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January 21, 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](mailto: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](mailto: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:

As you may recall, this firm serves as Special Counsel to the Township of Woolwich with regard to its Transfer of Development Rights ("TDR") legislation. Thank you for the time you have afforded us in discussing the status of the TDR program, the issues that Woolwich has faced over the past 12 years, and the Township's intention to terminate the program and repeal the TDR legislation.

By way of background, Woolwich Township enacted its first TDR ordinance on October 27, 2008 through Ordinance 2008-20, in response to certain comments raised by the State Planning Commission in its April 18, 2008 endorsement of the Township's proposed revisions to its Master Plan and "Initial Plan Endorsement". Thereafter, over the following decade, the TDR ordinance, as well as Woolwich Township's general land use ordinances, were amended numerous times to include various alternatives and "substitutes" to TDR to achieve for farmland preservation. For example, Woolwich Township continued to participate in traditional farmland preservation programs, and has funded preservation through bond ordinances and participation by State and County governments; it has enacted numerous versions of "cluster development" mechanisms, which permit landowners to preserve farmland while increasing densities through cluster development, as opposed to the utilization of the TDR mechanisms; and it has provided other means by which property owners and/or developers can develop land, set certain portions of a tract aside for continued farmland or other open space purposes, and yet still develop the property in a fashion which affords a return on investment, while not involving the TDR Ordinance.

**COUNSEL WHEN IT MATTERS.<sup>SM</sup>**

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

Moreover, as you are aware, shortly after the enactment of the TDR legislation in 2008, the New Jersey real estate market collapsed, creating enormous negative impacts. Frankly, the timing probably could not have been worse to implement a program as ambitious and demanding as TDR. With real estate values beginning to plummet, the last thing developers want to deal with are additional financial burdens and hurdles to limit their returns.

During the entire life of the TDR program, not a single acre of farmland has been preserved utilizing the private capital that TDR contemplates. It is essential to remember that one of the primary purposes behind TDR was to facilitate the preservation of farmland through private investment, and not through publicly funded bond ordinances, voter approved referenda, or other publicly subsidized mechanisms. Simply stated, it does not appear that there was ever an appetite by developers and/or landowners, to dine on TDR in Woolwich Township.

Notwithstanding this lack of interest by the private community, Woolwich Township persevered in “trying to make TDR work”. It undertook statutorily required five-year TDR review analyses; it funded a required real estate market analysis (“REMA”) every five years and updated same; and it continually reviewed and revisited its Master Plan and TDR program as required by the Municipal Land Use Law (“MLUL”). Its TDR Task Force met regularly.

On January 31, 2019 and February 21, 2019, in response to a referral from the governing body, the Woolwich Township Joint Land Use Board held two advertised public hearings, taking testimony from members of the public, including landowners in both the TDR sending and receiving zones, as well as testimony from the Municipality’s professionals. As a result of that hearing, the Joint Land Use Board made certain recommendations, findings and determinations which it then forwarded to the governing body.

Those findings and determinations include this: the Township had met its statutory obligation of having transferred at least 25 percent of the remaining development transfer potential during the previous five years, as called for in N.J.S.A. 40:55D-157 and N.J.S.A. 40:55-D-156a. The Planning Board’s resolution, however, also acknowledged the concerns that had arisen over the years regarding the economic viability of the TDR program moving forward in its current configuration.

It is important to note that the only reason Woolwich Township was able to meet its statutory obligation of having transferred 25 percent of the development transfer potential was because the public funded that acquisition, through a “reverse auction”, utilizing Five Million Dollars (\$5,000,000.00) from the State Agricultural and Development Committee (“SADC”), as well as utilizing Two Million Dollars (\$2,000,000.00) of Woolwich Township bond proceeds.

Through that “reverse auction”, held March 8, 2016, the Township purchased, and retired, two hundred (200) credits, which encompassed 817 acres across 22 properties. When added to other acreage already preserved by Woolwich Township, this brought to more than 3,000 the



number of acres protected in Woolwich Township. Unfortunately, these 817 acres of now permanently preserved farmland constitute the entirety of farmland preserved under the Township's TDR program. This is, of course, ironic, since all of these credits were purchased (and all of this acreage therefore preserved), through public monies. As stated earlier, a primary purpose of TDR was to fund farmland preservation through private investment, not public monies. The reverse auction, undertaken in a "last ditch effort", to preserve and bolster the TDR program, in fact, defeated that important goal. And, since the reverse auction took place almost five (5) years ago, not a single credit has been sold, conveyed, or otherwise exchanged; thus, not a single additional acre of farmland has been preserved through the TDR program as originally conceived.

In addition to the devastating impact upon the real estate market which the 2008 collapse had on Woolwich Township's TDR program, and the consequent inability to "get it off the ground", the TDR program was threatened by other factors as well. Specifically, a number of lawsuits were filed by various property owners and/or developers, challenging both the TDR legislation itself, and seeking "builder's remedies", to facilitate the development of additional affordable housing in Woolwich Township. New Jersey case law advocates the elimination, or at least mitigation, of cost barriers to the production of affordable housing. TDR is an expensive undertaking, and the imposition of its requirements proved to be a severe hurdle to the production of affordable housing in Woolwich Township. Therefore, over the course of the past decade, while the Township has been in litigation, and now mediation, with Fair Share Housing Center, and other developers, it has been recommended by all involved, including the Court's Special Master, that substantial acreage which was previously targeted as TDR receiving areas, be removed from the program. Those lawsuits, and the recommended settlements of same, also substantially impact the Township's ability to move forward with a viable TDR program.

It appears that the only benefit, if indeed it can be considered a benefit, that the Township received in exchange for the Five Million Dollars (\$5,000,000.00) SADC funding to "prime the TDR pump" through the reverse auction, was the Township's receipt of a Centers Designation. However, this Centers Designation is about to expire, and did advance the goals of TDR. Instead, given the changes in the real estate market both generally as to valuation, and more specifically as to the new uses which developers seek for areas such as those which were previously designated as "Centers" in Woolwich Township, residential development is no longer beneficial or advantageous. The Township has moved forward with funding, on its own, water and sewer infrastructure to facilitate commercial and industrial development that is now realistic and being pursued heavily by developers in the South Jersey area. Specifically, Woolwich Township has expended between Eighteen Million to Twenty Million Dollars (\$18,000,000.00 - \$20,000,000.00) in construction costs, engineering, professional fees, etc. on infrastructure improvements.

One of the original goals of the Centers Designation was to complete the Route 322 corridor with commercial ratables to offset the residential tax base that had already been constructed, and was contemplated to continue at the time that TDR was enacted. Unfortunately, and again based upon the broad menu of alternatives given to landowners and developers under

Woolwich Township land use ordinances between 2008 and 2020, which impeded any realistic chance of TDR success, houses, townhouses, and apartments have continued to be built in Woolwich Township; yet without a commercial or industrial ratable base to offset the economic cost arising the residential growth that preceded, and then followed, the 2008-2010 collapse. (See attached "Residential Construction" chart and Federal Census Reports). For example, local property taxes in Woolwich Township have more than doubled over the last decade. Between 2001 and 2012, the municipality was forced to borrow over One Hundred Million Dollars (\$100,000,000.00) to fund the construction of various government buildings, including a new municipal building and police station; two grammar schools; an addition to the Swedesboro school; the construction of a new middle school; and four (4) separate expansions of/additions to the existing high school. This residential housing growth needs to enjoy a companion increase in industrial and commercial ratables to meet the municipality's financial obligations.

Fortunately, commercial and industrial developers are now anxious to pursue opportunities in Woolwich Township. The Township has, over the last decade, and, as was originally contemplated as part of the TDR program, continued to pursue both water and sewer expansion in the Woolwich Township and Route 322 corridor. It has entered into an agreement with the Gloucester County Utilities Authority ("GCUA") to treat sewage from Woolwich Township; Woolwich Township is fully funding that infrastructure relationship.

It is clear that over the past twelve (12) years since TDR was enacted, that "the world has changed", and has changed dramatically. There is no future for TDR in Woolwich Township. The Township has gone to great lengths to salvage the program, but it is obvious that after all these years, there is simply no appetite for same in the private sector.

Accordingly, Woolwich Township proposes to repeal its TDR legislation. Before doing so, however, it seeks State assistance in seeking forgiveness of its obligation to repay the Five Million Dollars (\$5,000,000.00) SADC funding which was utilized for the aforementioned "reverse auction". In that regard, it is respectfully suggested that since the purpose of the Five Million Dollars was to fund the retirement of TDR credits, and the consequent preservation of farmland, both of which were, in fact, achieved, the funding served its purpose and should indeed be forgiven. And, the Township utilized Two Million Dollars of its own funds, to enhance that auction, and increase the number of acres permanently preserved for farmland.

Accordingly, Woolwich Township has done all that it can to facilitate the success of TDR through private investment, albeit, without a single credit having been transferred through same in twelve (12) years. The preservation of farmland, however, through the SADC funds, and Woolwich's own Two Million Dollar contribution, has resulted in the preservation of farmland, as was anticipated when the monies were provided. Accordingly, the purpose of the Five Million Dollar funding has been met, the Township has invested Two Million Dollars of its own money to supplement that sum; and the Township has invested between Eighteen Million to Twenty Million Dollars (\$18,000,000.00 - \$20,000,000.00) to bring infrastructure to the municipality, as was



January 21, 2020

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originally contemplated in the Centers Designation. Stated differently, despite the inability of Woolwich to attract TDR participants, farmland has been preserved with the State's funds, and the underlying goal has been met.

For all of the foregoing reasons, the Township of Woolwich respectfully urges the Office of State Planning Advocacy to advocate on behalf of Woolwich Township, to have the State release and forgive any monies that it would otherwise seek arising from the five million dollar transaction entered into almost five (5) years ago.

Thank you for your courtesies and looking forward to hearing from you, I remain,

Very truly yours,

JOHN C. GILLESPIE

JCG/jth

Encl.

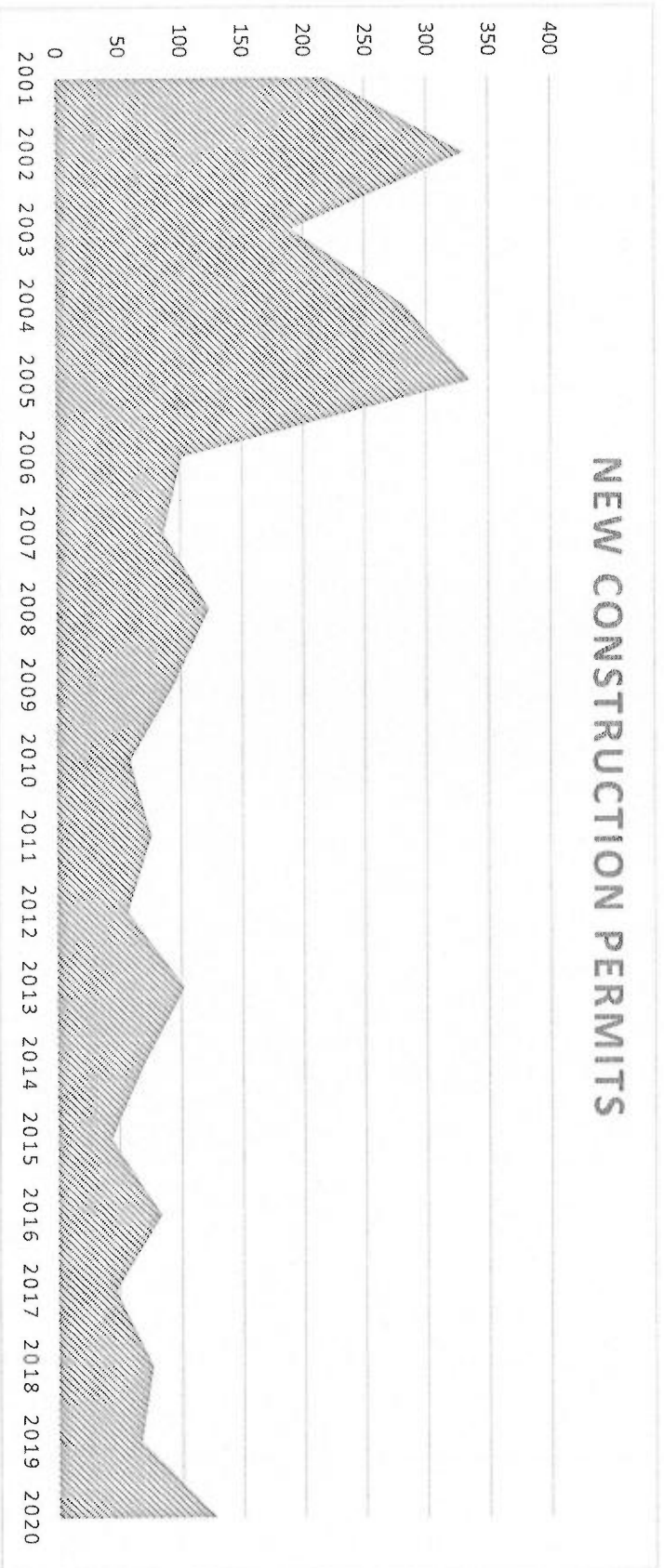
**VIA E-MAIL ONLY:**

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

4823-4969-1093, v. 1



# Residential Construction (98.5%) 2001 - 2020



FEDERAL CENSUS REPORT  
For the Period of 01/01/01 - 12/31/20  
Township of Woolwich, County of Gloucester

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01/09/21  
11:02:18

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	2,616	2,769	350,596,259	0	0	0
	103	4	24	1,062,950	0	0	0
	105	34	470	35,679,621	0	0	0
Total	109	2,654	3,263	387,338,830	0	0	0
Section II	214	1	1	79,000	0	0	0
Section III	320	4	0	4,254,850	0	0	0
	322	1	0	34,450	0	0	0
	326	0	0	0	1	0	91,800
	327	2	0	653,000	0	0	0
	328	6	3	109,850	0	0	0
	329	4	2	178,175	1	0	50,000
Section IV	434	23	3	471,870	0	0	0
	437	17	1	328,032	1	0	366,515
	438	1	0	2,500	0	0	0
Section V	645	6	-4	79,090	0	0	0
	649	7	-1	46,600	0	0	0
Section V	999	9,889	25	154,875,507	83	0	68,699,257

FEDERAL CENSUS REPORT  
For the Period of 01/01/01 - 12/31/01  
Township of Woolwich, County of Gloucester

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01/09/21  
10:37:31

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I Total	101 109	218 218	218 218	24,215,354 24,215,354	0 0	0 0	0 0
Section III	320 322 327 328 329	1 1 1 3 2	0 0 0 2 2	3,304,000 34,450 23,000 51,350 15,675	0 0 0 0 0	0 0 0 0 0	0 0 0 0 0
Section IV	434 437	14 13	2 1	272,025 241,450	0 0	0 0	0 0
Section V	645 649	1 1	-1 0	13,590 500	0 0	0 0	0 0
Section V	999	199	7	1,239,575	0	0	0



FEDERAL CENSUS REPORT  
For the Period of 01/01/02 - 12/31/02  
Township of Woolwich, County of Gloucester

Page 1  
01/09/21  
10:38:42

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I Total	101 109	330 330	330 330	39,831,854 39,831,854	0 0	0 0	0 0
Section III	328	3	1	58,500	0	0	0
Section IV	434 437	5 3	1 0	120,345 25,582	0 0	0 0	0 0
Section V	645 649	2 1	-2 0	8,500 1,400	0 0	0 0	0 0
Section V	999	342	16	3,323,841	1	0	10,279,257

FEDERAL CENSUS REPORT  
For the Period of 01/01/03 - 12/31/03  
Township of Woolwich, County of Gloucester

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01/09/21  
10:39:36

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I Total	101 109	190 190	190 190	24,387,073 24,387,073	0 0	0 0	0 0
Section II	214	1	1	79,000	0	0	0
Section III	320 326 327 329	3 0 1 2	0 0 0 0	950,850 0 630,000 162,500	0 1 0 1	0 0 0 0	0 91,800 0 50,000
Section IV	434 437 438	4 1 1	0 0 0	79,500 61,000 2,500	0 1 0	0 0 0	0 366,515 0
Section V	645 649	3 5	-1 -1	57,000 44,700	0 0	0 0	0 0
Section V	999	347	3	2,879,908	1	0	908,240

FEDERAL CENSUS REPORT  
For the Period of 01/01/04 - 12/31/04  
Township of Woolwich, County of Gloucester

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01/09/21  
10:40:25

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	282	282	37,042,480	0	0	0
	105	16	229	18,787,400	0	0	0
Total	109	298	511	55,829,880	0	0	0
Section I	999	399	0	19,865,266	6	0	367,800



FEDERAL CENSUS REPORT  
For the Period of 01/01/05 - 12/31/05  
Township of Woolwich, County of Gloucester

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10:41:22

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	385	385	50,260,841	0	0	0
	105	0	0	12,000	0	0	0
Total	109	385	385	50,272,841	0	0	0
Section I	999	408	1	5,349,747	3	0	94,498

FEDERAL CENSUS REPORT  
For the Period of 01/01/06 - 12/31/06  
Township of Woolwich, County of Gloucester

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10:45:07

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	101	101	16,051,384	0	0	0
Total	109	101	101	16,051,384	0	0	0
Section I	999	530	0	8,432,324	5	0	933,127

FEDERAL CENSUS REPORT  
For the Period of 01/01/07 - 12/31/07  
Township of Woolwich, County of Gloucester

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10:45:56

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	86	86	13,331,559	0	0	0
Total	109	86	86	13,331,559	0	0	0
Section I	999	410	0	8,683,299	10	0	29,222,167



FEDERAL CENSUS REPORT  
For the Period of 01/01/08 - 12/31/08  
Township of Woolwich, County of Gloucester

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10:46:43

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	123	123	18,399,240	0	0	0
Total	109	123	123	18,399,240	0	0	0
Section I	999	380	0	9,814,401	4	0	196,413

FEDERAL CENSUS REPORT  
For the Period of 01/01/09 - 12/31/09  
Township of Woolwich, County of Gloucester

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10:47:36

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	94	94	12,321,600	0	0	0
	105	8	86	2,550,855	0	0	0
Total	109	102	180	14,872,455	0	0	0
Section I	999	348	0	4,793,123	2	0	14,000

FEDERAL CENSUS REPORT  
For the Period of 01/01/10 - 12/31/10  
Township of Woolwich, County of Gloucester

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10:48:17

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	59	59	7,490,860	0	0	0
Total	109	59	59	7,490,860	0	0	0
Section I	999	368	0	5,628,863	5	0	367,170



FEDERAL CENSUS REPORT  
For the Period of 01/01/11 - 12/31/11  
Township of Woolwich, County of Gloucester

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10:49:02

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	76	168	15,262,883	0	0	0
Total	109	76	168	15,262,883	0	0	0
Section I	999	368	0	4,493,220	0	0	0

FEDERAL CENSUS REPORT  
For the Period of 01/01/12 - 12/31/12  
Township of Woolwich, County of Gloucester

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Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	57	110	9,591,085	0	0	0
Total	109	57	110	9,591,085	0	0	0
Section I	999	393	-1	5,305,675	8	0	19,930,565

FEDERAL CENSUS REPORT  
For the Period of 01/01/13 - 12/31/13  
Township of Woolwich, County of Gloucester

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	102	100	13,942,539	0	0	0
	103	1	20	979,850	0	0	0
	105	4	75	3,799,550	0	0	0
	109	107	195	18,721,939	0	0	0
Total							
Section I	999	434	-1	7,025,122	7	0	915,424



FEDERAL CENSUS REPORT  
For the Period of 01/01/14 - 12/31/14  
Township of Woolwich, County of Gloucester

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Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	70	70	9,142,980	0	0	0
Total	109	70	70	9,142,980	0	0	0
Section I	999	863	-1	13,819,419	4	0	191,162

FEDERAL CENSUS REPORT  
For the Period of 01/01/15 - 12/31/15  
Township of Woolwich, County of Gloucester

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10:53:26

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	43	43	5,524,475	0	0	0
Total	109	43	43	5,524,475	0	0	0
Section I	999	997	0	13,338,505	5	0	4,337,210

FEDERAL CENSUS REPORT  
For the Period of 01/01/16 - 12/31/16  
Township of Woolwich, County of Gloucester

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	83	83	9,666,158	0	0	0
	105	5	80	5,853,516	0	0	0
Total	109	88	163	15,519,674	0	0	0
Section I	999	595	0	8,121,430	4	0	32,847

FEDERAL CENSUS REPORT  
For the Period of 01/01/17 - 12/31/17  
Township of Woolwich, County of Gloucester

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Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	47	47	6,743,244	0	0	0
Total	109	47	47	6,743,244	0	0	0
Section I	999	638	-1	7,420,179	3	0	120,500

FEDERAL CENSUS REPORT  
For the Period of 01/01/18 - 12/31/18  
Township of Woolwich, County of Gloucester

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10:55:45

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	76	85	11,040,496	0	0	0
Total	109	76	85	11,040,496	0	0	0
Section I	999	612	0	5,999,719	5	0	62,750



FEDERAL CENSUS REPORT  
For the Period of 01/01/19 - 12/31/19  
Township of Woolwich, County of Gloucester

Page 1  
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10:56:20

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	67	67	9,567,599	0	0	0
Total	109	67	67	9,567,599	0	0	0
Section I	999	622	0	7,429,602	4	0	137,770

FEDERAL CENSUS REPORT  
For the Period of 01/01/20 - 12/31/20  
Township of Woolwich, County of Gloucester

Page 1  
01/09/21  
10:57:22

Report Section	Census Item Number	Privately Owned			Publicly Owned		
		Buildings	Units	Value of Construction	Buildings	Units	Value of Construction
Section I	101	127	128	16,782,555	0	0	0
	103	3	4	83,100	0	0	0
	105	1	0	4,676,300	0	0	0
Total	109	131	132	21,541,955	0	0	0
Section I	999	636	2	11,912,289	6	0	588,357