

COUNTY OF SUFFOLK



STEVEN BELLONE
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PUBLIC WORKS

PHILIP A. BERDOLT
DEPUTY COMMISSIONER

GILBERT ANDERSON, P.E.
COMMISSIONER

DARNELL TYSON, P.E.
DEPUTY COMMISSIONER

MEMORANDUM

TO: Dennis Cohen, Chief Deputy County Executive, Honorable DuWayne Gregory, Presiding Officer of the Suffolk County Legislature, Honorable Legislators; Al Krupski, Chairman of the Public Works, Transportation, & Energy Committee, Louis D'Amaro, the Sewer Agency Legislator-At-Large; Schneiderman, Browning, Muratore, Hahn, Anker, Calarco, Lindsay, Martinez, Cilmi, Barraga, Kennedy, Trotta, McCaffrey, Stern, Spencer; Presiding Officer Gregory; Walter Hilbert, P.E., Principal Public Health Engineer, representing the Commissioner of the Suffolk County Department of Health Services; Sarah Lansdale, AICP, Director, Suffolk County Planning Department; Lisa Broughton, representing County Executive Steven Bellone

FROM: Gilbert Anderson, P.E., Commissioner, SCDPW and Chairman, Suffolk County Sewer Agency

DATE: April 14, 2016

SUBJECT: Please see the attached Suffolk County Sewer Agency minutes for the meeting of March 21, 2016.

GA/JD/br – Attachments

cc: Jon Schneider, Deputy County Executive
Philip A. Berdolt, Deputy Commissioner SCDPW
Darnell Tyson, P.E., Deputy Commissioner SCDPW
John Donovan, P.E., Chief Engineer, Division of Sanitation, SCDPW
Janice McGovern, P.E., Principal Civil Engineer, Division of Sanitation, SCDPW
Robert A. Braun, Esq., SC Department of Law
Walter Dawydiak, P.E., SC Department of Health Services
Catherine Stark, Aide to Legislator Al Krupski
Gwynn Schroeder, Aide to Legislator Al Krupski
Ted Klein, SC Planning Department
Justin Littell, Aide to Legislator Louis D'Amaro
Tony Leung, P.E., NYSDEC
Boris Rukovets, P.E., Secretary, SC Sewer Agency

*The Suffolk County Sewer Agency meets at 11:00 AM at the offices of the
Suffolk County Department of Public Works - 335 Yaphank Avenue - Yaphank, NY*

SUFFOLK COUNTY IS AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

Suffolk County Sewer Agency Meeting Minutes March 21, 2016

The meeting was called to order at 10:08 AM by Commissioner Gilbert Anderson, P.E. In attendance were Legislator Al Krupski, Chairman of the Public Works, Transportation, & Energy Committee; Justin Littell, representing Legislator Lou D'Amaro, the Sewer Agency Legislator-At-Large; Tanima Adhya, P.E., representing the Commissioner of the Department of Health Services; Lisa Broughton, representing County Executive Steven Bellone; Sarah Lansdale, AICP, Director, Suffolk County Planning Department.

Note: Ms. Lansdale arrived at 11:04 pm, prior to the beginning of the discussion on Country Pointe at Smithtown.

Also present was John Donovan, P.E, Chief Engineer, Suffolk County Department of Public Works, Division of Sanitation; Catherine Stark, Aide to Legislator Krupski; Janice McGovern, P.E. Suffolk County Department of Public Works; Mr. Robert A. Braun, Esq., Suffolk County Department of Law; Boris Rukovets, P.E., Secretary, Suffolk County Sewer Agency.

(See the attached sign-in sheet for others in attendance).

Commissioner Anderson welcomed attendees to the meeting of the March 21, 2016, Suffolk County Sewer Agency. A roll call was then taken.

I. **Roll Call** - (see above)

II. **Minutes of Previous Meeting**

The minutes from SCSA meeting of February 22, 2016, were discussed. A motion to accept the minutes as written was made by Commissioner Anderson; seconded by Ms. Broughton; and approved unanimously.

III. **Public Portion** – There were no requests to address the Agency during Public Portion.

IV. Public Hearing – Rate Petition filed by Greens at Half Hollow LLC (HU-1194)

Commissioner Anderson opened the hearing by asking Mr. Braun to describe the background for the hearing.

Mr. Braun said that the code did not require a public hearing on rate increase application by an operator of a private sewage treatment plant but due to significant amount of interest in this particular application, the staff had decided to give all the parties an opportunity to be heard. He added that the Agency Board would benefit from hearing the testimonies and comments.

Commissioner Anderson said that the hearing would be recessed at 11 am and would continue after completion of the regular business portion of the Sewer Agency meeting. He then invited Ms. Denise Coyle from Greens at Half Hollow LLC (G@HH) to testify. Ms. Coyle said that she would like to give an opportunity to Mr. Al Natoli to speak on the subject matter.

Mr. Braun explained that G@HH has been a successor to the original developer of the Greens who has been operating the treatment plant since the very beginning. There was an original rate set by the developer and disclosed in the offering plant to the community. Several years later, Greens at Half Hollow Homeowners Association (HOA) objected to the rate and asked the Agency to review it. Based on the Agency review, it recommended a significant reduction of the amount that has been charged and the operator of the plant has been charging the reduced rate since that time. The operator now has come to the Sewer Agency saying that the rate is not sufficient to cover the cost of the plant. They asked the Agency to review the rate and to consider the operator's expenses to run the plant. Mr. Braun concluded by saying that the Board was there to hear both the operator and the affected communities have to say about the rate going forward

Commissioner Anderson thanked Mr. Braun and invited Mr. Al Natoli, the attorney for G@HH, to testify. Mr. Natoli said that he was the person who prepared the rate application. He thanked the Agency for the opportunity to testify and noted that in 2012, G@HH did not have that opportunity to comment on rate adjustment made by the staff. He described his professional background as an attorney and professional engineer, practicing public utilities law for 46 years. He added that sewer rates are set differently than water rates and differently than other utility rates. He has represented both the customers and regulators. He described the rates setting process as taking the expenses, entering utility's cost of capital and coming up with revenue requirement and, based on the number of customers, producing a rate that is intended to generate the entire revenue requirement to be set.

Mr. Natoli mentioned that based on the information obtained through the FOIL request and additional research, it appeared that this was virtually the first time the Agency Board was setting the sewer rates and the first time it was done in the litigious atmosphere. He then provided the overview of the rate application. He noted that G@HH merely adopted the Agency's number of single family equivalents (1,458 SFEs) used by the Agency when it was

considering forming a district and taking over G@HH. Essentially, we divide the total revenues needed by the number of SFEs to come to the rate and that is \$869.25 rate that G@HH was asking for. Mr. Natoli added that after filing, G@HH realized that it had neglected to include the resource it was extensively using – its executive management – and added it back. Even after that, the proposed rate would be still generating less than the revenue requirement of approximately \$1.2 million.

Mr. Natoli stated that, in G@HH's opinion, the Town of Huntington had already ruled by default and thereby had approved the \$869.25 rate, so asking to increase the rate would mean going back to the Town; that was the delay G@HH could not afford, so no adjustments had been made.

Mr. Natoli explained that Wages/Salaries line item on the Revenue Requirements Summary had been generated by allocation because those were employees of affiliated companies to maintain roads and sewers and provide access to the sewer plant, landscaping, snow removal and supervision of contract operations. The allocation has been in the G@HH tax returns for many years and has been approved by independent certified public accountants. The next item is Executive Management & Supervision was not included in the original application which was an oversight. Many in the County know people that this line represents -- Denise Coyle, Russ Mohr, several other people – they spent a substantial amount of executive management and supervision involved in running the sewer company and in steps to form the district and \$165,000 was based on a very conservative hourly rate and represents a very conservative number.

Mr. Natoli said that Legal and Professional Fees had been almost \$1.4 million over the last three years. G@HH decided to defer the legal expense and amortize it over the period of three years to flatten the spike in expenses. The period of three years was chosen because according to the regulatory practice, the period for amortization needs to reasonably model the period in which the company would have a reasonable opportunity to actually collect these funds. The second part of the equation is the capital cost. Expenses plus capital cost equals revenue requirements. In G@HH calculations, they used capital cost of 11%. It's a pre-tax rate of return and taking into account taxes, it would probably be 3 or 4 % less. More importantly, this rate is comparable to the rates of similarly situated private utilities providing sewer service. Also, the rate set by the Public Service Commission for many years has been around 11% pre-tax rate of return.

Mr. Natoli continued going through the Revenue Requirements Summary. Cost of capital represents the amount of deferred reserves – according to regulatory practice; the company gets return on that money. That also includes the funds that were spent on replacement capital required under SPDES permit. So that total comes to \$1,432,373 which, as mentioned earlier, produces less revenues than G@HH needs.

Mr. Natoli said that legal expenses had been incurred as the result of actions brought by an HOA and were included since G@HH had the right to defend itself. These expenses were comparable to HOA legal expenses.

Mr. Natoli noted that O&M expenses were actually less than what the Sewer Agency was charging. The Sewer Agency has a huge advantage over the small utility and large economy of scale and tax advantages. The rule is the smaller the agency the higher the cost of capital. The Sewer Agency cost of capital is probably less than 4%.

Legislator Krupski asked if the number of SFEs was a disputed number. Mr. Natoli said it was not, since it was used by Sewer Agency engineers when they was considering taking over.

Legislator Krupski asked why Mr. Natoli stated that the Town of Huntington already approved proposed rates by default. Mr. Natoli said that his client's position was that the Transportation Corporation Law (TLC) applied and it required that the rate increase application be responded to in 90 days. Ms. Broughton asked why there was a separate cost of engineering, separate from operations. Mr. Natoli responded that engineering was retained in addition to engineering maintenance when for example there was a need to redesign pump or decide on a new control panel.

Commissioner Anderson invited Mr. Yaffe to speak next. Mr. Hamburger responded that HOA had three speakers and introduced Mr. Stanley Widger, the main speaker and said that he will speak after Mr. Widger and Mr. Yaffe may potentially speak as well. Mr. Hamburger said that Mr. Widger had 40 years of experience in utility regulations including electric, gas, steam, water, sewer and telecommunications regulations and he appeared regularly before the NY Public Service Commission (PCS) and other regulatory bodies. His clients included major utilities and utility customers.

Mr. Widger said that his legal team approach was to look at the 2002 sewer agreement first as it covers most of the decision making criteria the Sewer Agency must adhere to. He noted that PSC had developed a comprehensive body of law. STP agreement is pretty clear in criteria for rate setting. According to the agreement, the rates would be subject to prior written County approval, the rates that were set in the past did not comply with that requirement.

The limited expenses have to be for the benefit of all users and have to be limited O&M expenses. No return on investment was allowed pursuant to STP agreement and for a very good reason – developer had to do it at his own cost and dedicate the plant to the County so the County would be able to take it over. This is part of the STP agreement – applicant received authority to construct over 1,000 units; the plant has been paid for and there is no return on investment. Same was true for capital and repair reserves – the applicant was responsible at the time for funding those funds and that could have been taken by the County from Day One.

Mr. Widger described some of the PSC principles of operations:

- 1) the rates have to be just and reasonable -- the cornerstone of PSC consistent with STP agreements;
- 2) the rates and expenses have to be prudent. There is a presumption in the regulatory field that management decisions are presumed to be prudent unless the questions are raised and then the burden is on the utility to prove that they were prudent. HOA's opposition papers laid the case to show why the major expenses, particularly on legal actions, can be considered not prudent and, at a minimum, raised the question of a burden of proof.
- 3) Expenses have to be incurred for the benefit of ratepayers. In most utility expenses, it can be easily seen – construction project, payment of taxes. Legal expenses here were incurred with no benefit customers, to deny validity of the STP agreement. The burden of proof is on the applicant to show that those expenses were beneficial to the ratepayers. The burden of complying with regulations is a recognized expense. An increase in rates is allowed but has to be reasonable. Expenses that benefit only owners of the STP are not reasonable. PSC would not allow those types of expenses to be included. Lobbying and legislative expenses in NY are essentially prohibited. Part of the legal fees incurred was for litigation brought by G@HH regarding the referendum process, which is essentially a legislative process.

Mr. Widger said that applicant had failed entirely to meet the burden of proof. Data provided was sketchy. No nexus was established between the bills and expenditures. Failure to meet burden of proof was so stark, that if this were a matter before PSC, the application would be dismissed out of hand.

At that point, at 11 am, at the request of Commissioner Anderson, Mr. Widger interrupted his testimony and the hearing was recessed until completion of the regular business portion of the meeting.

V. New Business

A. Formal Approval –Connection Agreement

COUNTRY POINTE AT SMITHTOWN

SM-1689

Mr. Donovan said that this project is a proposed Sixty-nine (69) unit residential condominium subdivision in Smithtown that includes a pool and a 1,500 square foot recreational building situated on Eleven plus (11.4±) acres on the North side of NYS Route 347, 160± feet west of NYS Route 111 in Smithtown. The project is expected to generate Fifteen Thousand (15,000 GPD) gallons per day of wastewater. The developer proposes to construct an on-site sewage treatment plant capable of treating the wastewater.

Mr. Donovan added that the Town of Smithtown Board of Planning Appeals was declared the Lead Agency for SEQR with respect to the Country Pointe at Smithtown. The Town completed the environmental review process and issued a Findings Statement. The Sewer Agency should issue its own Findings regarding the project, stating that the Agency has reviewed the submittals and the project before them in conformance with the Town Board of Planning Appeals' Findings. Staff recommends granting Formal Approval for the construction and operation and maintenance of an on-site STP.

Commissioner Anderson asked if there was a representative present and Matt Scheiner, P.E., the engineer for Country Pointe at Smithtown, mentioned that he was and that the narrative was accurate.

Leg. Krupski asked what was the treatment method proposed and Mr. Scheiner replied that it was a modified version of BESST system. Leg. Krupski asked if this was a system with which the County was familiar and had a good experience with and Mr. Donovan responded affirmatively. Leg. Krupski asked whether the project was subject to the Affordable Housing Law and Mr. Scheiner responded that it was not since it was the private development not connecting to the County treatment plant and, therefore, the Affordable Housing Law would not apply. Leg. Krupski asked if there were applicable Town affordable housing requirements and Mr. Scheiner said no, not to his knowledge.

Commissioner Anderson asked if there were any questions or comments and seeing none, he made a motion to approve the resolution; the motion was seconded by Ms. Broughton and approved unanimously.

Suffolk County Sewer Agency

Gilbert Anderson, P.E.,
Commissioner, SCDPW, Chairman,
Suffolk County Sewer Agency

335 Yaphank Avenue
Yaphank, NY 11980
(631) 852-4010

Date adopted by the SCSA: March 21, 2016

Title 6 NYCRR Part 617.11 –
Decision-making and findings requirements
State Environmental Quality Review
Findings Statement

Pursuant to Article 8 (State Environmental Quality Review Act – SEQRA) of the Environmental Conservation Law and 6 NYCRR Part 617, the Suffolk County Sewer Agency, as involved agency, makes the following findings

Name of Action: Country Pointe at Smithtown – Construction, Operation, and Maintenance of an On-Site Sewage Treatment Plant (SM-1689)

Description of Action: This project includes the construction, operation, and maintenance of an on-site sewage treatment plant to service the wastewater generated from Sixty-nine (69) residential condominium units, a pool and a 1,500 square foot recreational building situated on Eleven+ (11.4±) acres.

Location: North side of NYS Route 347, 160± feet west of NYS Route 111 in Smithtown. SCTM No. 08.00-157.00-02.00-013.000, 046.001, 046.002, 047.001, 051.000, 053.000, 058.000

Agency Jurisdiction: Construction, Operation, and Maintenance of an On-Site Sewage Treatment Plant

Date Full EAF filed: June 24, 2015

Facts and conclusions in the environmental review record relied upon to support the decision:

1. Country Pointe at Smithtown was the subject of a review by the Town of Smithtown Board of Planning Appeals. On September 22, 2015, the Town of Smithtown Board of Planning Appeals issued a *Negative SEQR Declaration* and approved the project.
2. The EAF adequately addressed impacts to the groundwater resources.
3. The impacts relevant to the Sewer Agency identified within the SEQR process have been shown to be insignificant or adequately mitigated.
4. The Sewer Agency has reviewed the proposed action as submitted by Country Pointe at Smithtown and determined that it is consistent with the final project as identified within the EAF and the Town of Smithtown Board of Planning Appeals SEQR Findings.

Certification to Approve:

Having considered the draft and final Environmental Impact Statement and having considered the preceding written facts and conclusions relied on to meet the requirements of 6 NYCRR Part 617.11, this Statement of Findings certifies that:

1. The requirements of 6 NYCRR Part 617 have been met; and
2. Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

Suffolk County Sewer Agency



Gilbert Anderson, P.E., Commissioner, SCDPW,
Chairman, Suffolk County Sewer Agency

4/15/16

Date

Address of Agency:
Suffolk County Sewer Agency
335 Yaphank Avenue
Yaphank, NY 11980

cc: Other Involved Agencies
Applicant

SUFFOLK COUNTY SEWER AGENCY

RESOLUTION NO. 7-2016

AUTHORIZING THE CONSTRUCTION AND OPERATION & MAINTENANCE OF AN ON-SITE SEWAGE TREATMENT PLANT FOR COUNTRY POINTE AT SMITHTOWN (SM-1689)

WHEREAS, application has been made for the Country Pointe at Smithtown which is a proposed Sixty-nine (69) residential condominium subdivision that includes a pool and a 1,500 square feet recreational building located in Smithtown, New York, situated on property identified on the Suffolk County Tax Maps as District 0800, Section 157.00, Block 02.00, Lots 013.00, 046.001, 046.002, 047.001, 05051.000, 053.000 and 058.000.

WHEREAS, there is no Suffolk County Sewer District, or any other municipal sewer district in the vicinity of Country Pointe at Smithtown with available capacity to treat the proposed Fifteen Thousand (15,000) gallons per day of wastewater, and

WHEREAS, the developer has applied to this Agency for permission to construct, operate, and maintain an on-site sewage treatment plant to treat such wastewater for Country Pointe at Smithtown, and

WHEREAS, this Agency has determined that the Fifteen Thousand (15,000) gallons per day of sanitary sewage generated by the said project shall be treated at an on-site sewage treatment plant to be constructed by the developer, and

WHEREAS, pursuant to Section 617.5(c) (11) and (20), of the SEQRA regulations, the Suffolk County Sewer Agency has issued a Findings Statement, and requires no further action, and

WHEREAS, this Agency believes that prospective purchasers of the units should be apprised of the annual cost of the operation and maintenance of the proposed sewage treatment plant, not only while the plant is privately owned, but also if and when the County, or another municipality, assumes ownership of the plant,

NOW, THEREFORE, BE IT

1st RESOLVED, by the Suffolk County Sewer Agency as follows:

The Issuer hereby finds and determines:

(a) The Agency's jurisdiction over the project is the Construction, Operation, and Maintenance of an On-Site Sewage Treatment Plant.

(b) Based upon an independent review by the Issuer of the EAF and the Smithtown Board of Planning Appeals' Negative SEQR Declaration on September, 2015, the Issuer hereby concurs in the Smithtown Board of Planning Appeals' declaration and decisions contained in the Statement and hereby adopts the Statement of Findings attached hereto as Exhibit A as its own Statement of Findings under SEQRA.

(c) Having considered the EAF, the Smithtown Board of Planning Appeals' Negative SEQR Declaration and such other documents as may be necessary or appropriate, the Sewer Agency finds that:

(i) The requirements of 6 NYCRR Part 617 have been met;

(ii) Consistent with the social, economic and other essential considerations, from among the reasonable alternatives thereto, the Action is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including effects disclosed in the environmental impact statement; and

(iii) Consistent with social, economic, and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement will be minimized or avoided by incorporating as conditions those mitigative measures which were identified as practicable.

(d) The basis for this decision is set forth in the Statement of Findings attached as Exhibit A hereto and incorporated by reference herein, thus all of the provisions of SEQRA have been complied with.

2nd RESOLVED, that the said application be approved subject to the execution of an agreement between the developer, the Suffolk County Department of Public Works, the Suffolk County Department of Health Services, the County of Suffolk and this Agency, on such terms as the Chairman of this Agency shall determine, including, but not limited to, the following:

1. The developer shall, at its sole cost, expense and effort, construct a complete sewage collection, treatment and disposal facility for the project in accordance with Agency standards and shall offer to dedicate the said facility to the Agency at no charge;

2. The developer and/or the Home Owners Association (HOA) shall operate and maintain the said facility until such time, if ever, as a Suffolk County, or other municipal, sewer district is formed encompassing the premises within its boundaries;

3. No Certificate of Occupancy shall be issued for any of the units in the project until the sewage treatment plant has been completed, and is operating, to the satisfaction of this Agency's staff;

4. The developer shall post a Letter of Credit, in form, wording and amount as determined by this Agency's staff, as security for the performance of all of the developer's obligations under the said agreement;

5. The developer shall disclose, in the project's Offering Plan/Prospectus, in language to be approved by this Agency's staff, the annual cost of operation and maintenance of the proposed sewage treatment plant, in order to ensure that prospective purchasers of the condominiums are apprised of said cost. The developer shall include in said notice the projected annual cost of operation and maintenance of the proposed sewage treatment plant for the ensuing years, based on an inflation factor, in order to ensure that all future owners of the condominium units are apprised of said

cost, not only while the plant is privately owned, but also if and when the County, or another municipality, assumes ownership of the plant.

And be it further

3rd RESOLVED, that this resolution shall become null and void, and of no further force or effect, without any further action by this Agency or notice to the developer of Country Pointe at Smithtown if, within one (1) year from the date of the adoption hereof, an agreement in furtherance of the authorization granted herein, in form and content satisfactory to the Chairman of this Agency, has not been negotiated and fully executed by all parties thereto.

Suffolk County Sewer Agency Meeting (March 21, 2016)

BEACH PLUM MEADOWS, LLC**SH-1697**

Mr. Donovan mentioned that this project is a proposed Sixteen (16) single family residential lot subdivision situated on Ten plus (10.8±) acres on Moses Lane in the Village of Southampton. The project is expected to generate Four Thousand Eight Hundred (4,800 GPD) gallons per day of wastewater. The developer proposes to construct an on-site sewage treatment plant capable of treating the wastewater.

The Village of Southampton Planning Board was declared the Lead Agency for SEQR with respect to Beach Plum Meadows, LLC. The Village completed the environmental review process and issued a Findings Statement. The Sewer Agency should issue its own Findings regarding the project, stating that the Agency has reviewed the submittals and the project before them in conformance with the Village Planning Board's Findings.

Staff recommends granting Formal Approval for the construction and operation and maintenance of an on-site STP.

Commissioner Anderson asked if there was a representative present and Charlie Bartha, P.E., the engineer for Beach Plum Meadows, representing Mr. Jim Tsunis, the owner, mentioned that he was and that the narrative was exactly the way it was. Legislator Krupski asked what was the wastewater treatment system considered and Mr. Bartha replied that the system under consideration was Cromaglass system. Legislator asked if Mr. Bartha would consider doing a pilot with alternative advanced treatment system and Mr. Bartha responded affirmatively. Mr. Krupski asked if the developer was locked into a specific system and Mr. Braun replied that the Agency was approving the onsite treatment plant and not a specific system. Commissioner Anderson added that an alternative system would have to be reviewed by Suffolk County Health Department.

Commissioner Anderson asked if there were any questions or comments and seeing none he made a motion to approve the resolution; the motion was seconded by Mr. Littell and approved unanimously.

Suffolk County Sewer Agency

Gilbert Anderson, P.E.,
Commissioner, SCDPW, Chairman,
Suffolk County Sewer Agency

335 Yaphank Avenue
Yaphank, NY 11980
(631) 852-4010

Date adopted by the SCSA: March 21, 2016

Title 6 NYCRR Part 617.11 –
Decision-making and findings requirements
State Environmental Quality Review
Findings Statement

Pursuant to Article 8 (State Environmental Quality Review Act – SEQRA) of the Environmental Conservation Law and 6 NYCRR Part 617, the Suffolk County Sewer Agency, as involved agency, makes the following findings

Name of Action: Beach Plum Meadows LLC – Construction, Operation, and Maintenance of an On-Site Sewage Treatment Plant (SH-1697)

Description of Action: This project includes the construction, operation, and maintenance of an on-site sewage treatment plant to service the wastewater generated from Sixteen (16) single family homes situated on Ten+ (10.8±) acres.

Location: 248 Moses Lane in the Village of Southampton, NY. SCTM No. 09.04-001.00-03.00-085.001.

Agency Jurisdiction: Construction, Operation, and Maintenance of an On-Site Sewage Treatment Plant

Date Full EAF filed: July 2, 2014

Facts and conclusions in the environmental review record relied upon to support the decision:

1. Beach Plum Meadows LLC was the subject of a review by the Village of Southampton Planning Board. On April 6, 2015, the Village of Southampton Planning Board issued a *Negative SEQR Declaration* and approved the project.
2. The EAF adequately addressed impacts to the groundwater resources.
3. The impacts relevant to the Sewer Agency identified within the SEQR process have been shown to be insignificant or adequately mitigated.
4. The Sewer Agency has reviewed the proposed action as submitted by Beach Plum Meadows LLC and determined that it is consistent with the final project as identified within the EAF and the Village of Southampton Planning Board SEQR Findings.

Certification to Approve:

Having considered the draft and final Environmental Impact Statement and having considered the preceding written facts and conclusions relied on to meet the requirements of 6 NYCRR Part 617.11, this Statement of Findings certifies that:

1. The requirements of 6 NYCRR Part 617 have been met; and
2. Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

Suffolk County Sewer Agency



Gilbert Anderson, P.E., Commissioner, SCDPW,
Chairman, Suffolk County Sewer Agency

4/15/16

Date

Address of Agency:
Suffolk County Sewer Agency
335 Yaphank Avenue
Yaphank, NY 11980

cc: Other Involved Agencies
Applicant

SUFFOLK COUNTY SEWER AGENCY

RESOLUTION NO. 8 - 2016

AUTHORIZING THE CONSTRUCTION AND OPERATION & MAINTENANCE OF AN ON-SITE SEWAGE TREATMENT PLANT FOR BEACH PLUM MEADOWS, LLC (SH-1697)

WHEREAS, application has been made for the Beach Plum Meadows, LLC which is a proposed Sixteen (16) single family residential lots subdivision, located in the Village of Southampton, New York, situated on property identified on the Suffolk County Tax Maps as **District 0904, Section 001.00, Block 03.00, Lot 085.001**.

WHEREAS, there is no Suffolk County Sewer District, or any other municipal sewer district in the vicinity of Beach Plum Meadows, LLC with available capacity to treat the proposed Four Thousand Eight Hundred (4,800) gallons per day of wastewater, and

WHEREAS, the developer has applied to this Agency for permission to construct, operate, and maintain an on-site sewage treatment plant to treat such wastewater for Beach Plum Meadows, LLC, and

WHEREAS, this Agency has determined that the Four Thousand Eight Hundred (4,800) gallons per day of sanitary sewage generated by the said project shall be treated at an on-site sewage treatment plant to be constructed by the developer, and

WHEREAS, pursuant to Section 617.5(c) (11) and (20), of the SEQRA regulations, the Suffolk County Sewer Agency has issued a Findings Statement, and requires no further action, and

WHEREAS, this Agency believes that prospective purchasers of the units should be apprised of the annual cost of the operation and maintenance of the proposed sewage treatment plant, not only while the plant is privately owned, but also if and when the County, or another municipality, assumes ownership of the plant,

NOW, THEREFORE, BE IT

1st RESOLVED, by the Suffolk County Sewer Agency as follows:

The Issuer hereby finds and determines:

(a) The Agency's jurisdiction over the project is the Construction, Operation, and Maintenance of an On-Site Sewage Treatment Plant.

(b) Based upon an independent review by the Issuer of the EAF and the Southampton Village Planning Board's Negative SEQR Declaration on April 6, 2015, the Issuer hereby concurs in the Southampton Village Planning Board's declaration and decisions contained in the Statement and hereby adopts the Statement of Findings attached hereto as Exhibit A as its own Statement of Findings under SEQRA.

(c) Having considered the EAF, the Village of Southampton Planning Board's Negative SEQR Declaration and such other documents as may be necessary or appropriate, the Sewer Agency finds that:

(i) The requirements of 6 NYCRR Part 617 have been met;

(ii) Consistent with the social, economic and other essential considerations, from among the reasonable alternatives thereto, the Action is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including effects disclosed in the environmental impact statement; and

(iii) Consistent with social, economic, and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement will be minimized or avoided by incorporating as conditions those mitigative measures which were identified as practicable.

(d) The basis for this decision is set forth in the Statement of Findings attached as Exhibit A hereto and incorporated by reference herein, thus all of the provisions of SEQRA have been complied with.

2nd RESOLVED, that the said application be approved subject to the execution of an agreement between the developer, the Suffolk County Department of Public Works, the Suffolk County Department of Health Services, the County of Suffolk and this Agency, on such terms as the Chairman of this Agency shall determine, including, but not limited to, the following:

1. The developer shall, at its sole cost, expense and effort, construct a complete sewage collection, treatment and disposal facility for the project in accordance with Agency standards and shall offer to dedicate the said facility to the Agency at no charge;

2. The developer and/or the Home Owners Association (HOA) shall operate and maintain the said facility until such time, if ever, as a Suffolk County, or other municipal, sewer district is formed encompassing the premises within its boundaries;

3. No Certificate of Occupancy shall be issued for any of the units in the project until the sewage treatment plant has been completed, and is operating, to the satisfaction of this Agency's staff;

4. The developer shall post a Letter of Credit, in form, wording and amount as determined by this Agency's staff, as security for the performance of all of the developer's obligations under the said agreement;

5. The developer shall disclose, in the project's Offering Plan/Prospectus, in language to be approved by this Agency's staff, the annual cost of operation and maintenance of the proposed sewage treatment plant, in order to ensure that prospective purchasers of the condominiums are apprised of said cost. The developer shall include in said notice the projected annual cost of operation and maintenance of the proposed sewage treatment plant for the ensuing years, based on an inflation factor, in order to ensure that all future owners of the condominium units are apprised of said

cost, not only while the plant is privately owned, but also if and when the County, or another municipality, assumes ownership of the plant.

And be it further

3rd RESOLVED, that this resolution shall become null and void, and of no further force or effect, without any further action by this Agency or notice to the developer of Beach Plum Meadows, LLC if, within one (1) year from the date of the adoption hereof, an agreement in furtherance of the authorization granted herein, in form and content satisfactory to the Chairman of this Agency, has not been negotiated and fully executed by all parties thereto.

Suffolk County Sewer Agency Meeting (March 21, 2016)

B. Formal Approval – Connection/Construction Agreement – Time Extension

BAYPORT MEADOWS ESTATES

IS-1636

Mr. Donovan mentioned that this project was the proposed One Hundred Forty-Eight (148) unit planned retirement community (PRC) subdivision on 23.5± acres located in the vicinity of the southwestern corner of Sunrise Highway and CR 97 – Nichols Road in Bayport. The project is expected to generate Forty-Five Thousand Six Hundred gallons per day (45,600 GPD) of wastewater, for which the developer requests an additional time extension to complete the connection agreement. Staff recommends granting the Time Extension to complete the connection agreement for connection to SCSD #14 – Parkland. The capacity is still available in the plant.

In accordance with the Local Law 20-2007, *“A Local Law to Amend the County Policy for Sewer Connections to Promote Affordable Housing”*, the “affordable” part of the project, as per Town of Islip’s requirements and documentation will be constructed at the off-site location. Additionally, the developer requested a payment plan for the connection fees that was approved as part of the February 9, 2015 SA Resolution No. 1-2015.

Commissioner Anderson asked if there was a representative present and Mr. Charlie Bartha, P.E., the engineer for Bayport Meadow Estates, mentioned that he was and said that the narrative was accurate. The developer is currently working though the contractual process; the engineering plans have been submitted for review.

Ms. Broughton asked whether a payment plan was up to date and Mr. Donovan responded that the fees would be paid upon signing of the agreement and not upfront. Mr. Littel asked whether the agreement is expected to be signed during the one-year extension and Mr. Braun responded that he did not see a reason why it could not happen.

Commissioner Anderson asked if there were any questions or comments and, seeing none, he made a motion to approve the resolution; the motion was seconded by Ms. Broughton and approved unanimously.

SUFFOLK COUNTY SEWER AGENCY

RESOLUTION NO: 9 - 2016

AUTHORIZING AN EXTENSION OF TIME FOR CONNECTION OF THE BAYPORT MEADOW ESTATES (IS-1636) TO THE SUFFOLK COUNTY SEWER DISTRICT NO. 14 – PARKLAND

WHEREAS, on February 9, 2015, this Agency adopted Resolution No. 1-2015, authorizing the connection of Bayport Meadow Estates to Suffolk County Sewer District No. 14 - Parkland, and

WHEREAS, Resolution No. 1-2015, granted one year for completion of the Agreement, but the year has passed without the completion of the Agreement, and

WHEREAS, negotiations concerning such an agreement are incomplete, and a proposed agreement is being prepared, and

WHEREAS, the owner of Bayport Meadow Estates has requested an extension of the authorization granted in Resolution No. 1-2015,

NOW, THEREFORE, IT IS

1st RESOLVED, that Resolution No. 1-2015, adopted by this Agency on February 9, 2015, is hereby renewed, and it is further

2nd RESOLVED, that this resolution shall become null and void, and of no further force or effect, without any further action by this Agency or notice to the developer, if, within one (1) year from the date of the adoption hereof, an agreement in furtherance of the authorization granted herein, in form and content satisfactory to the Chairman of this Agency, has not been negotiated and fully executed by all parties thereto.

(Suffolk County Sewer Agency Meeting March 21, 2016)

HIGHLAND GREEN RESIDENCES

HU 1323

Mr. Donovan mentioned that this project is a proposed One Hundred Eighteen (118) unit rental apartment subdivision situated on 8± acres located on the north side of Ruland Road east of Maxess Road in Melville. The estimated flow from this project is Twenty-Seven Thousand Seventy-Nine gallons per day (27,079 GPD), for which the developer has started the process of entering into the connection agreement and requests an additional time extension to complete the connection agreement. The capacity continues to be available in the District and the Staff recommends granting the Time Extension to complete the connection agreement for connection to SCSD No. 3 – Southwest.

Commissioner Anderson asked if there was a representative present and Ms. Kathleen Deegan Dickson, Esq., the attorney for the developer, said that she was. She said that the narrative was accurate and mentioned that she had been working with Mr. Braun on the agreement and it was close to being completed. Leg. Krupski asked what was currently on site and Ms. Deegan Dickson responded that the buildings were nearly completed, connection fees were paid and that her client was awaiting the agreement to put the sewers in the ground. Mr. Littel asked if the affordable housing issues had been settled with the Towns and Ms. Deegan Dickson replied yes.

Commissioner Anderson asked if there were any questions or comments and seeing none, Mr. Littel made a motion to approve the resolution; the motion was seconded by Ms. Broughton and approved unanimously.

SUFFOLK COUNTY SEWER AGENCY

RESOLUTION NO: 10 - 2016

AUTHORIZING AN EXTENSION OF TIME FOR THE HIGHLAND GREEN RESIDENCES (HU-1323) TO CONNECT TO SUFFOLK COUNTY SEWER DISTRICT NO. 3 – SOUTHWEST

WHEREAS, on November 17, 2014, this Agency adopted Resolution No. 42-2014, authorizing the connection of Highland Green Residences to Suffolk County Sewer District No. 3 - Southwest, and

WHEREAS, Resolution No. 42-2014, granted one year for completion of the Agreement, but the year has passed without the completion of the Agreement, and

WHEREAS, negotiations concerning such an agreement are incomplete, and a proposed agreement is being prepared, and

WHEREAS, the developer of Highland Green Residences has requested an extension of the authorization granted in Resolution No. 42-2014,

NOW, THEREFORE, IT IS

1st RESOLVED, that Resolution No. 42-2014, adopted by this Agency on November 17, 2014, is hereby renewed, and it is further

2nd RESOLVED, that this resolution shall become null and void, and of no further force or effect, without any further action by this Agency or notice to the developer, if, within one (1) year from the date of the adoption hereof, an agreement in furtherance of the authorization granted herein, in form and content satisfactory to the Chairman of this Agency, has not been negotiated and fully executed by all parties thereto.

(Suffolk County Sewer Agency Meeting March 21, 2016)

Mr. Donovan mentioned that this project was formerly known as Crescent Club Apartments, LLC and is an existing 257 rental unit Apartment subdivision situated on 36± acres located in Coram. The project is expected to generate Forty One Thousand Six Hundred Seventy gallons per day (41,670 GPD) of wastewater and the owner proposes to connect to SCSD #11 – Selden. The owners request a time extension to complete the connection agreement.

Staff recommends granting the Time Extension to complete the connection agreement for connection to SCSD #11-Selden.

Commissioner Anderson asked if there was a representative present and Mr. Tom Lembo, the engineer for the Fairfield Coram project said that he was. Mr. Lembo introduced Mr. Steve Laverty, the representative of Fairfield Properties and Steve Losquadro, the attorney for Fairfield. He said that Fairfield purchased this property in October last year. He added that his client asked for a time extension and would like to complete the agreement within three months. He said that the old secondary treatment plant is currently failing and his client would like to have the agreement done quickly to get the secondary plant out of service.

Commissioner Anderson asked if there were any questions or comments and, seeing none, he made a motion to approve the resolution; the motion was seconded by Ms. Adhya and approved unanimously.

SUFFOLK COUNTY SEWER AGENCY

RESOLUTION NO. 11 - 2016

AUTHORIZING AN EXTENSION OF TIME FOR THE FAIFIELD CORAM APARTMENTS (BR-1655) TO CONNECT TO SUFFOLK COUNTY SEWER DISTRICT NO. 11 – SELDEN

WHEREAS, on February 10, 2014, this Agency adopted Resolution No. 1-2014, authorizing the connection of Fairfield Coram Apartments (formerly known as Crescent Club Apartments LLC) to Suffolk County Sewer District No. 11- Selden, and

WHEREAS, on March 23, 2015, this Agency adopted Resolution No. 21-2015, granting a one-year extension for the connection of Fairfield Coram Apartments to Suffolk County Sewer District No. 11 - Selden, and

WHEREAS, Resolution No. 21-2015, will expire on March 23, 2016 without the completion of the Agreement, and

WHEREAS, negotiations concerning such an agreement are incomplete, and a proposed agreement is being prepared, and

WHEREAS, the owners of Fairfield Coram Apartments has requested an extension of the authorization granted in Resolution No. 1-2014,

NOW, THEREFORE, IT IS

1st RESOLVED, that Resolution No. 1-2014, adopted by this Agency on February 10, 2014, is hereby renewed, and it is further

2nd RESOLVED, that this resolution shall become null and void, and of no further force or effect, without any further action by this Agency or notice to the developer, if, within one (1) year from the date of the adoption hereof, an agreement in furtherance of the authorization granted herein, in form and content satisfactory to the Chairman of this Agency, has not been negotiated and fully executed by all parties thereto.

(Suffolk County Sewer Agency Meeting March 21, 2016)

311 MERRITT AVENUE WYANDANCH**BA-1477.1-005**

Mr. Donovan mentioned that this project is a reconstructed building situated on 0.11± acres on Merritt Avenue in Wyandanch within the Wyandanch Rising revitalization area. The project is within the Town of Babylon, revitalization project area (Area A) and the owner requests a Time Extension to complete the connection agreement. The capacity continues to be available in the Sewer District #3 – Southwest and the Staff recommends granting the Time Extension to complete the connection agreement.

The applicant's representative was not in attendance.

Mr. Braun said that that he was working with the applicant's attorney and the agreement was not far from being completed. Ms. Adhya asked if the applicant was expanding the building since if that were the case, it would need to be reviewed by the Health Department. Mr. Braun clarified that this was just an extension and when the project had been originally approved, the Health Department representative did not have any objections with moving forward.

Commissioner Anderson asked if there were any questions or comments and seeing none, Ms. Broughton made a motion to approve the resolution; the motion was seconded by Commissioner Anderson and approved unanimously.

SUFFOLK COUNTY SEWER AGENCY

RESOLUTION NO. 12 - 2016 AUTHORIZING AN EXTENSION OF TIME FOR THE CONNECTION OF 311 MERRITT AVENUE WYANDANCH (BA-1477.1-005) TO SUFFOLK COUNTY SEWER DISTRICT NO. 3 - SOUTHWEST

WHEREAS, on August 19, 2013, this Agency adopted Resolution No. 25-2013, authorizing the connection of 311 Merritt Avenue Wyandanch to SCSD No. 3 - Southwest, and

WHEREAS, on November 17, 2014, this Agency adopted Resolution No. 46-2015, authorizing a one-year extension for the connection of 311 Merritt Avenue Wyandanch to SCSD No. 3 - Southwest, and

WHEREAS, Agency Resolution No. 46-2014, granted one year for completion of the Agreement, however, the resolution expired on November 17, 2015, without the completion of the Agreement, and

WHEREAS, the Owner of 311 Merritt Avenue Wyandanch has requested an extension of the authorization granted in Resolution No. 25-2013, and

NOW, THEREFORE, IT IS

1st RESOLVED, that Resolution No. 25-2013, adopted by this Agency on August 19, 2013, is hereby renewed, and it is further

2nd RESOLVED, that this resolution shall become null and void, and of no further force or effect, without any further action by this Agency or notice to the developer, if, within one (1) year from the date of the adoption hereof, an agreement in furtherance of the authorization granted herein, in form and content satisfactory to the Chairman of this Agency, has not been negotiated and fully executed by all parties thereto.

(Suffolk County Sewer Agency Meeting – March 21, 2016)

Mr. Donovan mentioned that this project is an existing/proposed 492,708 Sq. Ft. Commercial Office Complex subdivision situated on 41± acres located on the south side of Sunrise Highway east of Connetquot Avenue in Great River. The estimated flow from this project is 34,000 GPD, for which the developer requests a Fifth (5th) Time Extension to complete the Connection Agreement to SCSD No. 3 – Southwest via a pump station.

The District's STP continues to have sufficient excess treatment capacity to accommodate this project. Staff recommends granting the Time Extension request.

Mr. Braun said that this agreement was signed after the Agency received a request for extension. The Agency can still review the request for extension. Commissioner Anderson asked if there was a representative present and Chris Robinson, P.E., the engineer for 3500 Sunrise Highway, mentioned that he was. He said that he agreed with Mr. Braun's description. The agreement was essentially signed after the submittal of request for extension.

Commissioner Anderson asked if there were any questions or comments and, seeing none, he made a motion to approve the resolution; the motion was seconded by Ms. Broughton and approved unanimously.

Commissioner Anderson said that that was the conclusion of the regular business of the Sewer Agency and that the Agency would resume the public hearing.

SUFFOLK COUNTY SEWER AGENCY

RESOLUTION NO. 13 - 2016 AUTHORIZING AN EXTENSION OF TIME FOR THE CONNECTION OF 3500 SUNRISE HIGHWAY (IS 1432.2) TO SUFFOLK COUNTY SEWER DISTRICT NO. 3 - SOUTHWEST

WHEREAS, on September 20, 2010, this Agency adopted Resolution No. 21-2010, authorizing the connection of 3500 Sunrise Highway to SCSD #3 - Southwest, and

WHEREAS, on December 19, 2011, this Agency adopted Resolution No. 30-2011, on February 25, 2013 adopted Resolution 8-2013, on February 10, 2014 adopted Resolution 9-2014, and on May 18, 2015 adopted Resolution 24-2015, each granting one year time extensions to complete the agreement, and

WHEREAS, Agency Resolution No. 24-2015, granted a one year time extension for completion of the Agreement, however, the resolution will expire on May 18, 2016, and

WHEREAS, the developer of 3500 Sunrise Highway has requested an additional extension of the authorization granted in Resolution No. 21-2010, and

NOW, THEREFORE, IT IS

1st RESOLVED, that Resolution No. 21-2010, adopted by this Agency on September 20, 2010, is hereby renewed, and it is further

2nd RESOLVED, that this resolution shall become null and void, and of no further force or effect, without any further action by this Agency or notice to the developer, if, within one (1) year from the date of the adoption hereof, an agreement in furtherance of the authorization granted herein, in form and content satisfactory to the Chairman of this Agency, has not been negotiated and fully executed by all parties thereto.

(Suffolk County Sewer Agency Meeting – March 21, 2016)

IV. Public Hearing – Rate Petition filed by Greens at Half Hollow LLC (HU-1194; continued)

Mr. Widger said that it was critical that the County had all the information to set the rates. The allocation of officers' time through assignment of value does not do it. It's not the method of making the decision. He added that his next point was that rate payment was prospective and not retroactive, The ratepayers need to know future expenses. Increasing sewer rates by over 100% based on past charges in order to collect them from the customers is not just and reasonable. There is no ability to tell whether a lot of past costs presented by the applicant really related to business. The applicant's approach was 'let's spend now and recover it later.' The applicant could have come in and reset the rates a long time ago on a prospective basis.

Mr. Widger then described deferral and recovery – a practice of looking at past expenses and determining if they can be incorporated in future rates and perhaps billing the customer as a surcharge. Mr. Widger said this was truly a rare exception to prospective rate making. He said that PSC had very strict criteria for when that practice was appropriate: 1) costs have to be incremental to what was included in the rates; 2) costs have to be material, defined as more than 5% of net income; second half of this criterion is that costs have to be extraordinary – defined by PSC as something beyond ordinary in terms of both its nature and amount. He added that legal expenses were something the utilities routinely expected to project and include. Any additional legal expenses should be reported or planned or alternatively considered for whether these expenses should have been incurred in the first place. Based on the amount of expenses spent on litigation, their nature would not be considered extraordinary; 3) Third criteria – the company has to be in the situation of not earning the adequate return on equity. In this case, there should be no return, since the capital cost of building the system is presumably recovered by the sale of the units at the time the system started out,. There is no rate base so to speak; it has already been paid for. Therefore, PSC would be looking into whether the company is overearning an allowed return, since the capital cost here has been recovered, the return on zero should be zero. Looking at the total amount here that G@HH benefitted from based on excess charges and interest rate, that dwarfs any amount the applicant is trying the recover – this means that the application will fail.

Mr. Widger said that the amortization period of three years made no sense. With the proposed 100 percent rate increase, customer impact is the key in this case when PSC looks at it. This is clearly 'beating up' on the customer. It is not unusual for the PSC customers to have a ten year period of amortization.

Mr. Widger further commented on the rate of return. He said that we were not dealing with the investment in the plant even for which the 11% return on investment in his opinion should have been below 9% somewhere; the same policy did not require granting that rate of return on the amount owed. In this case, the rate should be an equivalent of what PSC uses for the rate for customer deposits and currently it is 0.85%, which is more reflective of current interest rates, rather than applicant's claim that the amount here are investments in utility capital which by the way has risk associated with that. When we have a defined amount of

money waiting to be returned if it is basically a commercial loan and in case of the applicant, it should be much closer to PSC rate.

Mr. Widger said that as far as allocation of officers' time, since the applicant had failed to meet the criteria for deferral and recovery, they should not be getting anything. On expenditures, they have not met the burden of proof and proved the prudence of expenses. The nature of expenses is in question and there is no justification for this kind of overspending on these matters. Looking at legal costs allowed by PSC in typical deferral petitions, a good example is major rate proceedings by the Central Hudson Gas & Electric. Their rate increase was tens of millions of dollars spread over a three year period, but their percentage of increment to customers as a result of amortization was fraction of 0.1% while here we have 114 or 115% the way the applicant would have it amortized which out of whack. Mr. Widger concluded by stating that, based on his experience with PSC and other regulatory bodies, he could say with a high degree of confidence that the application would be denied or dismissed.

Commissioner Anderson invited Mr. Hamburger to testify. Mr. Hamburger said that he wanted to remind the Agency how it had all started. In 2010-11, the HOA was concerned that they were being overcharged and the HOA came to the Agency and spoke with Mr. Donovan and it appeared that they were being overcharged. The HOA filed a law suit in 2011 alleging that Suffolk County never approved the existing rate and they believed they had been overcharged. G@HH dragged its feet on providing their expense information for 15 months so the County would not set the rate and after 15 months when the books were closed on the information provided to the County, the County reduced the rate by 53% by looking at O&M costs.

Legislator Krupski asked how long the G@HH was in business before the rate was set.

The Greens, as an HOA, was controlled by the developer until December 2009. The developer controlled the Board until the last unit was sold in 2009. In 2010 or early 2011, the HOA came to the County and raised an issue of being overcharged. From 2005 to 2009, the developer was paying the rate himself. So after 15 months the rate was set 53% lower. That was the only lawsuit filed by HOA. Mr. Hamburger said that Mr. Natoli had testified that all the lawsuits brought by G@HH were defensive litigation, which in Mr. Hamburger's view was not true. He said that G@HH's first position was to oppose the regulatory authority of the County, claiming that the STP agreement did not apply and County had no jurisdiction. Lawsuit resulted in the County setting the rate, which was proper to do. To this date, G@HH doesn't quarrel with the rate. This application is based on huge legal fees of \$1.4 million and to build a reserve which G@HH is required to have, but does not.. The reserve was never there. The G@HH overearned \$2.2 million according to the determination made by County. This is a huge consideration for PSC when in the period prior to the application there was a huge over-collection situation. The second lawsuit filed in 2013 challenged the rate set by the County and County's jurisdiction. The case was dismissed by Judge Pines on statute of limitation grounds and now it's pending appeal. What was the benefit to customers? Challenging County set rate and jurisdiction was not a defensive litigation. The third lawsuit, recently filed, was an attempt without any basis of law, to stop the permissive referendum from going forward. The law allows a referendum on the

formation of a sewer district if a certain number of residents in the proposed district ask for it. The lawsuit to challenge the referendum was dismissed; the G@HH went to the Appellate Division and the dismissal was affirmed and they now ask that their expenses in bringing that lawsuit be reimbursed. This was not a defensive litigation. The G@HH also paid for legal expenses of the resident who was the relative of Mr. Mohr because G@HH had no legal standing to bring the lawsuit, so they paid for legal expenses of a friendly resident.

Mr. Hamburger said that he had no idea how much money was spent on each law suit and what it has been spent for. He said that Suffolk County had been very cooperative in providing the data through FOIL request but the data provided had been as Mr. Widger described it "data dump." It was not clear what lawyer worked on which case and what exactly they did and it was not the HOA or the County's responsibility to do. If G@HH was looking for reimbursement; it was their obligation of being very clear on what they have been asked for. Looked at the billing rates, there are 15 lawyers for which G@HH is seeking reimbursement. That includes \$375/hour billing rate for the attorney admitted to the Bar in 2014 -- Alana Cohen; \$275/hour for a law student and \$650/hour for Mr. Schlesinger who never appeared in any of the papers. Mr. Hamburger said that these were 15 lawyers at extraordinary high rates, not even close to HOA charges for the STP litigation. We had several litigations with the sponsor and the charges were 20-25% of \$1.4 million that G@HH is claiming. These kind of legal fees not spent for the benefit of ratepayers -- 15 lawyers on three cases -- G@HH should not get a dollar for these things. On hourly rate, HOA paper cites reasonable rates for attorneys in the Eastern District Court of NY, in the context of fee shifting there are not on order of reasonable rates of \$650/hour for a partner. The highest rates are \$450/hour for partner and they would never approve the kind of rates the applicant is asking for reimbursement for senior and junior associates These rates are extremely excessive.

Mr. Hamburger said that the time allegedly spent on litigation was not substantiated in any paperwork HOA had seen; HOA had not seen the time sheets, W-2 or K-1 forms or the verifiable support. He added that Mr. Natoli said it was all on the tax returns and approved by CPA; HOA did not see any of this information submitted to the County and CPA does not authorize that. While HOA did not deny that the time was valuable, the reimbursement is based on cost not value; the cost of litigation that should not have been defended in the first case or brought up in the second and third case is unreasonable. Second point, if the hourly rates are not substantiated, lobbying and legislation activities are not permitted, this was the third lawsuit. These law suits were against the rate payers. All HOA was trying to establish was that the County sets the rate and we live by the rate set up by the County.

No actual cost was demonstrated as being incurred and there were series of operator invoices and emails disproving Russell Mohr's time that G@HH claimed. With regard to the Golf Club employees -- this is a private golf club, an 84 acre golf course. The time of the Golf Club employees allegedly spent is not substantiated. Severn Trent invoices disprove that the Gulf Club employees time was spent on STP operation, sanitation removal, manhole, sanitary drains, leaching fields, etc., because it is all in Severn Trent's contract. If Severn Trent is doing it, why are private golf club employees also doing it and there is no substantiation, no documentation that they did anything. The County previously rejected this very same request to include Golf Club employees when they set the rate in 2012.

Mr. Hamburger said that Mr. Natoli asked for a three years amortization because there was an issue about collection. There was no such issue. The Greens HOA and 1,184 units and 2,000 residents who live there and the Country Pointe and the Sagamore Children Hospital residents; the ratepayers are not going anywhere. If the expenses were included in a five year or ten year rate, they would be reimbursed. From Mr. Hamburger's perspective, these legal expenses were outrageous not comparable and not defensive. The applicant is asking for \$165,000 in indirect costs; this amount is large compared to direct cost. Mr. Hamburger said that Mr. Natoli testified that the County would determine that the rate without legal fees and allocated labor expenses would have been \$438/SFE Mr. Donovan submitted an affidavit showing that that amount was \$312/SFE; that amount was correct at the time and is correct today.

On Transportation Corporation Law (TCL) Judge Pines held that the HOA had standing to bring the lawsuit to get rates set by the County based upon STP agreement and the TCL. She did not find that the TCL applied to all determinations to be made. The Attorney General, representing OPWDD in the opinion letter already opined that TCL does not apply, because G@HH was not a sewage works corporation established under TCL. G@HH chose to establish as LLC not as a TCL. The Town is in agreement that TCL does not apply; G@HH does not have the benefit of TCL provisions.

Mr. Hamburger closed by saying that HOA had been very frustrated so as the County – the G@HH application were just numbers thrown out -- \$1.4 million In legal expenses they could not confirm, etc. He said that he relied upon the County to address items which should legitimately be included in the rate -- security, the telephone, the utilities that were legitimate operating cost. G@HH have had the opportunity to come to the County for the rate increase since October 2012 when the rate was set and were invited to do so. They chose instead to litigate for five years challenging the authority of the Agency and want the legal fees to be paid by ratepayers. Makes no sense.

Commissioner Anderson introduced Mr. Russel Mohr with G@HH and asked if it was a rebuttal to please keep it brief, no more than five minutes.

Mr. Mohr said that it had never been the intention of the G@HH to run the plant indefinitely. Particularly, when in 2012 the rate was reduced by 53%, G@HH felt what was reasonable to do was to come to the County to dedicate the plant. G@HH emailed to Mr. Braun the spreadsheets broken down by attorney by case. After 2012, G@HH went through the effort to form the district and did everything they had been asked to do. The only case was not brought about as a result of HOA actions to challenge the rate was legal challenge under the election law because G@HH knew there was no law with regards to the Sewer Agency and the referendum; it only falls under the election law.

Mr. Mohr said that the 2012 rate case had been set at \$270; he questioned the \$312 number. Mr. Mohr said that going back to 2011, there was no communication between DPW and G@HH in setting the rate. G@HH found out later through the FOIL request, of a spreadsheet without any title or date on it of how DPW came up with their own allocation of cost. G@HH provided the bulk of documentation on the proportionate share of Golf Club

employees, their salaries, equipment to maintain etc. The efforts of County taking over the sewer plant was thwarted by HOA. In 2016, three years later, HOA does not want \$479 from the County nor \$438 from G@HH; they just want G@HH to absorb those costs. G@HH is a small private operator and thus allocates cost; G@HH did so since 2003, unless County takes it over. G@HH made an effort and now are stuck in the middle. HOA does not want to pay \$479 and they don't want the rate increase. There have to be some give.

The next speaker, Ms. Denise Coyle said that G@HH had entered into this agreement in good faith with the County and had never anticipated to be in that business forever. If G@HH allocated their expenses they incurred 10 years going forward, to allocate expenses there would be nothing to subsidize the plant and it was always anticipated that the revenues will cover the costs until the County takes it over. Ms. Coyle wanted G@HH to get out of the STP business and tried to follow what was in the agreement to create an STP business. As far as the required referendum because the Election Law covers it. Every resident of Greens has in their deeds an agreement giving irrevocable consent for creation of the SD so Ms. Coyle disagreed with the HOA statement that they knew it was a frivolous lawsuit. The residents already gave their consent.

Ms. Coyle said that every lawsuit had a valid, legitimate reason and therefore the money that the HOA points out to over \$1 million is the amount of money that should be recouped. G@HH came to the hearing to ask the Agency to please do the right thing contrary to the outrageous statement about "document dump." All the records to back up the expenses were not only submitted a month ago, the G@HH also offered to sit down and go over them with everyone – something they never got an opportunity to do in 2012. Ms. Coyle concluded by saying that G@HH was asking the Agency to give G@HH a fair shot of review the rate increase so they can continue to operate until apparently the courts decides if this agreement without end date were a valid agreement.

Next speaker, Mr. Natoli said that Mr. Widger testified that lobbying expenses were not allowed. Mr. Natoli said that the expenses particularly incurred by the executive team were not lobbying expenses. On rate of return on amortization, PSC always allows the full rate of return on amortization. Mr. Natoli added that in this case the amortization was far much more important than for the large utility. Central Hudson utility had a huge rate base and huge net income. There was essentially no net income in case of G@HH. It's important that the utility could recoup at the full rate. Even if the percentage is high, there is no cushion in this case to absorb, particularly in respect to amortization. As Ms. Coyle said, G@HH hopes not to be in this business for 10 years. If the plant is allowed to be transferred to the County, the expectation of that to happen in three years is perfectly reasonable. There were no documents that there was an overcharge in 2012. There is a doctrine that the rate in effect is in effect. The key is the customers knew their rate when they purchased the property that the rate stayed in effect until 2012. G@HH says that the rate is still in effect. I can think of a single instance when PSC sets the rate of return for a small company that is less than 10.5%, almost inevitably its 11%

Mr. Mohr added that Mr Hamburger had stated that G@HH had to inform DPW and review of the rate. G@HH was told by DPW representatives and Mr. Braun that G@HH was only supposed to inform the County if the rate is challenged.

Mr. Natoli said that his final point was that the litigation rates paid were competitive. G@HH did not see Mr. Hamburger's rate, Mr. Widger's rate or Mr. Yaffe's rate.

Mr. Mohr said that G@HH had been told that they could not come in advance; they needed to actually spend the money first to get reimbursed in the rate the following year.

Mr. Hamburger asked for permission to provide a quick response which was granted by Commissioner Anderson. He said that his billing rate was \$360/hour since Mr. Natoli had asked about it. He added that G@HH had been happy to continue to own and operate the plant when they were making money and it was a huge cash cow. Only when DPW looked at G@HH costs and brought the rate down in 2012 because HOA held them accountable to what was in STP agreement. Mr. Hamburger said that he had no issue with rate increase if this was based on O&M, insurance goes up, sludge cost goes up, labor cost goes up; they are entitled to that. He said that the resident's lawsuit regarding the credendum was frivolous; covenant issue was a side show and there were a lot of ratepayers who had not signed the covenants because there were non-resident connectees, other than the Greens and there were renters. G@HH had an opportunity in 2012 to provide the County with the data for 15 months to justify their costs and then the County made a determination. \$479 that the County was going to charge included the spread cost about 25% that added to the actual cost to support the sewer stabilization fund for the benefit all residents of the Suffolk County. \$312 number was without spread cost. He said that G@HH was in the situation of their own doing; HOA offered them repeatedly to take the plant on the same terms and conditions they offered it to the County. He concluded by saying that what was before the Board, was the application for rate increase that should meet the burden of proof and link all the bills to all the standard Mr. Widger had talked about. They have not met that burden.

Mr. Rukovets mentioned that on March 18th, the OPWDD attorney Susan Milstein submitted written testimony in lieu of oral testimony as part of the record for the Public Hearing.

Commissioner Anderson asked if anyone else wanted to speak. Seeing no further comments and no further business, Commissioner Anderson made a motion to adjourn the meeting. The motion was seconded by Ms. Lansdale and approved unanimously at 12:08 pm.

Respectfully submitted,



Boris Rukovets, P.E.
Secretary, SCSA

Note: These minutes represent the recorder's understanding of the issues discussed. Please report any discrepancies to the recorder within seven days of distribution for discussion at the next available Agency meeting or move to amend the meeting's minutes at the next meeting.

Sign-in

March 21, 2016

Suffolk County Sewer Agency
SCDPW - Sanitation - Engineering

No.	Name	Firm/Company	Project	Email Address (copy of minutes)
1	Russell Moran	Greens at Half Hollow	Greens	R Moran @ Benjamin W Devo Co. Com
2	Dennis Coyle	"	"	Dcoyle @ Benjamin W Devo Co. Com
3	Danielle Rizzo	"	"	DRizzo @ Benjamin W Devo Co. Com
4	MATTHEW SCHEINER	CHIARELLI ENG.	COUNTRY PT. @ SM.	mscheiner @ mpcengineer. com
5	Albert A. Natoli	Albert A. Natoli Esq.	Greens	alnatoli @ pipeline. com
6	Danielle Rizzo	Greens@HalfHollow	Greens	DRizzo @ benjamindevo. com
7	Richard Hamburger	Hamburger Maxson	Greens	richamburger @ hmylaw. com
8	Fred Werfel	Greens HOA	Greens	fwerfel @ optonline. net
9	Mike Stone	Greens HOA	Greens	mstmktg @ optonline. net
10	HERB SCHOLENFELD	GREENS HOA	GREENS - SEWER RATE	HERB@FSMG@YAHOO. COM
11	Stanley W. Widger, Jr.	Nixon Peabody LLP	Greens	swidger @ nixonpeabody. com
12	David N. Yaffe	Hamburger Maxson	GREENS	dyaffe @ hmylaw. com
13	Chris Robinson	RMS ENGINEERING	3500 SURPRISE	CWR@RMSENGINEERING. COM
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19	Kathleen Deegan Dickson	Forchelli Curto Highland Greens	Highland Greens	kdickson @ forchelli. law. com
20				

If you are not a project representative but would like to address the Sewer Agency, please fill out an index card.