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July 27, 2024

***VIA USPS AND ELECTRONIC MAIL TO:***

***kathleen.crawley@doa.ri.gov***  
Rhode Island Water Resources Board  
Division of Statewide Planning  
235 Promenade Street, Suite 230  
Providence, RI 02908

**Re: Appeal of Decision of the Town of Jamestown to Deny Application For Water Main Extension and Associated Water Service Connection.**

Dear Rhode Island Water Resources Board,

Please be advised, this office represents Stephen Zimmiski and Suzanne Gagnon (“Appellants”) of 7 Seaview Avenue, Jamestown, Rhode Island (“Property”). Enclosed please find correspondence dated June 28, 2024 from the Town of Jamestown, denying Mr. Zimmiski and Ms. Gagnon’s request to extend public water service to the Property (“Decision”). This correspondence is intended as an appeal of the Decision on behalf of the Appellants as Aggrieved Parties.

The Appellants assert that the Decision is subject to legal error and the denial carries the potential for significant impacts Appellants’ ability to sell the Property in the future and may impact their ability to access a reliable and safe water supply in the long term.

Sincerely,

Marisa Desautel

Enclosure

*CC: Frederick W. Stolle, Esq., Assistant Director of Legal Services, Department of Administration;  
Nancy Beye, Chair, Town of Jamestown Water and Sewer Commissioners  
Michael Gray, Director, Jamestown, Department of Public Works*



# Town of Jamestown

## Town Clerk's Office

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Roberta J. Fagan  
Town Clerk  
Probate Clerk

June 28, 2024

Stephen Zimniski and Suzanne Gagnon  
7 Seaview Avenue  
Jamestown, RI 02835

Re: Water Service Extension Request

Dear Mr. Zimniski and Ms. Gagnon,

The following is the decision on your application for a water main extension and associated service connection outside of the Jamestown Urban Water District, dated January 2, 2024, to property identified as 7 Seaview Avenue, Jamestown, R.I. (AP 7 Lot 94) and placed on the Town of Jamestown Water and Sewer Commission ("Commission") meeting agenda for consideration and action.

Your application, along with three other applications for similar water service extension and connection requests to their nearby properties, was first considered by the Commission at their February 20, 2024, meeting. At their February 20, 2024, meeting, your application was continued because several new documents in support of your application were submitted that evening. The Commission continued your application for review and consideration to their meeting set for April 15, 2024. At the April 15, 2024, Commission meeting, you were not represented by legal counsel and chose to represent yourselves. Each of you were sworn in and made a statement into the record that you have been experiencing water-related issues at your property since you moved in in 2019.<sup>i</sup> Ms. Gagnon testified that a report was filed to show that two 250 gallon water storage tanks were installed on the property. Mr. Zimniski testified that he was informed by a well contractor that no other well could be located on their property.<sup>ii</sup> During questioning by a commissioner, it was discovered that some information was missing from your application. After a discussion, it was agreed that your application be continued to the May 6, 2024, Commission meeting to afford you the opportunity to locate and submit the missing information.<sup>iii</sup>

At the May 6, 2024, Commission meeting a letter was received from you requesting a continuance since neither you nor your wife could be present. You did, however, provide supporting information that was missing from the April 15<sup>th</sup> meeting application considered by the Commission. You offered no further presentation in support of your application.

Mr. Michael Gray, the Department of Public Works Director and who has responsibility for the

Town's Water and Sewer divisions, appeared and presented a report to the Commission concerning the Town's water supply and distribution system. Mr. Gray testified that the Town purchased the water plant and its water distribution system from a private company by authorization of a special act of the General Assembly passed in 1968 and the subsequent approval of the special act by local referendum.<sup>iv</sup> Mr. Gray testified that the water system purchased by the Town only served a limited geographic area, primarily within the village area (referred to as the Urban District in the current water system supply management plan and rules) and areas south of the village where former military facilities were located.<sup>v</sup> Mr. Gray testified that your property is located to the north of and outside the Urban Water District and that no water service is available to or exists at your property. Mr. Gray also testified that the Town has no plans to extend the water service system north of the current boundary of the Urban Water District (which is south of your property). Mr. Gray also testified that all costs to operate, improve, and maintain the water supply and distribution system are the responsibility of the ratepayers in the system. Mr. Gray testified that your property is not part of the water supply system, and you are not a ratepayer.

Mr. Gray testified that the Town has undertaken significant improvements since its acquisition of the water supply and distribution system, including but not limited to improvements to the two surface water reservoirs and adding a ground water well to bolster supply. Mr. Gray testified that the Commission has implemented regulations to reduce water consumption to balance the supply and demand for water among the current system users. Mr. Gray explained that supply replenishment is unpredictable since it relies on annual rainfall, and that consumption demand, which exceeds supply for up to five (5) months each year, must be closely monitored and regulated to ensure the continued capability of the system to supply water to current users.<sup>vi</sup>

At the conclusion of Mr. Gray's testimony, you offered no further presentation in support of your application. The Commission continued your application to their May 20, 2024, meeting to allow time for the commissioners to thoughtfully consider the evidence submitted on behalf of your application before they begin their deliberations.

At the May 20, 2024, Commission meeting, the commissioners discussed the present conditions of the Jamestown water system, specifically the limited supply and distribution network. The commissioners discussed the past history of the limited water supply, their adoption of rules to limit and reduce consumption of water by system users to conserve the limited and unpredictable supply, and the reasons why the water system is limited to a specific geographic area to ensure available supply will be adequate to meet current and predicted future system consumption demand. The commissioners also discussed the relevant standard of review provision in the Rules and Regulations of the Board of Water and Sewer Commissioners (the "Rules") for water service extensions outside the Urban District. The Commission discussed the relevance and applicability of Rule 14.B. of the Rules, which states, in relevant part, at b.4., "Extensions to and within the rural district shall be prohibited." However, the Rule provides that "Nothing herein shall be construed to prohibit or prevent the Board of Water and Sewer Commissioners from making such improvements, including extensions, which shall, in the opinion of the Board, improve the quality or quantity of water furnished to existing water uses (sic)."<sup>vii</sup>

You were one of four applications seeking a municipal water extension and connection which were considered by the Commission simultaneously. All four applications concern properties located on Seaview Avenue. Your property, along with the other three application properties, is located

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

The Jamestown Board of Water and Sewer Commissioners was created by a special act of the General Assembly in 1968, in pertinent part, to allow for the purchase of the then-existing Jamestown Water Company by the Town (the “Act”). The Town voters ratified the special act by referendum thereby authorizing the Town to purchase the Jamestown Water Company. At the time of its acquisition, the Jamestown Water Company provided water service to a geographic area somewhat synonymous with the Jamestown Village, so-called. In addition, a water service distribution line extended south of the Village area to serve areas formerly used as federal defense installations, to Beavertail and facilities commonly known as Fort Getty and Fort Wetherill. In time and up to the present, through the adoption of its water supply and distribution plan and the Rules, the Commission has designated the geographic area mostly comprised as the Village as the Urban Water District and the area south of the Urban District as the Rural Water District. The Water Supply System Management Plan (the “Plan”), in effect and applicable to your application specifically shows the water service areas at Figure 2.3. <sup>viii</sup> Figure 2.3 contains a specific notation that it “shows the boundaries of the Urban Water and Sewer Districts...[and] No future extensions of water service are planned at this time.” Of particular relevance to your application is that neither the Act nor the Plan obligate the Commissioners to provide water service everywhere in Town or to areas outside of the Urban Water District not presently receiving water service. <sup>ix</sup> It is undisputed that your property is located outside of the Urban Water District as shown in Figure 2.3. It is also undisputed that your property is not receiving municipal water service. Your evidence established that your property has a private well as its water supply.


It was undisputed on the record that the Act, the Plan, and the Rules provides the Commission the discretion to authorize extensions and connections to the municipal water system for property located outside of the Urban Water District, such as is the case for your property. In fact, you offered no evidence to the contrary. Your entire presentation focused on the relevant provisions of the General Laws 46-15.2(b). The Commission is specifically charged with the obligation to preserve and protect the water supply and ensure its wise and responsible use. <sup>x</sup> In addition, the Commission has the responsibility to the present users of the water system to provide sufficient water. By their very nature, extensions, expansions, and new connections outside of the current water service area are injurious to and endangers the Commission’s obligations to its present users. All these facts were considered in the adoption of the Rules, 14.B.(b) requirement that extensions and connections outside of the Urban Water District may be authorized when the applicant shows it will constitute an improvement to the quality or quantity of water furnished to the existing water system users.

Such is not the case here. You offered no evidence to demonstrate or show that your requested extension and connection had any improvement to the quality or quantity of water furnished to the existing system users. To the contrary, your application’s evidence only showed a benefit to your property without consideration of the detriment to the existing system users, the water supply capacity, or improvement to the quality or quantity of water furnished to existing water system

your property without consideration of the detriment to the existing system users, the water supply capacity, or improvement to the quality or quantity of water furnished to existing water system users. Your sole reliance in making this application was compliance with the General Laws 46-15.2(b). All the testimony and evidence you entered into the record of the hearing on this application focused on this sole metric. You failed to offer any evidence whatsoever regarding compliance with the Rules at 14.B.b.4. In conclusion, the Commission had no evidence or decisional law presented to it during the course of this hearing to show or demonstrate that Jamestown has to provide water to everybody; that this new general law overrules the special act of the legislature which created the municipal water system or that mere compliance with the criteria set forth in the new general law obligates the water system to extend its distribution lines and provide a service connection to the applicant; or that, this new general law nullifies the Rules that have been promulgated for the district.

On the preceding basis and for the many reasons stated previously, herein, Commissioner R. White made a motion to deny this application for an extension and connection of a new water service outside of the Urban Water District. The motion was seconded by Commissioner Meagher. The vote was 4 in favor and 0 opposed to the motion. The motion carried by a 4-0 vote.

Very truly yours,

  
Nancy Beye, Chair

Jamestown Water and Sewer Commissioners

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<sup>i</sup> Transcript p. 105 (Apr. 15, 2024)

<sup>ii</sup> Id. at p. 106-107.

<sup>iii</sup> Id. at p. 111-112.

<sup>iv</sup> Chapter 273 of the Public Laws (1968).

<sup>v</sup> Transcript p. 59 (May 6, 2024).

<sup>vi</sup> Id. at p. 84-89.

<sup>vii</sup> Rules and Regulations of the Board of Water and Sewer Commissioners, Rule 14.B.4. (2009)

<sup>viii</sup> Water Supply System Management Plan, 5 Year Update, p. 2-9 (Mar. 2018).

<sup>ix</sup> See, e.g., id. at 2.6.1 Geographic Service Area; see also 2.9.3.

<sup>x</sup> Transcript p. 10-11 (May 20, 2024).