

**DUFFY & SWEENEY, LTD**  
BUSINESS LAW & LITIGATION

*Joelle C. Rocha, Esq.*

[jrocha@duffysweeney.com](mailto:jrocha@duffysweeney.com)

February 20, 2025

**VIA EMAIL ONLY**

Planning Board  
Town of South Kingstown  
180 High Street  
Wakefield, RI 02879  
c/o James Rabbitt, AICP  
Jason Parker, AICP  
[jrabbitt@southkingstownri.gov](mailto:jrabbitt@southkingstownri.gov)  
[jparker@southkingstownri.gov](mailto:jparker@southkingstownri.gov)

**RE: *Fieldstone Farms Preliminary Plan Application***

Dear Hon. Planning Board Members:

In advance of the continued meeting on the above-referenced comprehensive permit application on February 25, 2025, this correspondence addresses some of the issues raised at the previous hearing.

**A. Public well notation on plan for KHA**

As recognized by Town staff and counsel, the permitting of the community septic for the new cul de sac lots in Fieldstone Farms, as well as the private wells servicing the lots are governed by state agencies. Such state permits/approvals are not due until the final plan/building permit stage. At this preliminary plan stage, Fieldstone has presented a site suitability determination from RIDEM which shows the soils are adequate for the septic systems.

As this Board is aware, initially, the development proposed public water, with the extension of the line to the Kingston Hill Academy (“KHA”) property line, which would have allowed the school to connect to public water. As this Board is also aware, significant upgrades to the water system off-site would now be needed to accommodate the extension of water to the development and other points such as KHA, which cost in excess of \$1,000,000. The development now proposes private wells.

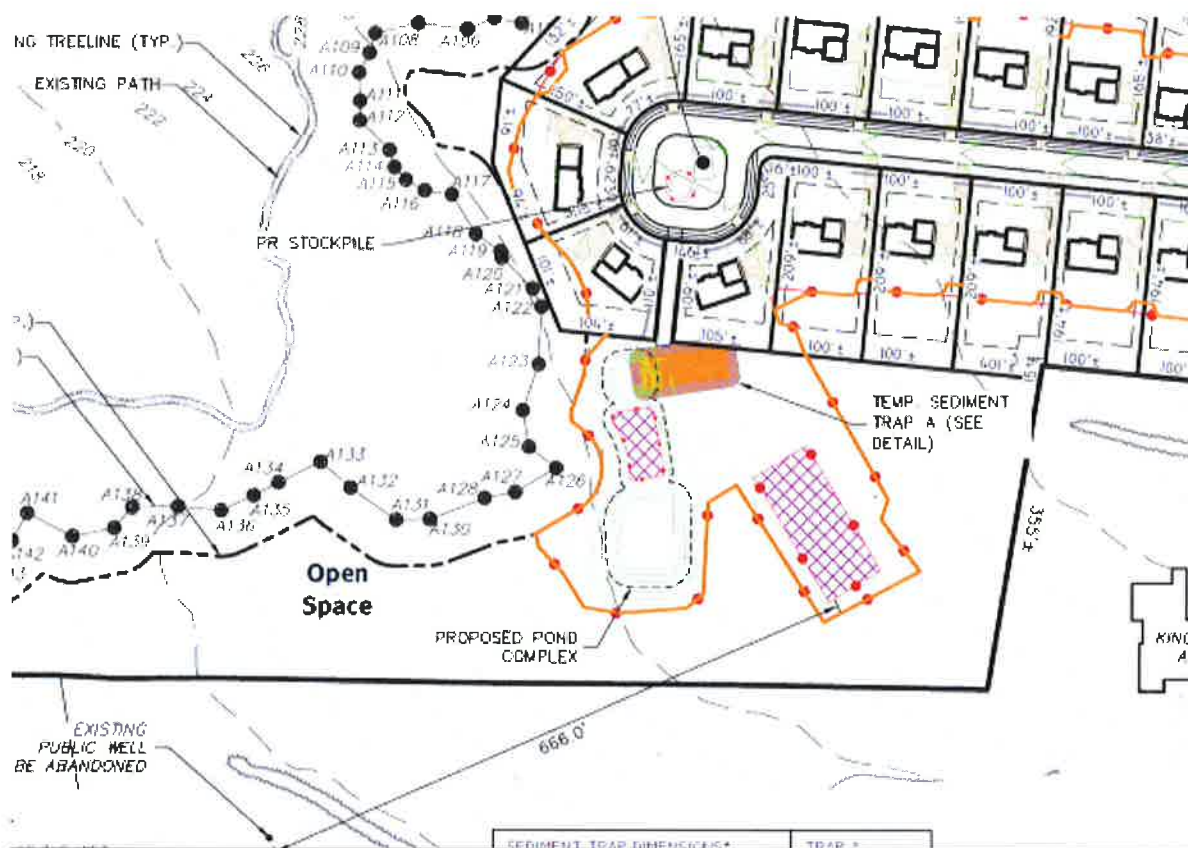
An issue was raised at the last hearing, as the note that the KHA public well was to be abandoned inadvertently remained on the plan, as well as a note saying KHA would be connected to public water, after the switch to private wells. It was explained that given the change to private wells, the KHA public well will now not be abandoned as part of the Fieldstone development. The

final plan for Fieldstone will remove these notations and that can be a condition of approval of preliminary plan.

The Board still questioned the notation as it related to RIDEM's review of the site suitability determination. RIDEM, in the site suitability looks at certain features and the distance to the same, requiring the following to be on the submitted plans:

- \_\_\_ Features below to be shown on plan for property immediately adjacent:
    - \_\_\_ Natural waters or watercourses within 200 feet of proposed subdivision
    - \_\_\_ Existing and proposed private wells within 200 feet of proposed subdivision
    - \_\_\_ Any watershed of an existing or proposed public water supply source or critical area with respect to the proposed subdivision
    - \_\_\_ Existing OWTs within 100 feet of the proposed subdivision
    - \_\_\_ Existing drains within 100 feet of the proposed subdivision (in critical resource area note where drainage system discharges)
    - \_\_\_ Existing and proposed public water supply wells within 500 feet of proposed subdivision
    - \_\_\_ Exact location of any cemetery onsite
- 

As shown on the most recent plans, the KHA's public well is over 650 feet from the proposed community septic for the cul-de-sac lots. The public well is even further from the proposed lots in the subdivision:



Reference: Overall Plan (Sheet 5 of 16) of the Site Plans.

Per RIDOH Source ID 2980411-01, the Kingston Hill Academy public well is classified as a bedrock-driven non-community non-transient well with a pumping rate of 5 gallons per minute (gpm).

The community OWTS system is designed for twenty-four (24) homes at 3-bedrooms per home for a total flow of 8,280 gallons per day (gpd). RIDEM "Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems" (250-RICR-150-10-6) states:

- Rule 6.23.B. Minimum Setback Distances – General:
  - Minimum of 50' to property line for OWTS leachfield with design flow > 5,000 gpd
    - The community leachfield is 102.3' from the property line
- Rule 6.23.E .Minimum Setback Distances from Drinking Water Wells:
  - Minimum of 300' to public well (drilled rock/driven/dug) for OWTS leachfield with design flow > 5,000 gpd
    - The community leachfield is 666' from the existing public well

The proposed plan provides sufficient distance between the features of the proposed subdivision to the KHA public well.

Ultimately, RIDEM will review all site and neighboring features, distances, etc. in their thorough review of the application for the community OWTS system, which approval is required for the construction of the subdivision.

### **B. Sidewalks/Frontage along Old North**

The Property lines have been adjusted accordingly on the attached revised plan, and the proposed frontage lots have been slightly reduced in size to accommodate the Town's request to take ownership of this portion of the Property. This should be considered a modification of the request for an adjustment of the lot sizes pending before the Board at this stage of review. As noted in the most recent staff report, the lot configurations at this stage do mirror those approved at master plan but for the transfer of the portion of the Property containing the sidewalks to the Town.<sup>1</sup> See **Exhibit A** for the plan showing the new lot configurations with the Town taking title to the area up to the pedestrian walkway.

The details regarding any significant trees to remain, if feasible, along the Old North frontage are shown on the submitted landscape plans. The plan also shows some infill plantings, as necessary. The Old North frontage landscaping will remain variable as it is today.

Additionally, as noted the existing stone walls will be infilled with existing stones from the interior of the Property, to the extent feasible. The stone walls are of variable heights and widths and will continue in this non-uniform way which goes towards the findings of the Board at master plan, to preserve the existing conditions along Old North Road. In fact, in the Master Plan Decision, the Board found specifically that "**remnant** stonewalls are present along the property frontage of Old North Road and stonewalls contribute to the natural and cultural resources of the community as described in the South Kingstown Comprehensive Community Plan." (emphasis added).

Last month, we received a redesign of the entire sidewalk area as a proposal from the Town Planner and other Town staff. The result of the re-design would be to completely relocate the stone wall to behind the sidewalk. This proposed plan or redesign comes years after the internal sidewalk proposal and after the entire project has been designed. It could have potential impact on drainage and leachfields, costs, as well as safety for pedestrians. As such, we are still proposing the sidewalks as submitted with our preliminary application. In the alternative, as mentioned by the Board at the hearing, we would renew our request for a waiver/adjustment for

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<sup>1</sup> There is a question on whether this adjustment is needed at preliminary plan, given the master plan approval of the lots. As noted in the most recent staff report, this adjustment is requested out of an abundance of caution as the project was reviewed under the FDRP regulations at master plan.

sidewalks for the frontage lots and allow the frontage to remain as is, but for the driveways shown on the plans.

By way of background, as part of the master plan submission, the applicant sought a full waiver from providing sidewalks as part of the development. One of the conditions of approval was that the applicant provide sidewalks along the frontage lots. That condition was appealed to the State Housing Appeals Board and was vacated by agreement whereby the installation of sidewalks would be part of the analysis at preliminary plan.

Ahead of the full preliminary submission, the applicant and its team met with staff in August 2021, to discuss options for the sidewalk. Building on the suggestions at that meeting, in October 2021, the applicant and its team appeared before the Planning Board presenting an internal walkway beyond the remnant stone walls, in an effort to preserve the streetscape and preserve as much existing vegetation as possible. At that meeting, the applicant showed existing conditions along Old North Road with the remnant stone walls:



See **Exhibit B**.

The Applicant's team then showed a rendering of what the streetscape would look like with no sidewalks and just the driveways:



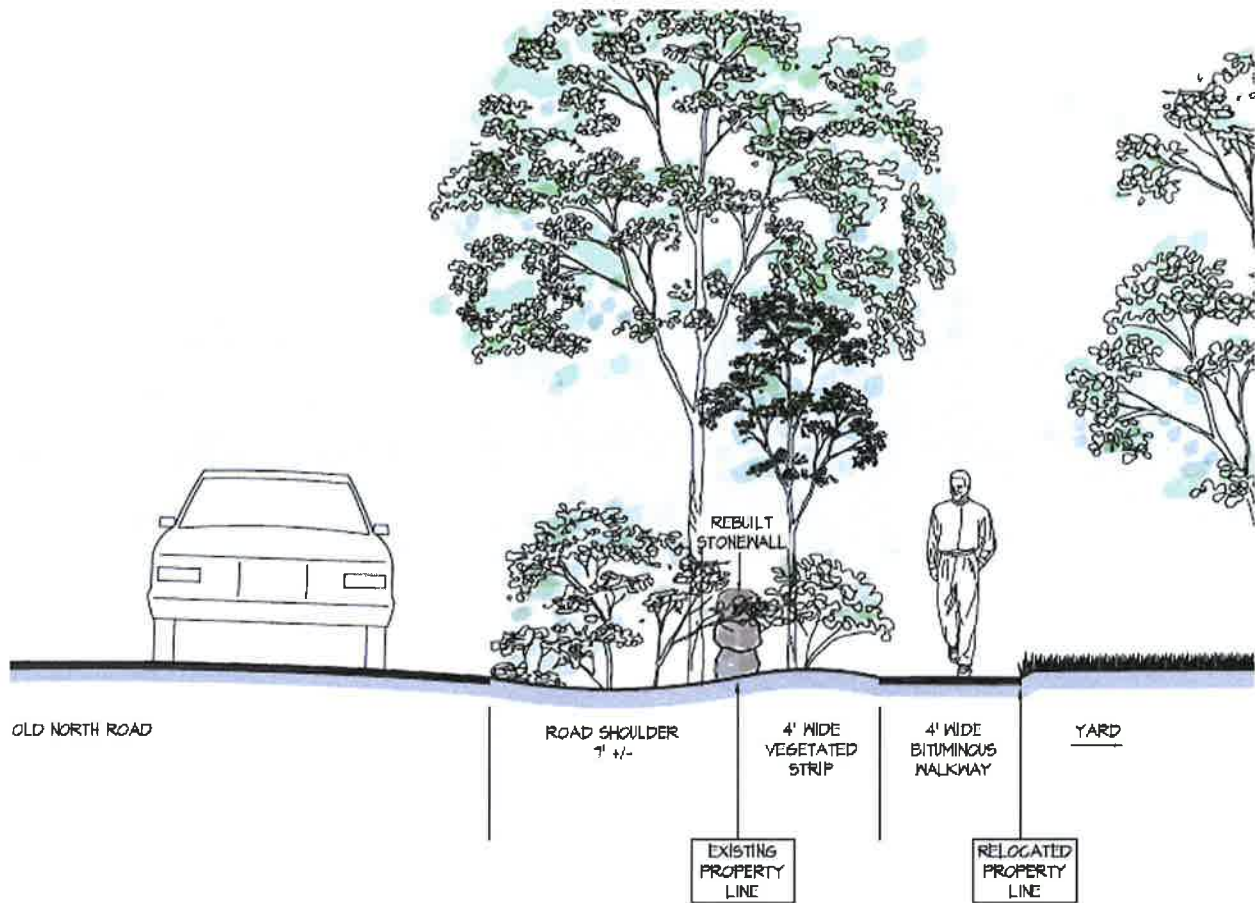
See Exhibit C.

Then a conventional sidewalk was shown:

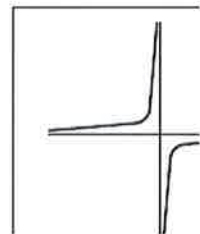


**Exhibit D.**

Lastly, the rendering of the proposed internal walkway was proposed (same as proposed in the preliminary plan submission) along with a site plan showing the walkway in red:



SKETCH SHOWING PROPOSED PEDESTRIAN WALKWAY  
AND RELOCATED PROPERTY LINE



See **Exhibit E**; see also site plan at **Exhibit F**. The Planning Board was supportive of the concept and hoped that it will serve as a good model for future development.

The Applicant then proceeded to full design of the Project, and submitted for preliminary plan incorporating the internal pedestrian walkway in the design as exactly shown on **Exhibits E and F**. In fact, the only issue raised at the last hearing was a request for a rendering (**Exhibit G**)

and whether the Town wanted to take title to the land incorporating the pedestrian walkway. After repeated attempts to get that answer for several weeks regarding Town ownership, the Town Planner provided a detail with the suggestion noted above which was vastly different than anything proposed to date.

Following the Board's direction, our landscape architect has provided a conceptual streetscape rendering, but again, the vegetation and stone walls will be variable, so this is for demonstration only.



See **Exhibit G**, attached.

**C. GZA Report and conditions during construction**

For the past several years, in another development, this developer has utilized GZA inspections during construction, and GZA has drafted inspection reports related to the site work performed and conditions ahead of the construction of foundations for the single-family homes at that subdivision. Said signed reports provide information like as follows:

3. Work Performed and Observations Made:

- a. Upon the undersigned's arrival, Hesford Landscaping, Inc. had completed the removal of topsoil and subsoil from within the proposed building footprint on Lot 80. The topsoil and subsoil had been excavated to undisturbed natural gray-brown silty sand with gravel at approximately 2 to 5 feet below the existing grade. The subgrade had been excavated with a smooth-edged bucket to minimize disturbance. The subgrade was observed to be undisturbed, firm, dry and stable. The excavation will be filled to the bottom of the footing/slab elevations in lifts of compacted crushed stone. The excavated subgrade and compacted crushed stone are considered suitable for the support of the proposed building foundations.

We would propose submitting the same inspection reports from GZA in the course of site work in preparation for the construction for the homes in the proposed subdivision.

**D. Open space**

A draft restriction for the open space lot or lots<sup>2</sup> was provided with the preliminary plan submission and is attached for ease of reference here. See **Exhibit H**. The open space will remain in private ownership of the homeowners, with the detailed limitations on such areas on title to the entire subdivision.

**E. Fire suppression**

The Board requested updated correspondence from the Fire Marshal. On January 15, 2025, the Fire Marshal confirmed that he did not have any additional comments but wanted some additional time to review:

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<sup>2</sup> It is likely that the open space area including the drainage basin and community septic servicing the cul de sac lots will be a separate lot than the other open space area for maintenance and other purposes, as allowed by the land development and subdivision regulations.

**From:** Dennis Bernier <[DBernier@unionfiredistrict.com](mailto:DBernier@unionfiredistrict.com)>  
**Sent:** Wednesday, January 15, 2025 8:02 AM  
**To:** Eric Prive <[eprive@diprete-eng.com](mailto:eprive@diprete-eng.com)>  
**Subject:** Re: Fieldstone Subdivision (Old North Road/Stony Fort Road)

Good morning, Eric.

Thank you for reaching out to me one this.

After a quick review of the plans, it looks that you have the water requirements that the Union Fire District has requested.

But I will need a little more time to do a thorough review .

I would also suggest that you reach out to Chief Reed as I believe he will also have question on this .

Dennis Bernier

Fire Marshal

Union Fire District

131 Asa Pond Rd

Wakefield, RI 02879

Phone (401)789-8354

Cell (401)489-9915

Fax (401)789-8750

[DBernier@unionfiredistrict.com](mailto:DBernier@unionfiredistrict.com)

[www.unionfiredistrict.com](http://www.unionfiredistrict.com)

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We have been unable to get a further update for inclusion in this correspondence but will continue to follow up.

**F. Maintenance plans**

Maintenance of the stormwater and community septic and other areas will be accounted for in the HOA documents submitted for review at final plan, along with other relevant legal documents.

**G. Architectural scale and style:**

The Low and Moderate Income Housing Act, R.I. Gen. Laws § 45-53 *et. seq.* (the “Act”) provides that one of the findings to be made by the Board is that:

All low- and moderate-income housing units proposed are integrated throughout the development; are compatible in scale and architectural style to the market rate

units within the project; and will be built and occupied prior to, or simultaneous with the construction and occupancy of any market rate unit.

R.I. Gen. Laws § 45-53-4(d)(2)(iii)(E)(III). It has been shown on the plans that the units are integrated throughout the development. Additionally, the units will be built and occupied simultaneously with the market rate units and the developer agrees to a typical condition whereby 1 LMI unit is built for every 3 market rate units.

In the only Court decision to our knowledge on this issue, this standard is to be measured in consideration of the purposes of the Act (to provide affordable housing) and the need for affordable housing in the community. *See Grilli v. Atlantic East*, CA No. PC-2009-7122 and PC-2009-7095 (consolidated) (R.I. Super. February 10, 2012). Additionally, the Act requires the Town to provide incentives to offset the differential costs between the affordable and market rate units. *See R.I. Gen. Laws §45-54-4*. The Fieldstone Farm development has not been granted a density bonus for this development, as the site yields 39 lots under current zoning. *See Yield Plan*. The cost to construct the affordable single-family units in this development exceed the current price for which the home can be sold.

The remaining standard speaks in terms of proportionality, while considering the Town and state's need for affordable housing. No where in the standard does it require the same size units or the same exact units, rather, it is simply a requirement that the units be "similar" in style and scale. We have attached 3 of the potential architectural styles that are currently in demand for single-family homes being built by this developer. *See Exhibit I*. Of course, market conditions at the time of construction as well as the requests and demands of potential purchasers will dictate the ultimate styles and details of the homes, as is the nature of a single-family subdivision. However, the attached detail and architectural are demonstrative of how this developer intends on integrating the moderate-income units in the development and building the units similar in style and scale. The law does not require the units to be the same, in size, number of bedrooms or bathrooms. Here, we are proposing square foot ranges of finished area for the market rate units of approximately 2,160 to 2,773 square feet and for the moderate-income units of 1,717 to 2,236 square feet. The applicant agrees to a condition whereby the affordable units will be at least 80% of the size of the market rate units and will be similar in architectural styles from the exterior of the dwellings, utilizing similar external materials and designs as shown on the concepts provided.

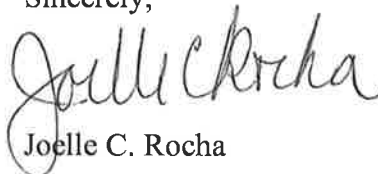
The challenge with a comprehensive permit single family project without the payment or significant incentives to cover the offsets, is of course the significant gap between what it costs to construct the homes, and the loss on the sale of such homes given the deed-restriction and limits on pricing of the homes, which currently stands at under \$400,000 per home. Here, again, my client has not received any density bonus. As noted in previous correspondence, he would be entitled to a density bonus under the new law of 3 units per acre above and beyond the 39-unit yield for the site.

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We had initially proposed an affordability period of 30 years for these ownership units. The Board requested us to consider a deed restriction of 99 years. In consideration of approval of the project as proposed, the applicant would agree to a deed restriction of 50 years.

Thank you in advance for your continued attention to this Project.

Sincerely,

A handwritten signature in black ink that reads "Joelle C. Rocha". The signature is written in a cursive style with a large initial "J".

Joelle C. Rocha

Attachments