and anticipate future usage. Do not have  
3 necessarily the ability to help out the Town, the  
4 Commissioners, to add to their current custom bank, so  
5 to speak.

6 I don't know if there is any other, beyond the  
7 pipe to North Kingstown or any further discussions.  
8 If you would like, I can defer to Mr. Gray. By the  
9 way, there have been other discussions that I am aware  
10 of, I think I might get hit in the back of the head  
11 soon if I say it wrong. There were things along the  
12 lines of seeking desalination of the system. There  
13 has been exploration as to that.

14 MR. KINZELL: That is a very expensive  
15 choice. That kind of answers those questions. Thank  
16 you.

17 You're applying the standard from the 2009  
18 regulation that prohibits the expansion. Doesn't the  
19 first standard, the 46-15-2(b) address whether there  
20 is a specific prohibition on the extension? So is  
21 there any reason why -- I just really want to ask like  
22 where did that originate from in 2009 when that  
23 regulation passed? Why did that get added in there as  
24 we're now going to prohibit expansion?

25 MS. DANIELS: I don't know the answer to

1 that. I'm not sure if anyone from the Town does. I  
2 don't know the answer to that, why the 2009 was  
3 changed.

4 I do know they did have their own, they always  
5 had their own, my understanding, they had their own  
6 qualifications, where it was located, because of the  
7 legal obligations to provide to the urban district and  
8 have the choice. They have the ability to move out.  
9 I know they had that separate.

10 I don't know if that's what happened in 2009, if  
11 that was the year, to add that prohibition. I don't  
12 know.

13 MR. KINZELL: Per the files, I think it  
14 was.

15 MS. ROCHA: There is nothing in the  
16 minutes. I have the minutes that go straight through.  
17 What happened at that time is connections had,  
18 connections and extensions were grouped together and  
19 had this standard we would have all met. Then for  
20 some reason that's not reflected in the minutes,  
21 extensions, that standard which changed to the current  
22 one that was applied for.

23 MR. KINZELL: Okay. Thank you.

24 MS. ROCHA: Not that that's helpful.

25 MR. KINZELL: There's been a major change

1 to your water management plan in this last update for  
2 2024. Obviously, I think these cases that we're  
3 talking about right now are applicable to the previous  
4 water management plan.

5 Is the reasoning for this large change of  
6 consolidating, you know, the two current water  
7 districts into one because of what's happening right  
8 now between these four?

9 MS. DANIELS: I can't speak to that. I'm  
10 sorry. There is one proposed, the updated one, the  
11 2024, yes, it hasn't been approved yet. I don't know.  
12 I wasn't participating in that. I don't know if you  
13 want Mr. Gray to answer that. I don't know, though.

14 MR. KINZELL: That's okay; that's okay.  
15 It was just a yes or no.

16 MS. DANIELS: Can I just speak to the  
17 fact that obviously the reason of updating it every  
18 five years is to look to see what's changed, what is  
19 going on. Part of that is changing the Water  
20 Resources Board and part of what is happening with our  
21 current system, et cetera.

22 It makes sense that when they update it, they're  
23 updating it because of the things that happened in the  
24 past seven years/five years since it was last updated.

25 MR. KINZELL: My concern is, I'm just

1 worried is the change really so that in the future  
2 there will be no provisions outside this service area  
3 based upon limited capacity of the resources and the  
4 anticipated future demand determined by the build-out  
5 analysis completed from 2024?

6 MS. DANIELS: Right. Mr. Gray can speak  
7 to that. He is, actually, was the person.

8 MS. ROCHA: You're referencing the  
9 expansion of the urban district into the south,  
10 correct? All of Beavertail and the south, but not the  
11 north?

12 MR. KINZELL: Yes.

13 MS. DANIELS: Mr. Gray said he could  
14 speak to that, if you'd like.

15 MR. GRAY: In the current water system  
16 supply management plan that is before you for review,  
17 what we're trying to do with our regulation that is  
18 now possibly going to be amended to define the  
19 district, right now we have the urban district and  
20 then rural, rural areas where there is water mains  
21 that exist, and there are rural areas where water  
22 mains do not exist to the north.

23 The attempt in the water supply management plan  
24 that is before you and possibly new amendments, so to  
25 actually define the district where water mains exist,

1 so that it's defined. That's simply what the  
2 Commission would like to do.

3 MR. KINZELL: That's what was expected in  
4 that build-out plan. Now that you have expanded that  
5 area, you do expect more people to come to you for  
6 applications for increase --

7 MR. GRAY: Not necessarily. What we're  
8 doing is defining, defining where water exists. Rural  
9 to the south to Beavertail and Fort Wetherill, urban  
10 district in the village, identify those areas where  
11 water exists.

12 That analysis, the build-out analysis that you  
13 were referencing that we implemented was within that  
14 defined area. We did not go outside to the north.

15 MR. KINZELL: Okay.

16 MS. ROCHA: Just to be clear, there are  
17 lines all to the south here. The water supply  
18 management plan 2018 shows where all the lines in the  
19 Town are. There are some to the north outside of the  
20 urban district. There are some, but not all, of this  
21 area in the brown here on this map, has lines. But  
22 that's where the expansion is.

23 VOICE: May I comment as an applicant?  
24 Basically --

25 MR. SMITH: Permission of counsel?

1                   VOICE: I want to comment. This is all  
2 the rural district right now, simple as that. This  
3 part, the waterline goes up there. They're not  
4 expanding the district. If they want to expand it  
5 where some lines go, why aren't they expanding it  
6 north? They're trimming the size of it. It's  
7 ridiculous.

8                   Automatically all these people who have not  
9 proven they have a water problem with hookups that are  
10 not existing, they are expanding three times. I want  
11 to comment on that.

12                  MR. KINZELL: The last question I had was  
13 for the denial of each of these applications,  
14 specifically related to the last point on there on how  
15 an expansion to this waterline could benefit. Can you  
16 provide any examples of anybody who is actually  
17 benefitting by taking more water and connecting?

18                  MS. DANIELS: Example was for us  
19 improving the lines?

20                  MR. KINZELL: That's correct.

21                  MS. DANIELS: Improving the fire  
22 abilities, as far as that is concerned. There was one  
23 that, I'm reaching back to the annals of this head of  
24 mine, this was a couple of years ago that I looked at  
25 this. There was one that was a fire improvement to

1 the area, as well as, like I said, improving from 4 to  
2 6 inches in the line itself.

3 MR. KINZELL: Specifically for a private  
4 owner, how could you ever justify an extension  
5 approval if you're not actively extending the main  
6 pipe or somehow making the water quality better?

7 MS. DANIELS: That is a good question. I  
8 don't know. I don't know myself. I think there are  
9 probably circumstances, though, that could be. It  
10 hasn't been presented. Because of the water  
11 management plan itself and the restrictions that, you  
12 know, are identified in there, they have to make some  
13 accommodations to figure out how to, how to properly  
14 plan this finite resource.

15 They can't do it without some form of  
16 determination as to standards of some form. That's  
17 the standard that they decided this is how we're going  
18 to best be able to both try to meet our obligation and  
19 also service these existing customers while giving the  
20 opportunity to expand.

21 MR. KINZELL: Okay. I saw that somebody  
22 mentioned in the report that the fire chief had said  
23 it would benefit the Town to add a fire hydrant. That  
24 could have been taken into account. Was that  
25 commented on?



1 MR. IINFANTOLINO: It was part of the  
2 application.

3 MR. KINZELL: Was it commented on by the  
4 Town as part of the denial at all?

5 MR. MINEAU: Not that I am aware of, no.

6 MS. ROCHA: This is in the record, but to  
7 be clear, the applicant that you guys didn't get to  
8 hear at 68 provided the hydrant. Then the next  
9 hydrant would have been Mr. Saletan's property.

10 MR. KINZELL: I have tons of questions,  
11 but that is good for now. Thank you.

12 MR. SMITH: Attorney Daniels, is it the  
13 Town's position -- cut to the chase, just apply it to  
14 Jamestown; this case is Jamestown. Is it your  
15 position if the Town says there is not enough supply,  
16 the general law is not applicable; is that your  
17 position? It sounds like it.

18 MS. DANIELS: That is part of it. What  
19 we have to start with, you start with the district,  
20 though.

21 MR. SMITH: Is it the Town's position, if  
22 the Town determines of its own regulations, we'll get  
23 to that in a second, insufficient supply of water to  
24 make the extension, or the connection for that matter,  
25 or both, that you do not have to apply the state

1 statute; do you agree?

2 MS. DANIELS: No. What I have to say,  
3 applying the statute doesn't accommodate for that.  
4 Under the statute, regardless of whether we have, if  
5 we're only looking at amendments, regardless of  
6 whether we have it, we still have to provide it, if  
7 that's the determination that you only look at those  
8 elements.

9 MR. SMITH: Are you agreeing with me or  
10 disagreeing with me?

11 MS. DANIELS: I'm kind of disagreeing.

12 MR. SMITH: You're kind of agreeing?

13 MS. DANIELS: What you're saying is,  
14 you're saying that our position is, oh, we've proven  
15 we cannot show water.

16 MR. SMITH: What I've listened to, what  
17 I've read, is your position is essentially if we don't  
18 say there is enough water, we don't apply the general  
19 law.

20 MS. DANIELS: No.

21 MR. SMITH: Through our local regs,  
22 absolutely.

23 MS. DANIELS: The position is the  
24 particular district service area, if you're in the  
25 service area and you want to extend a water main,

1 because we have determined that that's the service  
2 area this far under the special Enabling Act, then  
3 those standards apply.

4 MR. SMITH: These people are not within  
5 the service area. I will rephrase my question. If an  
6 applicant is not in an existing service area and you  
7 determine there is insufficient supply to extend to  
8 that area, you do not need to apply the general law;  
9 is that your position?

10 MS. DANIELS: Right, because we made the  
11 determination our service area is limited under the  
12 act. Let me correct that. It's not that we don't  
13 apply the statute. The statute doesn't apply. That's  
14 how you harmonize it. You have to harmonize it.

15 MR. SMITH: That's semantics. You either  
16 apply it or you don't.

17 MS. DANIELS: That's the difference.  
18 Does it apply or doesn't it?

19 MR. SMITH: In the Town's brief you cite  
20 Section 2 for enacting these regulations.

21 MS. DANIELS: Oh, of the 1968 public law?

22 MR. SMITH: Yes, public law. I read  
23 Section 2. Section 2 has to do with the internal  
24 organization of the board. That's it. You get to  
25 organize, you get to be president, town board,

1     whatever. How do you extrapolate that out to expand  
2     to where you are now?

3                 MS. DANIELS: Every commission, even that  
4     provision says --

5                 MR. SMITH: Take your time to read. To  
6     me, it's clearly intended to allow the town or board  
7     to organize itself internally. It's an internal,  
8     general subject is allowing the town to internally  
9     organize its board, or whatever you want to call it.

10                MS. DANIELS: I would disagree that it's  
11     restricted to this.

12                MR. SMITH: Show me where it says, can  
13     you cite in Section 2, which is cited in your briefs,  
14     can you show me where it says you have the extra  
15     authority, other than to organize internally, even  
16     promulgate the regulations you're putting over the  
17     board?

18                MS. DANIELS: I don't know if I printed  
19     them all. Let me take a peek at my notes. Oh, the  
20     transaction of their affairs. When they have the  
21     transaction of their affairs, part of their affairs,  
22     include providing of the water services, so if you  
23     read it otherwise, then what you're suggesting is that  
24     we don't operate with regulations.

25                MR. SMITH: I'm reading this. It applies

1 to the transaction of the board's affair, how you  
2 conduct internal business internally.

3 MS. DANIELS: I think what you're saying  
4 then, we can't operate under the regulations. I'm not  
5 sure I understand that.

6 MR. SMITH: The Town has repeated, cited  
7 everything I read. The public law trumps the general  
8 law in a right to appeal and/or specifically Section 2  
9 allows you to do that, promulgate these regulations,  
10 which, by the way, are a catch-all.

11 It's almost an impossible standard for an  
12 applicant outside the water district to extend a  
13 connection or a transmission line, and would improve  
14 the function, quality and water supply. It detracts  
15 from the existing law. It has to, by definition. I  
16 don't know how an applicant outside an existing area  
17 would ever prove under that standard.

18 Assume you have the right, you have to establish  
19 that standard, which I'm not sold on. I'll hold off.  
20 I think that you have a rather expansive reading of  
21 Section 2 of your public law.

22 MS. DANIELS: Okay.

23 MR. SMITH: I have further questions, but  
24 I'm not going to ask them until later.

25 MS. BRADY: Any further questions from

1 the other members? Go ahead and take another crack.

2 MR. HOUDE: I have one more. If a main  
3 extension were to take place to these four properties,  
4 are there any other frontages that the water main  
5 would traverse beyond these four properties? In other  
6 words, could there be a additional property that would  
7 benefit by these?

8 MS. ROCHA: There are a couple.

9 VOICE: There is one.

10 MS. ROCHA: There is one.

11 MR. HOUDE: They have a viable well at  
12 this point?

13 MS. ROCHA: Yes. To be clear, again,  
14 connections in the rural water district can apply and  
15 be granted not under this, regardless of capacity.

16 MR. MINEAU: If I could make one  
17 additional point on the issue of the standard from the  
18 Town's regulation, that regulation has the provision  
19 in Section B4 which purports to expressly prohibit  
20 extensions within the rural district.

21 Right beneath that there is this ambiguous  
22 catch-all that seems to give the Town blanket  
23 discretion based on a very ambiguous standard when  
24 they may choose to apply either the state statute, or  
25 their own regulations, or when they might choose to

1 simply approve an extension.

2 You know, if there is even a question from the  
3 Town as to whether that proposed extension would be an  
4 improvement, which in some cases they may not even  
5 pursue that analysis, but if they do, it really is an  
6 impossible standard for applicants to meet. I could  
7 not agree more with those comments.

8 MS. BRADY: We're running very short on  
9 time. Unfortunately, we do have to be out of this  
10 room at 12:30. We have to be out by 1:00, but we need  
11 to clean up everything that is here.

12 As Cathy reminds me, we need to set a new date.  
13 It sounds like the next step for us will be to have a  
14 public meeting, so we have discussion before we make a  
15 determination. Our last proposal for a date was  
16 April 8, which the Town cannot make. I would like to  
17 ask us to look at our calendars so we can pick a time  
18 while we are all here. It would be much easier for  
19 us.

20 I would also suggest if there are some questions  
21 from the panel members, myself included, and staff and  
22 our attorney, if we can say that within the week we  
23 will get those out to the parties. If we can get, ask  
24 some questions in writing, we can get some answers  
25 prior to the next date that we set, that would be

1 helpful in our discussion.

2 We won't have any more testimony or contributions  
3 at the next occurrence of this meeting, but we will  
4 have public discussion which we would love to have  
5 some additional answers.

6 (OFF THE RECORD)

7 MS. BRADY: We aren't necessarily  
8 guaranteed to be back here, but we will find an  
9 appropriate room. If we can do it, we're going to try  
10 to do it maybe in our own building in Room 300 over at  
11 DEM. I think we could get that set up in a way that  
12 would be more user-friendly, not necessarily the long  
13 conference table. We will find a good location for  
14 that.

15 MR. INFANTOLINO: There will be an agenda  
16 sent out once it's all solidified?

17 MS. BRADY: These have to be public  
18 meetings. Definitely make sure the agenda is sent  
19 out. Within a week we will create written questions  
20 we would love to get answers for. If it's the 7th,  
21 what is that, that makes it the 31st, or maybe the  
22 30th. I don't like putting deadlines on April 1; you  
23 never know what is real. Close of business on the  
24 31st to answer anything. We'll try to get it out as  
25 soon as we can.



1           It doesn't have to be a week. I would like to  
2       figure out if anybody has any questions. You can  
3       e-mail Cathy, e-mail Cathy. Don't copy anybody else  
4       with any questions you might still have. We'll talk  
5       to your attorney as well and get some questions  
6       together to send out. Try to not make it war and  
7       peace as far as questions. We'll send it to all  
8       parties.

9           We very much appreciate your attendance today.  
10      The information you provided, it's helpful to us. It  
11      will hopefully move us to the next meeting and having  
12      a recommendation to the board. I am adjourning this  
13      panel.

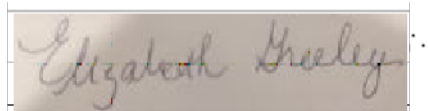
14                   (HEARING CLOSED AT 12:30 P.M.)  
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C-E-R-T-I-F-I-C-A-T-E

I, ELIZABETH GREELEY, a Notary Public, do hereby  
certify that I am expressly approved as a person  
qualified and authorized to take depositions pursuant  
to Rules of Civil Procedure of the Superior Court;  
especially, but without restriction thereto, under  
Rule 28 of said Rules; that the transcript contains a  
true record of the proceedings.

Reading and signing of the transcript was not  
requested by any parties involved upon completion of  
the deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this  
24th day of March , 2025.



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ELIZABETH GREELEY, NOTARY PUBLIC  
CERTIFIED COURT REPORTER  
MY COMMISSION EXPIRES: 04/07/2026