



PARKER McCAY

Parker McCay P.A.
9000 Midlantic Drive, Suite 300
P.O. Box 5054
Mount Laurel, New Jersey 08054-5054

P: 856.596.8900
F: 856.596.9631
www.parkermccay.com

John C. Gillespie, Esquire
Direct Fax: 856 489-6980
jgillespie@parkermccay.com

April 20, 2021

File No. 30386-1

VIA E-MAIL AND REGULAR MAIL

Donna Rendeiro, Executive Director
Office of Planning Advocacy
Department of State
New Jersey Business Action Center
P.O. Box 820
Trenton, NJ 08625-0820
Donna.rendeiro@sos.nj.gov

Meghan E. Wren, Area Planner
Office of Planning Advocacy
Department of State
New Jersey Business Action Center
P.O. Box 820
Trenton, NJ 08625-0820
meghan.wren@sos.nj.gov

Re: **Termination of Woolwich Township Transfer of Development Rights
("TDR") Program/Repeal of Legislation**

Dear Ms. Rendeiro and Ms. Wren:

Pursuant to our recent conversations of March 4 and April 9, 2021, and continuing communications thereafter, and in supplement to our letter of January 21, 2021, please accept the following comments in support of Woolwich Township's intent to repeal and "unwind" its existing Transfer of Development Rights ("TDR") Land Use Legislation. Specifically, this letter addresses two (2) principal concerns of the Office of State Planning Advocacy:

1. Dismissal of pending litigation in which the Township of Woolwich was named as a defendant, which litigation challenges its TDR Legislation, and in which the Township joined the State of New Jersey as a third-party defendant to assist it in defending the TDR Ordinance; and
2. An explanation as to why two (2) Sewer Service Areas ("SSA's") within the municipality should remain as SSA's, and why the approval by the New Jersey Department of Environmental Protection ("NJDEP") of same should not be impacted by the proposed repeal of the TDR Legislation.

I. PENDING LITIGATION

As has been explained to me by Township Attorney, John Alice, and as was explained to by Mr. Alice to the Deputy Attorney General who entered his appearance in the matter on behalf of the State, the Township faced significant legal challenges to the TDR Ordinances. The litigation was brought as a "Builders' Remedy", seeking to compel the development of affordable housing

COUNSEL WHEN IT MATTERS.SM

Mount Laurel, New Jersey | Hamilton, New Jersey | Atlantic City, New Jersey

by this specific developer, the Wolfson Group, which controlled 524 acres; but also directly attacked the underlying TDR Legislation. The developer proposed a mix of residential (1,375 units on approximately 200 acres), retail (750,000 square feet on just under 100 acres), and warehousing (1.5 million square feet on 100 +/- acres). Within the proposed residential component, the developer proposes approximately 180 affordable housing units. In addition, the same developer has proposed a separate 100% family-rental affordable project consisting of 120 units.

During the course of that litigation, the Township joined the State of New Jersey as a third-party defendant, urging the State to “stand shoulder to shoulder” with Woolwich Township in defending the litigation and supporting the Township’s TDR Ordinances. Although the State expressed its support for Woolwich Township, it preferred to do so “from the sidelines”, and did not wish to become involved or assert a position in the litigation, or take any active role in assisting the Township in its defense of the TDR Legislation. The litigation has since been stayed by the Court, while resolution of the issues raised in the litigation have been explored. At this juncture, the State remains a defendant while the case proceeds through mediation. The impact of that mediation on the Township’s Ordinances and Affordable Housing Plan are discussed below. For sake of this issue, and the State’s interest in having same dismissed against it, the Township is not opposed to same, but of course the terms of such a dismissal would need to be discussed. More than likely, those terms are intertwined with the status of the TDR Legislation challenge and the Township’s desire to repeal the Legislation.

II. SEWER SERVICE AREAS

In our conversations, the OSPA has identified two (2) sewer service areas for discussion, one in the “northern part” of the municipality, along Route 322; and the other being the Auburn Road Village sewer service area. Before addressing these two (2) specific areas, the issue of whether the State granted SSA Amendments for these particular parts of the town because of TDR has been raised. Please be advised that we could find nothing in the Township files that indicate that the State would not have approved these sewer service area requests absent its continued commitment to TDR. Accordingly, we respectfully disagree with any statement that the sewer service areas would not have been approved by DEP without consideration of TDR’s continued viability.

A. Route 322 Sewer Service Area. As we indicated in our January 21, 2021 letter, the Township has incurred approximately \$18-\$20 Million Dollars in sewer infrastructure debt while constructing this system along Route 322. At this juncture, approximately 70% of the sewer infrastructure is either built, under construction, and/or committed to be constructed pursuant to agreements with developers along that area. Stated differently, approximately 70% of the sewer infrastructure is “spoken for” at this point.

Within the next few months (anticipated start dates of June and July), between 1 to 1.1 million square feet of warehouse space is scheduled to begin construction on Block 7, Lot 4.01

and vicinity. There is another project, on the northeast border of the municipality, at its boundary with Harrison Township, on which 1.1 million square feet of warehouse space will be built in Woolwich, with an additional 1 million square feet being built in Harrison. (Again, the municipal boundary line bisects the Project.) Harrison, however, will transmit its effluent to Woolwich for treatment at the Woolwich Sewage Treatment Plant. Thus, not only is the sewer service area approval for Woolwich integrally related to development along Route 322 in Woolwich Township, but if the State determined to question this SSA, it would threaten economic development of 1 million square feet of warehouse being built in Harrison Township.

As indicated above, the Wolfson Group proposal comprises 524 acres, all of which require sewer infrastructure to move forward. This development is part of the Builders' Remedy litigation referenced above, which is being mediated by the Honorable Marc A. Troncone, J.S.C. (ret.) I am advised that one of the early decisions made by Judge Troncone in this mediation, was that TDR Credits be eliminated. As you know, in affordable housing litigation, Courts look for cost-generative issues to eliminate to facilitate a more financially feasible development for affordable housing. As you also know, the TDR requirements are a significant expense to a developer and accordingly, this 524 acres has been relieved of any TDR obligations. A significant number of Credits, therefore, have simply been erased.

In addition to the affordable housing obligation of the municipality which necessitates the availability of public sewer infrastructure, and the commitments already made to developers through existing land use approvals and entitlements, it is also noteworthy that the Township of Woolwich, the Borough of Swedesboro, the Gloucester County Improvement Authority and the Gloucester County Utilities Authority have entered into a Memorandum of Understanding pursuant to which the Gloucester County Landfill will connect to the Woolwich Township sewer system; and the Borough of Swedesboro will close its sewage treatment plant, built a regional pumping station, and convey effluent to the Woolwich Sewage Treatment Plant, through both Woolwich's infrastructure, and the structure to be constructed by the Borough of Swedesboro. (See, Exhibit A).

It is clear that the development that has taken place in response to, and in reliance upon, the Route 322 sewer service area, cannot be "undone." Moreover, again, there is nothing that the Township can find in its records to suggest that the approval of this particular sewer service area, was conditioned upon, or relied upon, the continued existence of a viable TDR Program.

Auburn Road Village SSA. Although a much smaller sewer service area, comprised of currently vacant land, the property to be serviced by this infrastructure is currently the recipient of General Development Plan approval by the Township's Planning Board in 2011, with Amendments granted in 2016. Admittedly, there is no Developer's Agreement between that developer and the Township as required by both of those Resolutions; and the timeframe within which the developer was given to seek Preliminary and Final Site Plan Approval for at least one of the Phases of the General Development Plan, is about to expire in the next two and a half months.



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Nevertheless, the Township has not exercised its discretion in voiding or otherwise minimizing that General Development Plan.

An issue regarding environmentally sensitive areas was also raised during the course of our discussions. Although the Township is not certain of the identification of same, if that area relates to the Tomlin Station National Heritage Priority site, please be advised that it is situated along the northern border of the municipality with East Greenwich, and is not in the sewer service area. It is also zoned on the Township's Zoning Maps as "Conservation District." Accordingly, there is no intent to develop that area.

I hope that the foregoing is of assistance to you in advancing the Township's interests in moving away from, and repealing, the current TDR Legislation. As you probably know, each year that the Township submitted its "Five-Year Review Report", the scope and purpose of TDR Legislation was minimized; and in order to satisfy the last five-year timeframe, the Township was required to engage in the reverse auction which is discussed in our January 21, 2021 letter, and which effectively not only vitiated, but contradicted one of the primary purposes of TDR: the end of public funding of farmland preservation, in favor of private development funding that preservation. The reverse auction was the antithesis of private funding; it was fully funded by the public. Accordingly, the inability to successfully implement TDR not only existed from its inception in 2008 through the TDR reverse auction in 2016, but has continued from that date forward.

For all of the reasons we have already articulated, we respectfully urge that the State advocate in favor of the repeal and "unwinding" of Woolwich Township's TDR Program.

Needless to say, should you have any questions, please do not hesitate to contact me.

Very truly yours,

JOHN C. GILLESPIE

JCG/jth

Encl.

VIA E-MAIL ONLY:

cc: The Honorable Vernon Marino, Mayor
The Honorable Natalie Matthias, Deputy Mayor
Jane DiBella, Township Administrator/Clerk
Linda A. Galella, Esquire

4810-6873-7766, v. 1

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT made this 8TH day of May, 2020
between,

Parties:

1. Gloucester County Utilities Authority (GCUA)
2. Gloucester County Improvement Authority (GCIA)
3. Woolwich Township
4. The Borough of Swedesboro

Project

WHEREAS, the Gloucester County Improvement Authority (GCIA) operates a County Landfill. Leachate from the landfill is collected and stored on-site. Current practice is to haul the leachate to the Gloucester County Utilities Authority (GCUA) Wastewater Treatment Plant. Approximately 30-truck loads are delivered each day, Monday through Friday. Wet weather conditions increase the volume, with peak days of 200,000 gpd. Monthly average day flows vary from 70,000 to 100,000 gpd. Because of storage capacity at the GCIA Complex, the maximum future daily flow will be limited to 200,000 gpd; and

WHEREAS, the GCIA intends to construct a pump station and force main to convey the leachate to the GCUA interceptor system in a joint venture with the Borough of Swedesboro and Woolwich Township; and

WHEREAS, GCIA will complete all on-site improvements to pipe leachate to the new GCIA leachate pump station under their own separate project contracts. GCIA will also be responsible for the design and construction of the GCIA pump station which will be designed to GCUA standards, since GCUA will function as the future pump station operator. Flow from the pump station will be metered. The GCIA pump station will convey the leachate to a pump station to be constructed, owned and operated by the Borough of Swedesboro; and

WHEREAS, the Swedesboro Pump Station will be constructed by the Borough of Swedesboro and will connect to the GCUA force main in Kings Highway. Swedesboro will abandon their existing wastewater treatment plant and become a part of the Gloucester County Utilities Authority Regional System. Swedesboro's current average daily flows are approximately 220,000 gpd with a WMP buildout flow of 400,000 gpd. GCIA has agreed to be responsible for the design and construction oversight costs for the Swedesboro Pump Station pump station which will be designed to GCUA standards. The pump station construction will be paid for by the Borough of Swedesboro and shall include provisions for receiving and pumping GCIA leachate from this pump station, in combination with the Borough of Swedesboro flows; and

WHEREAS, the pump station will require a metering station component built to meter and transmit flow data to GCUA's operation center at 2 Paradise Road, West Deptford, NJ. The metering station will be constructed by GCUA on the pump station property and turned over to GCUA to own and maintain. The GCUA will complete the work necessary for the metering stations needed for this project; and

WHEREAS, the design, permitting and construction oversight of the Swedesboro pump station shall be completed by the GCIA and their professionals. Gloucester County will amend the Wastewater Management Plan for this project. All other permits required for the pump station project and abandonment of any treatment components, will be the responsibility of the Borough; and

WHEREAS, operational costs for the pump station will be shared between the Borough of Swedesboro and the GCIA. An estimated quarterly operation invoice will be generated by the Borough of Swedesboro and sent to GCIA for payment. At the end of each year, an adjustment will be determined based upon actual operating costs, proportioned between the Borough of Swedesboro and GCIA based on actual flows; and

WHEREAS, the design and selection of the pumps for the Swedesboro Pump Station shall consider the need to pump in concert with a 800,000 gpd future flow from the Woolwich Pump Station; and

WHEREAS, Woolwich Township is currently constructing a gravity sewer conveyance system to service the Route 322 corridor. A regional pump station is being designed on Locke Avenue. Aqua will operate and maintain the Woolwich Pump Station and force main up to the connection point of the Mantua Main being the intersection of Route 322 (Swedesboro Road) and Garwin Road across from the Kingsway Regional High School and will be the eventual owner. In the event a default on the part of Aqua of the operation and maintenance obligation set forth herein, Woolwich Township shall be responsible for such operation and maintenance; and

WHEREAS, the "Mantua Main" is the shared force main for flows from Woolwich Township and Swedesboro/GCIA. It starts at the intersection of Route 322 (Swedesboro Road) and Garwin Road across from the Kingsway Regional High School and continues to a discharge point into the Edwards Run Interceptor prior to the GCUA Mantua Creek Pump Station; and

WHEREAS, a one-time impact/recapture fee will be assessed to new customers connecting to the wastewater system for this amended sewer service area for GCUA system improvements needed to accommodate the additional regional flows. Fees are currently \$8.72/gallon, which may increase over time. All existing Swedesboro sewer connections are exempt from this impact fee. New connections will be subjected to GCUA current connection fee rate as well as the Swedesboro connection fee, at time of payment; and

WHEREAS, metered flows for the Borough of Swedesboro and Woolwich Township will be invoiced by GCUA at their published rates. GCIA flows will be deducted from the Swedesboro Pump Station metered flows to determine flows contributed by the Borough; and

WHEREAS, the Borough of Swedesboro will also make a \$250,000.00 payment to GCIA as a contribution for and payment for the Kings Highway portion of the Mantua Main construction costs. This payment is due upon activation of the pump station and force main; and

Terms of Agreement

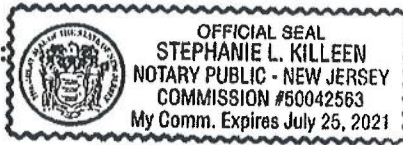
1. The preceding "Whereas" paragraphs are incorporated into the Terms of Agreement as if fully set forth below.
2. GCIA will be responsible for all construction costs pertaining to the leachate pump station and force main connecting to the Borough of Swedesboro Pump Station and for the force main from the Swedesboro Pump Station site to the Mantua Main.
3. Subsequent to construction completion, GCIA will transfer ownership of leachate pump station and force main to GCUA. GCUA will be responsible for future maintenance, repairs and operating costs for the pump station and force main. GCUA will provide licensed operator services for the GCIA pump station and force main.
4. Woolwich Township will complete construction of the Route 322 sewer collection system, consistent with the terms of an agreement between Woolwich Township and Aqua.
5. Pursuant to the terms of an agreement between Woolwich Township and Aqua, Woolwich Township will retain ownership, until such time as Aqua is legally permitted to take ownership pursuant to any bonding restrictions, and Aqua will provide a licensed operator and be responsible for future maintenance and repairs to the sewer collection system. In the event a default on the part of Aqua of the operation and maintenance obligation set forth herein, Woolwich Township shall be responsible for such operation and maintenance. A GCUA metering station constructed to GCUA standards will be required at the Locke Street Pump Station Site. GCUA will own and maintain this metering station.
6. Borough of Swedesboro will own and operate gravity sewer to their pump station, the pump station and all piping through a valve vault. A system valve will be installed prior to the flow meter vault which will delineate ownership between the Borough and GCUA infrastructure. GCUA will also be responsible for future maintenance, repair and operation of the force main from the noted system value to the connection point with the Mantua Main.
7. GCIA will be responsible for the design costs for the Swedesboro Pump Station and Metering Station and the construction oversight of the project through their engineering firm, CME.
8. Borough of Swedesboro will be responsible for the cost for the construction of the Borough of Swedesboro Pump Station.
9. GCIA has agreed to include all costs associated with the Swedesboro Pump Station in their bonding for the overall Mantua Main project. Swedesboro will repay their portion of the cost over a 20-year period. Payments will begin one year after completion of the Mantua Main project.
10. Operational costs for the Swedesboro pump station will be shared between the Borough of Swedesboro and the GCIA. An estimated quarterly operation invoice will be generated by the Borough of Swedesboro and sent to GCIA for payment. At the end of each year,

an adjustment will be determined based upon actual operating costs, proportioned between the Borough of Swedesboro and GCIA based on actual flows.

11. The Borough of Swedesboro will also make a \$250,000.00 payment to GCIA as a contribution for and payment for the Kings Highway portion of the Mantua Main construction costs. This payment is due upon activation of the pump station and force main.
12. The Borough of Swedesboro will provide a blanket easement for Block 23, Lot 14 which is the Swedesboro pump station parcel, to permit construction including directional drilling set-up for the Raccoon Crossing Creek and to permit GCUA personnel access to maintain the flow meter and SCADA telemetry components.
13. The cost for construction of the "Mantua Main" will be shared by GCIA and Woolwich Township equally (50% each). The Swedesboro aforementioned onetime payment will be shared and accredited equally between GCIA and Woolwich.
14. GCUA will assume ownership of the Mantua Main and be responsible for future operations and maintenance costs. Transfer of ownership for Woolwich's portion of the Mantua Main will be deferred, if required by the form of financing, until debt service for the construction of this sewer infrastructure is eliminated.
15. Current and future operational sequences will be reviewed to ensure that the Borough of Swedesboro and the Woolwich Township pump stations operate in concert.
16. Each party will be responsible for payment of legal and engineering service fees to their appointed consultants based on the assignment of tasks promulgated in this Agreement.
17. The Parties to this Agreement, agree to use their best efforts to cooperate with each other on any applications to any governmental authority having jurisdiction and any private party with review and/or approval rights, to provide its support and assistance in facilitating and expediting any such applications, and to use its best efforts in order to effectuate the Mantua Main, the gravity sewer conveyance system to service the Route 322 corridor, and the construction and/or improvements to sewer pump stations required by these projects, including applications for modifications of regulations, changes in standards or other relief from such governmental authorities or for amendments to any existing agreements between any of the Parties.

IN WITNESS WHEREOF, the parties, pursuant to the authority granted to them and set forth, have executed this Agreement on the date indicated herein.

ATTEST:



Stephanie Killeen

GLOUCESTER COUNTY UTILITIES
AUTHORITY

By: John J. Vanni Sr.
EX. DIR.

ATTEST:

GLOUCESTER COUNTY
IMPROVEMENT AUTHORITY

By: Ge. D. B. B.

ATTEST:



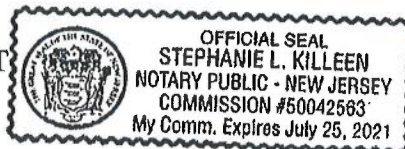
Jan D. Bell, Clerk

TOWNSHIP OF WOOLWICH

Kim M. Jaworski

By: Vernon Monro, Mayor

ATTEST:



Stephanie Killeen, Clerk

BOROUGH OF SWEDESBORO

By: Thomas W. Fromm
Thomas W. Fromm, Mayor

**RESOLUTION OF THE BOROUGH OF SWEDESBORO
AUTHORIZING THE MAYOR TO SIGN A CONTRACT/MEMORANDUM OF UNDERSTANDING
BETWEEN THE BOROUGH OF SWEDESBORO, THE GLOUCESTER COUNTY UTILITIES
AUTHORITY (GCUA), THE GLOUCESTER COUNTY IMPROVEMENT AUTHORITY (GCIA),
AND THE TOWNSHIP OF WOOLWOICH TO BECOME PART OF THE
GLOUCESTER COUNTY UTILITIES AUTHORITY REGIONAL SYSTEM.**

WHEREAS, the Borough of Swedesboro Sewer Treatment Plant is in need of costly upgrades and repairs; and

WHEREAS, the Borough Council of the Borough of Swedesboro find it to be in the best interest of the Borough of Swedesboro to become part of the Gloucester County Utilities Authority Regional System; and

WHEREAS, the Mayor and Borough Council of the Borough of Swedesboro find this Contract /Memorandum of Understanding to be in the best interest of the Borough of Swedesboro; and

WHEREAS, after consultation with the Borough of Swedesboro professionals and due deliberations, the Borough Council of the Borough of Swedesboro has determined that it is appropriate and in the best interest of the Borough of Swedesboro to execute a Contract/Memorandum of Understanding between the Borough of Swedesboro, the GCUA, the GCIA, and the Township of Woolwich; and

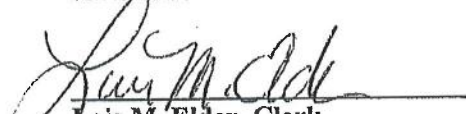
WHEREAS, the Borough Council of the Borough of Swedesboro grant the Mayor of Swedesboro authorization to execute a Contract/Memorandum of Understanding between the Borough of Swedesboro, the GCUA, the GCIA, and the Township of Woolwich; and


NOW, THEREFORE, BE IT RESOLVED by the Council of the Borough of Swedesboro that the Mayor be and is hereby authorized and directed to sign the Contract/Memorandum of Understanding between the Borough of Swedesboro, the GCUA, the GCIA, and the Township of Woolwich, and

ADOPTED, at a meeting of the Mayor and Council of the Borough of Swedesboro, in the County of Gloucester, and State of New Jersey, held on April 6, 2020.

ATTEST:

BOROUGH OF SWEDESBORO


Lois M. Elder, Clerk


Thomas W. Fromm, Mayor

CERTIFICATION

I do hereby certify that the foregoing is a true copy of the resolution adopted by the Borough Council of the Borough of Swedesboro, in the County of Gloucester, and State of New Jersey, at a meeting held on April 6, 2020.


Lois M. Elder, RMC, Clerk