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Governor

SHEILA Y. OLIVER
Lt. Governor

STATE OF NEW JERSEY
WATERSHED PROPERTY REVIEW BOARD

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Commissioner
Department of
Environmental Protection

JOSEPH L. FIORDALISO
President
Board of Public Utilities

SHEILA Y. OLIVER
Commissioner
Department of Community
Affairs

WATERSHED PROPERTY REVIEW BOARD REQUEST)
FOR AN EXEMPTION BY THE TOWNSHIP OF) ORDER GRANTING
INDEPENDENCE AND SUEZ WATER NEW JERSEY) EXEMPTION
)

(SERVICE LIST ATTACHED)

BY THE WATERSHED PROPERTY REVIEW BOARD:

Introduction

The Township of Independence, Warren County ("Township") has made an application before the Watershed Property Review Board ("Board") to sell its assets, including certain property containing its water systems located in the Township, to SUEZ Water New Jersey Inc. ("SWNJ"). The Township, by way of written request dated June 5, 2018, is seeking an exemption from the Watershed Property Review Board ("Board") to allow this sale to proceed. Without the exemption, conveyance of the property may be prohibited by the Watershed Protection and Moratorium Act, P.L. 1988, c. 163, as amended by P.L. 1990, c. 19 ("Act"). This Order adopts Board Staff's recommendation to grant the requested exemption.

Background

In 1975, the Township created the Independence Township Municipal Utility Authority ("IMUA") to provide water service to its residents. Currently, the IMUA provides water service to approximately 178 customers located in the Township. The IMUA currently owns and operates two small water systems (the "System"), one at the Highlands of Independence and the other at Valley View Estates. The System consists of three wells, two storage tanks and a series of related distribution systems in its service area.

The IMUA and Township have been interested in privatizing the System for some time due to the mounting operation and capital improvement costs, which would create an increase in water rates and create additional debt obligation for the IMUA. SWNJ recently approached the IMUA with a proposal to purchase the System and to commence upgrades. The Township felt that the proposal was one that, without question, was in the best interest of the Township and as such, has decided to pursue the sale. SWNJ will purchase the System for \$400,000.

There are three parcels ("the Properties") included in this sale, which will be transferred in fee, as inventoried in Exhibit 1. In addition to these properties, the IMUA's utility rights within certain road rights-of-way ("ROW") and seven utility easements across private properties will also be transferred to SWNJ. On October 11, 2017, the Local Finance Board approved the dissolution of the IMUA contingent upon the sale and satisfaction of the debt. No public referendum on the sale was required pursuant to *N.J.S.A. 40:62-3.1* since it serves less than 5% of the population of the Township.

Two properties are located within the headwaters area of Pohatcong Creek watershed and the third property is located in the Pequest River (below Bear Swamp) watershed. The IMUA's water system relies entirely on groundwater resources (three wells); none of its supply is generated by surface water. Board Staff conducted preliminary reviews and site visits of the Properties. Other than the IMUA's facilities (which include treatment facility, wellhouses, water storage tanks and associated access driveways and fencing), all of these properties are undeveloped.

Discussion

The Act prohibits any "municipality, municipal utility authority, or public utility" from conveying "any land utilized for the purpose of the protection of a public water supply." Section 1 of P.L. 1988, c. 163. In other words, the Act places a moratorium on all conveyances of watershed property. The Act permits the Board to grant an exemption from the moratorium under three circumstances. Section 2(a) of P.L. 1988, c. 163. The Board may permit the conveyance of watershed property if it finds: "(1) that there is a compelling public need for the conveyance of the property, (2) the denial of the exemption would result in extraordinary hardship, or (3) the sale or development of the watershed property is otherwise consistent with the purposes of this act" (which are generally to protect water quality and encourage open space preservation).

The Township is seeking an exemption which will allow it to convey its interest in the Properties, ROWs and easements to SWNJ on the basis that the sale is consistent with the purposes of the Act. Board Staff concurs that the Properties will continue to be subject to the Act since they will be conveyed from one regulated entity to another. The sale would further allow SWNJ to improve the system to meet current DEP standards. SWNJ anticipates routine capital improvements of approximately \$600,000 to this system over the next five years. If in the future SWNJ decides to convey any interest in these properties to a third party, SWNJ has committed to contact the Board for a jurisdictional determination on each property proposed for sale, as would be required under the Act.

Conclusion

Based on the foregoing discussion, the Board **HEREBY FINDS** that the proposed conveyance by the Township to SWNJ is consistent with the purposes of the Act, which are to protect water quality and encourage open space preservation. The Board **FINDS** that the Properties will continue to be subject to the Act, and any future conveyance of property interests in the Properties would require the Board Staff conduct a detailed jurisdictional determination for each property interest proposed for conveyance and/or an exemption from the Board. The Board **HEREBY ORDERS** any future sale of the Properties would require the Board Staff to conduct a detailed jurisdictional determination for each property proposed for sale. The Board **FURTHER ORDERS** to the extent that the Township and SWNJ identify additional property interests that will transfer to SWNJ at closing, the Township must report these properties to Board Staff within 30 days of closing, via an updated Exhibit 1 inventory.

Therefore, the Board **HEREBY ORDERS** that the application for the transaction for sale of the Properties, ROWs and easements be granted an exemption, pursuant to Section 2(a) of P.L. 1988, c. 163, as amended, shall be and hereby is **APPROVED** subject to the conditions recited above.

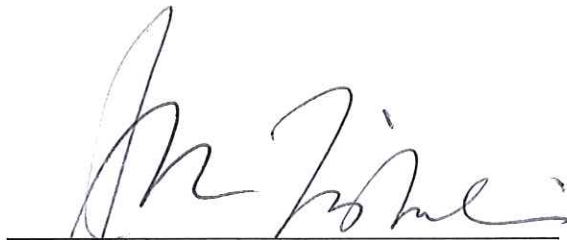
This Order addresses consideration of an exemption from the Act and does not relieve SWNJ, the Township and/or IMUA of any other obligations that may be required pursuant to any statute or regulation. This order is contingent on the applicant obtaining approvals pursuant to any other statute or regulation.

This Order confirms the vote on this matter taken at the duly noticed open public meeting of the Watershed Property Review Board on September 10, 2018.

DATED: 9/10/18

WATERSHED PROPERTY REVIEW BOARD

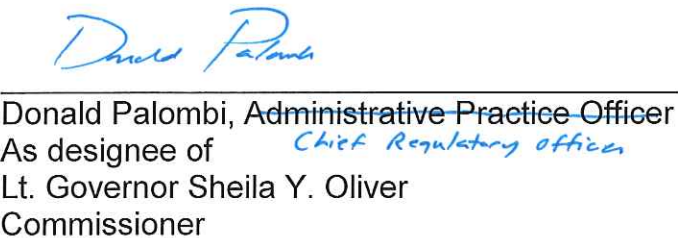
BY:



Joseph L. Fiordaliso
President
Board of Public Utilities



Ray Bukowski, Assistant Commissioner
As designee of
Catherine R. McCabe
Commissioner
Department of Environmental Protection
Pursuant to delegation order dated August 23, 2018



Donald Palombi, ~~Administrative Practice Officer~~
As designee of *Chief Regulatory Officer*
Lt. Governor Sheila Y. Oliver
Commissioner
Department of Community Affairs
Pursuant to delegation letter dated August 15, 2018

EXHIBIT 1

PROPERTY INVENTORY LIST

Independence Municipal Utilities Authority

All properties are located in Independence Township, Warren County, New Jersey

25-Apr-2018

Description	Fee/		Address	Tax	
	Esmt	Grantee		Block	Lot
Wellhouse and Treatment Plant	Fee	Independence Municipal Utilities Authority	10 Springdale Road	1.01	57.01
Wellhead Esmt	Esmt	Independence Municipal Utilities Authority	12 Springdale Road	1.01	57
Water Main Esmt	Esmt	Independence Municipal Utilities Authority	13 Springdale Road	1.02	10
Water Main Esmt	Esmt	Independence Municipal Utilities Authority	4 Pohatcong Drive	1.02	9
Water Storage Tank	Fee	Independence Municipal Utilities Authority	9 Crestwood Court	1.03	29.01
Water Main Esmt	Esmt	Independence Municipal Utilities Authority	22 Highland Road	1.03	7
Water Main Esmt	Esmt	Independence Municipal Utilities Authority	26 Highland Road	1.03	8
Water Main Esmt	Esmt	Independence Municipal Utilities Authority	9 Crestwood Court	1.03	29
Driveway Esmt ⁽¹⁾	Esmt	Highlands of Independence, Inc.	11 Crestwood Court	1.03	28
Wellhouse Site	Fee	Independence Municipal Utilities Authority	(No #) Autumn Lane	15.01	2

⁽¹⁾ Driveway easement was reserved by Highlands of Independence, Inc. prior to transfer of water system to IMUA.