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April 30, 2022

Jon R. Schock  
Public Services Director  
Town of South Kingstown  
509 Commodore Perry Highway  
Wakefield, RI 02879

Richard Bourbonnais, P.E.  
Town Engineer  
Town of South Kingstown  
509 Commodore Perry Highway  
Wakefield, RI 02879

Christopher Champi  
General Manager  
Kingston Water District  
14 Frank Avenue  
West Kingston, RI 02892

RECEIVED IN  
PLANNING DEPARTMENT

FEB 13 2023

TOWN OF  
SOUTH KINGSTOWN

Re: Proposed Division of Real Property located at 383 Old North Road, Kingston, RI 02881 and Proposed Construction and Use of a Mosque

Gentlemen:

On February 8, 2022, Mr. Schock sent a memorandum to James Rabbit, the Town Director of Planning with regard to the above referenced matter. That memorandum was shared with me and on February 22, 2022, I met with him and with Richard Bourbonnais.

Please accept this letter as an appeal of the decision you communicated to me.

The undersigned represents the Lutheran Church of the Good Shepherd (hereinafter "LCGS") and Masjid Al-Hoda, also known as the Muslim Community Center of Kingston, with regard to the above referenced proposal.

LCGS owns 7.49 acres of land on Old North Road. The church was originally built in the 1960s and was added on to in 2009. The church building occupies a portion of the northern half of the lot. The southern half of the lot is completely undeveloped. There is a 30 foot right-of-way along the southern border of the property granted to the South County Land Trust, as Trustee for Boy Scout Troop 1 in Kingston, for access to land east of the church property. To my knowledge, the easement has never been used, and is in fact covered in part by the Wetlands described below.

LCGS has been attempting to sell the undeveloped southern portion of the property for several years. The biggest problem has been that there are Wetlands on westerly portion of the property adjacent to Old North Road.

Masjid Al-Hoda, which has been looking for a place to build a mosque in Kingston for at least 15 years, has offered to buy the property upon receiving approval from the Town of South Kingstown to build a mosque.

The property is located in an R-40 zoning district. Pursuant to §300 and §301 (Schedule of Use Regulation Tables) of the Zoning Ordinance, "Religious Services ", Use Code 23, is a permitted use with a Special Use Permit.

As a result of the Wetlands, it will be necessary to access the proposed mosque through the existing driveway to the church, with an easement to the adjoining property. That is acceptable to both parties.

I was advised by the Public Works Department that in order to provide sewage removal and access to water for the proposed Mosque, we would have to construct a sewer line and a water line through the Wetlands to the proposed building site which would be located in the easterly portion of the property, more or less 400 feet from Old North Road.

In addition, I was advised that the existing sewer line to the Lutheran Church, which was constructed at the time of the addition to the Church and which passes through a portion of the property we are selling would have to be torn up and reconfigured as part of the sewer line to the Mosque. The Department is taking the position that no utility line serving a particular lot can pass through a neighboring lot. The Church would then be required to construct a +/-200 foot extension to the existing sewer line in Old North Road for its own connection. Plus, we would be adding a lot to the Diane Drive Sewer System, which would require a payment of nearly \$20,000 to the town.

I have consulted with the Rhode Island Department of Environmental Management, and while I have not received a final determination as to whether the construction of the utility lines through the Wetlands would be approved, they strongly doubt that it would be considered an "Insignificant Alteration" to the Wetlands, and any such determination would likely be time-consuming and expensive.

I was advised by the Planning Department that I could appeal the decision of the Public Works Department. It was suggested that I use the criteria set forth in §19-115 of the South Kingstown Ordinances which states the following: [t]he director shall consider the following criteria in determining if a mandatory connection and/or sewer main extension is required..." .

I will address each of the nine criteria separately. I will subsequently address a number of legal issues.

**(i) Conformity to Town of South Kingstown Comprehensive Plan.**

South Kingstown's currently approved Comprehensive Plan was approved in 2014. A new 2021 Plan is under consideration, and a draft of that plan is available. Since Comprehensive Plans for Cities and Towns in Rhode Island are, by necessity, drafted as lists of policy goals together with broadly defined action plans, it is next to impossible to say that what we are

seeking does not, in some fashion, fail to conform to the exact letter of some definition of some action plan. But nothing we are seeking to do fails to enhance the goals of the Comprehensive Plans. For example, the Plans speak to retaining the rural character of the Town's villages, including Kingston. Building a modest sized House of Worship which cannot be seen from the road on a 3 acre parcel of mostly wooded land seems not to do anything to destroy the rural character of Kingston Village. The Comprehensive Plans both speak to the diversity of churches in the communities comprising South Kingstown, notably Kingston, which in turn speaks to the diversity that the Town prides itself for. The Town has no Mosques (except a rented space in the Emporium), Temples or Synagogues. Adding a Mosque would only enhance that religious diversity.

**(ii) Areas of existing ISDS problems or failures.**

We are not aware of any existing ISDS problems or failures in the vicinity of the property.

**(iii) Soil Conditions not suitable for ISDS placement.**

Test borings have been done in the area where the septic system would be located. The water table is high throughout that area, and the ISDS/OWTS system will cost more as a result, but we have a proposed system that just needs to be approved by the Department of Health and DEM. Houses of Worship do not produce a great deal of waste, far less than residences.

**(iv) Proximity to wetlands, coastal ponds, groundwater resources and other environmentally sensitive areas.**

The Public Works Department suggested that our only solution is to put a sewer line and a water line in the ground through the identified forested Wetlands. That will necessarily involve digging up trees and roots through the Wetlands for a distance of, at a minimum, 220 feet for two lines which must be ten (10) feet apart. As noted above, DEM unofficially finds it highly unlikely that this is an "insignificant alteration" to Wetlands. In addition to permission from DEM, the process of laying the utility lines would require special equipment, even assuming that it could be done in a realistic and cost-effective manner otherwise, and would also likely require the removal of trees from this environmentally sensitive location.

**(v) Existing and/or planned municipal possible water line locations.**

There is an existing water line in Old North Road. It is impossible for the proposed Mosque to connect to it, without having the lateral water line pass through the adjacent property of the Lutheran Church, because of the existence of the Wetlands.

**(vi) Economic feasibility.**

One would hope that this criterion would be looked at in terms of the economic feasibility of the proposed project from the perspective of the property owner and/or the prospective buyer of the property, and not just the perspective of the Town of South Kingstown. This proposed creation of a House of Worship would have little or no impact on the Town of South Kingstown in terms of making any demands on the resources of the Town. The Town would obviously make money by adding another lot to the Diane Drive Sewer System and by having Good Shepherd pay for the construction of +/-200 feet of a sewer main extension in Old North Road. On the other hand, Masjid Al-Hoda and the Lutheran Church of the Good Shepherd would have to expend those funds and (a) pay for a finding that the construction of utility lines through the Wetlands would constitute an "insignificant alteration" to the wetlands or would be permitted by the Department of Environmental Management as an alteration to the wetlands.

That process would take at least six months and would require a great deal of additional expense for engineering, surveying, legal work, public hearings, notifications to numerous parties and so on, with no guarantee of success. The cost of an OWTS and a well should not be much more than the cost of the sewer line extension in the street, without considering all of the other costs outlined above.

**(vii) Lot size.**

The property is located in an R-40 zone. As presently planned, the Church lot is 176,491 square feet or 4.05 acres, of which 0.51 acres is Wetlands. The proposed Mosque lot is 149,968 square feet or 3.44 acres, of which 1.61 acres is Wetlands. We are proposing as part of our agreement between the two congregations that the use of the property will be restricted to a House or Houses of Worship.

**(viii) Impact on areas in the vicinity of the proposed main extension.**

The proposed extension of the sewer main in Old North Road would have no impact. The only lots that would be directly impacted would be the Lutheran Church lot, which is already connected to the sewer main in Old North Road and Assessors Plat/Lot 16-4/5, a vacant lot owned by the University of Rhode Island. The proposed vertical line into the new lot would require the destruction of the existing line to the Church lot together with the construction of a sewer line across Wetlands.

**(ix) Potential effect on private or municipal possible water or groundwater wells within the future.**

All the properties surrounding and abutting the property in question are encompassed in the Kingston Water District, including the parcel immediately east of it, which is owned by the South Kingstown Land Trust as trustee for Boy Scout Troop 1. It is very unlikely that there will be further development of the water resources in that immediate area. Plus, as noted elsewhere in this letter, Houses of Worship do not use very much water, since people are not living in them.

**Legal Issues:**

**Ordinance §19-33.**

South Kingstown makes it clear in its Ordinances that it does not favor the use of OWTS systems generally. §19-33 requires that the owner of all structures used by human beings situated in the town and abutting any roadway located in a present or future public sewer system (a) must have toilets and (b) must connect to the public sewer "**except when a public sewer is greater than two hundred (200) feet from the structure**" and it is served by an approved subsurface sewage disposal facility. The Mosque, of course, is not yet constructed, but it cannot be constructed within 200 feet of the sewer line in the street, because of the existence of the Wetlands. By not allowing this use of an OWTS, this ordinance is effectively being used to create an additional zoning requirement.

**Ordinance §19-69.**

This ordinance states that a "separate and independent building sewer shall be provided for every building, except where one (1) building stands at the rear of another or an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard or driveway..." It then calls for the owner of the rear lot to get a sewer easement from the owner of the front lot for the use of the sewer.

This Ordinance clearly applies to apartment complexes where there are multiple buildings in a single lot. It also speaks to "an interior lot", i.e., not a corner lot. There is no "adjoining alley, courtyard or driveway". This is not precisely a "front lot/back lot" situation, but it could, at the very least, be interpreted to allow the Mosque to connect to the Church's existing sewer line.

### **Ordinances §19-74 and §19-228.**

Both of these Ordinances address the requirements connections into the public sewer system (§19-74) and the public water system (§19-228). They both contain the following language:

"The service pipe shall extend to that point and the customers property line or the street line easiest of access to the utility from its distribution means and from the point at right angles to the main were practicable in front of the premises to be served at a point opposite the structure to be served."

§19-228 continues with the following language:

"Service pipes shall not cross intervening properties except under the following conditions:

[*(1) Landlocked lot...*]

*(2) Construction obstruction.* Where the property to be serviced abuts a public or private roadway, but cannot be serviced through said public or private roadway due to wetland proximity or other significant construction obstruction as determined by the utilities director."

The Ordinance goes on to say that neither the Construction Obstruction exception nor the prior Landlocked Lot exception "shall be applied if a water main extension is determined to be feasible by the director".

However, when it comes to wetlands and whether the wetlands are a "construction obstruction", the opinion of the utilities director cannot, in fact, be the final opinion. Wetlands are under the jurisdiction of the Department of Environmental Management, and any requirement about construction which involves construction within the wetlands is ultimately determined by DEM.

It appears that these two Ordinances are the basis of the ruling that a utility service line cannot cross an adjacent property, even if an easement is granted. This ruling flies in the face of several hundred years of Anglo-Saxon real estate law and even the Roman law upon which the English concept was based.

### **McConnell v. Wilson 543 A.2d 249 (1988)**

One way to resolve the issue relating to utility service lines crossing two lots is simply to turn this whole locus into a condominium. A great deal of the Rhode Island law on this issue originated right here in South Kingstown in the above-referenced case. The most salient point is that turning a piece of land into a condominium is not a change of ownership but only a change in the form of ownership.

"[T]he Condominium Act also provides that zoning, subdivision, building code, or other real estate use law, ordinance, or regulation, may not prohibit the condominium form of ownership or impose any requirement thereupon that it would not impose upon a physically identical development under a different form of ownership. Section 34-36.1-1.06." McConnell v. Wilson 543 A.2d 249, 250 (1988)

I would prefer, personally, not to have to create a condominium, although the Peace and Worship Condominium Declaration has been partially drafted. It seems to me to be an inordinately complicated approach to what seems to me to be a much simpler issue.

Thank you for your attention to this appeal of your decision. I look forward to hearing from you soon.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Stokes', with a long, sweeping horizontal stroke extending to the right.

Ralph E. Stokes, Esq.