

READINGTON TOWNSHIP SEWER ADVISORY COMMITTEE
MEETING – SEPTEMBER 30, 2015

The meeting was called *to order at 6:30 p.m.* announcing that all laws governing the Open Public Meetings Act have been met and that this meeting has been duly advertised.

PRESENT: Chairman Ron Monaco, Mrs. J. Allen, Mr. W. Meglaughlin

ALSO PRESENT: Attorney S. Dragan, Engineer Robert O'Brien, Secretary Karin Parker

ABSENT: None

APPROVAL OF THE MINUTES of meeting of July 21, 2015

A **MOTION** was made by Mrs. Allen to approve the minutes of the July 21, 2015 meeting, seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

Chairman Monaco stated that the purpose of this meeting was to memorialize those actions made by the Sewer Advisory Committee at the meeting of July 21, 2015. Chairman Monaco reiterated that the Sewer Advisory Committee is acting under a court order to do this work and read the criteria for determination as established by the NJ Supreme Court.

NEW BUSINESS

1. ***Township of Readington Sewer Advisory Committee Recommendation RE: Block 28, Lot 13.01 / Zacios – Kline Blvd***

The following recommendation was offered for consideration:

***TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 28, LOT 13.01
ZACIOS - KLINE BLVD***

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

Recommendation (Zacios) cont'd:

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township's sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner's development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, the Township Committee received a letter and completed questionnaire in response to the Township's June 11, 2015 notification letter from JoAnn and Wladyslaw Zacios ("Zacios"), dated June 18, 2015. Mr. and Mrs. Zacios own a vacant, single family building lot consisting of 3.07 +/- acres known as Block 28, Lot 13.01, located off Kline Boulevard in the Township and were made defendants in the Litigation. Their letter and completed questionnaire were forwarded to the Sewer Advisory Committee for initial review; and

Recommendation (Zacios) cont'd:

WHEREAS, in addition to the submission made by Zacios, Mr. Zacios appeared at the meeting to present his case before the Sewer Advisory Committee; and

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. Zacios received subdivision and variance approval from the Readington Township Planning Board to subdivide Lot 13.01 from Block 28, Lot 13 which also bordered Pulaski Road and contained an existing single family residence which had a failing septic system. No sewers were available from Pulaski Road at the time. According to the Planning Board minutes of January 16, 1985, the Township Committee gave Zacios approval to run a sewer line from Kline Boulevard to serve the existing house on Block 28, Lot 13, which was done and the house connected. Block 28, Lot 13.01 was also created by deed after the minor subdivision was approved. The sewer system hook-up and minor subdivision approval predated the Township's efforts to expand the sewerage treatment plant. At the time subdivision approval was granted in 1985, it was contemplated that Block 28, Lot 13.01 would also hook into the existing sewer line, but no residence was constructed. In 2004, Zacios approached the Sewer Advisory Committee to confirm that the gallonage for Lot 13.01 (350 gpd) was still available for the property, because he intended to start construction. At that time, Sewer Advisory Committee (on June 28, 2004) and the Township Committee (at a regular meeting held on July 6, 2004) confirmed the allocation.

2. Zacios has not constructed a residence on Block 28, Lot 13.01 since the approvals were granted in 1985. Zacios stated that despite that, he has been paying taxes on the property as a building lot since that time and that all utilities (power, gas, sewer line) except water have been installed. After the Sewer Advisory Committee meeting on July 21, 2015, the Zoning Officer was consulted and he advised that the property is split zoned between Village Residential and Rural Residential, but that it remains a buildable lot within the Township.

3. Block 28, Lot 13.01 is probably not protected by the Permit Extension Act; however, it remains buildable under the Township's land use ordinances and the owner has been paying taxes on it as a building lot for at least 30 years.

4. When asked, Zacios stated that he intends to build a house on the property or sell it within the next two years due to personal reasons. Zacios stated that he attended the Court sessions on the litigation which precipitated this review and that both the judge and the plaintiff's attorney told him that he did not need to be a defendant in the case and plaintiff's attorney told

Recommendation (Zacios) cont'd:

him he would remove him as a defendant.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. For the reasons set forth above, specifically, that Block 28, Lot 13.01 remains a buildable lot within the VR/RR zone, has the infrastructure already installed or available to build a single family house upon it and has been taxed and paid for as such for the past 30 years, and, further, that the owners have indicated that they intend to build a house upon or sell the property within the next two years and further, that 350 gpd sewerage capacity is the amount required by ordinance to serve one single family residential unit, the Committee agrees that the full amount of capacity allocated (350 gpd) will be utilized and does not recommend returning any of the sewerage capacity which was allocated for the property to the Township.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A MOTION was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

2. Township of Readington Sewer Advisory Committee Recommendation RE: Block 32, Lot 9 / John and Jacqueline Cunha

The following recommendation was offered for consideration:

***TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 32, LOT 9
JOHN AND JACQUELINE CUNHA***

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by

Recommendation (Cunha) cont'd:

a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township's sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner's development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, the Township Committee, in response to its request of June 11, 2015, received a completed questionnaire from John and Jacqueline Cunha , husband and wife, owners of Block 32, Lot 9 which submission was forwarded to the Sewer Advisory Committee for initial review; and

Recommendation (Cunha) cont'd:

WHEREAS, upon information and belief, John and Jacqueline Cunha are successors in title and interest to Coddington Homes Co., Inc. and Betty Ann Coebler, who were both named defendants in the above-captioned litigation; and

WHEREAS, in addition to the submission made by submitted by the Cunhas, the Sewer Advisory Committee is familiar with sewer allocation it previously granted for the property and the status of the development project approved thereon; and

WHEREAS, Mr. John Cunha appeared before the Sewer Advisory Committee on July 21, 2015 on behalf of himself and his wife.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. According to Township records, Coddington Homes Co., Inc., (“Coddington”) was originally allocated 900 gpd sewerage capacity for Block 32, Lot 9 conditioned on developing the property strictly for residential use with 50% of the units being restricted for affordable housing. However, Coddington never paid for the capacity, entered into an agreement for it nor did it develop the property for the stated purpose. The Cunhas purchased the property in July 2012 and approached the Sewer Advisory Committee and Township Committee for a sewerage allocation for various purposes between then and 2014. Ultimately they requested, and were granted, an allocation of 350 gpd for the construction of a single family residence (market rate unit, not affordable) on the property by the Township Committee on September 15, 2014, after land use ordinance amendments were adopted to rectify a split zoning issue on the lot. They entered into a Sewer Plant Expansion Contribution and Allocation Agreement which was recently and finally signed by all parties on May 22, 2015. Cunha paid \$6,590.00 for the capacity and has also paid the initial 1/3 user charge to reserve the capacity (\$146.66). The aforementioned Sewer Agreement allows the owners five (5) years from May 22, 2015 to hook into the sewerage system.

2. At the meeting, Mr. Cunha stated that he received a zoning permit on August 15, 2014, that he was in the process of getting house plans together with an architect and that he hoped to have building permits applied for prior to the end of this year.

Recommendation (Cunha) cont’d:

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. For the reasons set forth above and due to the recent approval of the 350 gpd allocation and sewer contribution and allocation agreement made between Cunha and Readington Township and Cunha's expressed intention to move forward with construction plans prior to the end of this year and the fact that the aforesaid sewer agreement specifies a performance date which does not expire until 2020, the Committee agrees that the full amount of capacity allocated (350 gpd) will be utilized and does not recommend returning any of the sewerage capacity which was allocated for, and is the amount necessary to serve, a single family house on Block 32, Lot 9 to the Township.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A ***MOTION*** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

3. Township of Readington Sewer Advisory Committee Recommendation RE: Block 14, Lots 29.02 and 29.03 / Ryland Developers, LLC

The following recommendation was offered for consideration:

***TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 14, LOTS 29.02 and 29.03
RYLAND DEVELOPERS, LLC***

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as "the Litigation") and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

Recommendation (Ryland Developers, LLC) cont'd:

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township's sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner's development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, in response to its request and questionnaire, the Township Committee received a letter and submission from Alexander Fisher, Esq. dated June 29, 2015 on behalf of Ryland Developers, LLC, which was a named defendant in the Litigation, with respect to property known as Block 14, Lots 29 and 29.01, which letter and submission was forwarded to the Sewer Advisory Committee for initial review; and

Recommendation (Ryland Developers, LLC) cont'd:

WHEREAS, Mr. Fisher appeared at the July 21, 2015 on behalf of Ryland Developers, LLC to present the case on its behalf; and

WHEREAS, in addition to the submission received from Mr. Fisher, the Sewer Advisory Committee has researched the history of the allocation further to enable it to make a complete and consistent finding with which to make a recommendation to the Township.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. Ryland Developers, LLC (“Ryland Developers”) holds a total sewer allocation of 30,125 gpd capacity in connection with property it owns known as Block 14, Lots 29.02 and 29.03 in the Township of Readington. This allocation stems from previous sewer agreements made between the Township of Readington and previous title holders, Ferber Properties II dated November 4, 1988 for a possible total of 56,450 gpd , but ultimately 12,375 gpd**, and Ry-Sew, Inc. dated December 27, 1991 for 30,000 gpd covering Block 14, Lots 29.02 and 29.03, as well as other properties. These sewer allocation agreements pre-date the expansion of the Township’s sewerage treatment plant. Ferber Properties, II obtained approvals for office buildings totaling 301,250 sq. ft. to be built on Block 14, Lots 29.02 and 29.03 on or about 1989 and then received CP-1 sewer treatment works endorsements for those lots and Block 14, Lot 29 (the Ryland Inn) from the Township Committee in May of 1993, but did not proceed with office building development on either Lots 29.02 or 29.03. Thereafter, Ryland Office Park, LLC (a successor in interest to Ferber Properties, II) attempted to assign the amount of 35,251 gpd of capacity to Sandra B. Maxwell, William H. Black, Jr. and Phyllis R. Black (then owners of Block 14, Lots 29.02 and 29.03) without first obtaining Township approval. After analysis and review, the Readington Township Committee, adopted Resolution 2001-110 and amended Resolution 2003-29 approving and endorsing the assignment of a total of 30,125 gpd sewer capacity for use on Lots 29.02 and 29.03 “in accordance with the existing zoning that exists on the property to the contract purchasers of the property from said Sandra B. Maxwell, William H. Black, Jr. and

** The sewer agreement and a developer agreement made between Readington Township and Ferber Properties II on 11/4/88 provides for additional allocations to the property in the amount of 4,200 gpd (subject to payment) and 40,000 gpd to come from the Township’s sewer plant, but neither Ferber Properties II nor Ry-Sew ever pursued the 40,000 gpd allocation and it was also

Recommendation (Ryland Developers, LLC) cont’d:

determined, after analysis done in 2007, that of the 4,200 gpd allocation, only 125 gpd was ever paid for, so the allocation was effectively reduced to 12,375 gpd.

Phyllis R. Black at the appropriate time”. Thereafter, Maxwell and Black contracted to sell the property to Ryland Developers, LLC (“Ryland Developers”) entered into an Assignment and Assumption Agreement for the same capacity which was approved by the Township Committee on November 21, 2005 with in 2005.

2. According to the information provided by and presented by Mr. Fisher, since its purchase of the property in 2005, Ryland Developers, LLC attempted to present the Township with several alternative proposals to develop the site, while maintaining that the original office building approvals are protected by the Permit Extension Act. In 2009, several years after Ryland Developers’ 2005 purchase, the Township re-zoned the property from R-O (Research Office) to V-H (Village Hospitality on Block 14, Lot 29.03) and A-R (Agricultural-Residential on Block 14, Lot 29.02). It also petitioned NJDEP to remove Lot 29.02 from the Sewer Service Area. Consequently, Ryland Developers sued the Township over the re-zoning and removal of Lot 29.02 from the sewer service area in a lawsuit captioned Ryland Developers v. Township of Readington, et al. Docket #HNT-L-496-09. According to Mr. Fisher, the litigation, among other things, claims spot zoning, arbitrary and capricious actions by the Township, inverse condemnation, constitutional violations and Permit Extension Act violations; it has lasted for over six (6) years. However, on the date of the anticipated trial (May 19, 2015) the parties entered into a settlement agreement in principle which was placed on the record and preliminarily approved by Hon. Peter C. Buchsbaum. The settlement agreement, if finalized, will provide for a total of 39 single-family homes, with the remaining land to be dedicated to the municipality as open space and farmland. The Sewer Advisory Committee notes that, if such a settlement were to occur, a good portion of the 30,125 gpd sewerage capacity would not be needed to serve the 39 unit development. However, Mr. Fisher stated that his clients believe that they are not obligated to give up any sewer capacity until the settlement agreement is finalized and fulfilled. Further, even if that is not the case, because the agreement is contingent on many variables, such as an approved concept plan, ordinance change and a final settlement agreement to be approved by both parties, Ryland Developers does not agree to give up any of its capacity at this time.

3. In addition, in further support of the reasons why the 30, 125 gpd allocation should not be disturbed, Mr. Fisher represented that while the aforementioned zoning litigation was pending, his client also filed an application with the Readington Township Board of Adjustment for a 144 senior congregate care unit and 101 assisted living unit senior development on Block 14, Lots

Recommendation (Ryland Developers, LLC) cont’d:

29.02 and 29.03, which application is stayed pending finalization of the settlement and completion of the contingencies. In addition, his client has also proposed to the Township building 160 apartment units on the property with a 20 percent set aside for affordable housing.

If the matter does not settle, Ryland Developers intends to pursue these other avenues and thus make use of its entire sewerage allocation.

4. On behalf of his client, Mr. Fisher contended that the development approvals received for both the office buildings (preliminary and final site plan) on Lots 29.02 and 29.03, as well as the sewer agreement made with the Township, are protected by the Permit Extension Act and its extensions through June, 2016. His submission states that the 1988 and 1989 office complex approvals remain valid because they were captured by the Permit Extension Act as of January 1, 2007 which runs through December 31, 2015 (with permits valid through June 1, 2015). The most recent Permit Extension Act enactment clarified that “approval” among other things, includes “an agreement with a municipality, county, municipal authority, sewerage authority or other governmental authority for use or reservation of sewerage capacity”. The Sewer Advisory Committee accepts this argument.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. For the reasons set forth in the above factual findings, the Sewer Advisory accepts the representations made by Ryland Developers and believes that, due to the uncertain state of the litigation at this time, the length of time the developer has had the sewerage allocation, and the arguments made regarding the applicability of the Permit Extension Act to the sewer agreements and approvals, that it recommends that the full allocation of sewer capacity (30,125 gpd) should remain with Block 14, Lots 29.02 and 29.03 at this time.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A MOTION was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

***4. Township of Readington Sewer Advisory Committee Recommendation RE:
Block 4, Lot 51 / Readington Commons II, LLC***

Attorney Dragan stated that she needed further clarification on a discrepancy between the sewer agreement allocated within terms of square footage and gallonage and what was actually built and opined that further investigation would be required to determine if the square footage can be justified or a return of gallonage would be necessary. Alexander Fisher, Esq., Mauro, Savo, Camerino, Grant and Chalk, on behalf of Ryland Developers, stated that based on the status of the remand from Judge Buchsbaum on the litigation, an alternative course might be to approve the recommendation with the caveat that there has to be an investigation into any discrepancy rather than leave it open ended. Attorney Dragan concurred that with the caveat, language needed to be added that in the event it is discovered that CPI permits did not justify the gallonage for the project, the remainder should be recommended for return to the Township for repurchase.

The following recommendation was offered for consideration:

***TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 4, LOT 51
READINGTON COMMONS II, LC***

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13)(hereinafter referred to as “the Litigation”) and as directed in a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;

Recommendation (Readington Commons II, LLC) cont’d:

- 2) The holders or landowner’s development plans to use some or all of the capacity and the

- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, in response to its request and questionnaire, the Township Committee received a letter and submission from Alexander Fisher, Esq. dated June 29, 2015 on behalf of Readington Commons, LLC, which was a named defendant in the aforementioned case, with respect to property it is developing known as Block 4, Lot 51 (located at 460 Route 22 West) in the Township which letter and submission was forwarded to the Sewer Advisory Committee for initial review; and

WHEREAS, Mr. Fisher appeared at the July 21st meeting, along with Lawrence Gardner and David Gardner, both principals of Readington Commons, LLC, and presented the case on behalf of the developer; and

WHEREAS, Mr. Fisher appeared again at the September 30, 2015 meeting on behalf of his client where further discussions took place based upon additional information found by the Township Attorney; and

Recommendation (Readington Commons II, LLC) cont'd:

WHEREAS, the Sewer Advisory Committee has reviewed the submission made by Mr.

Fisher and is familiar with the circumstances of the sewer allocation previously granted for the property and the status of the development project approved thereon.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. Readington Commons, LLC (“Readington Commons”) holds a total sewer allocation of 7,628 gpd capacity in connection with property it owns known as Block 4, Lot 51 in the Township of Readington. This allocation stems from a Sewer Plant Expansion Contribution Agreement dated March 16, 2000 made between a predecessor entity in interest, Larken Associates, (of which Lawrence Gardiner was managing partner) and Readington Township, as a result of a recommendation made by the Sewer Advisory Committee on August 25, 1999 and subsequent approval by the Township Committee on September 7, 1999. Larken Associates paid its pro-rata share toward the cost of the sewer plant expansion set forth in the agreement (\$143,635.24), as of August 14, 2000. The sewer allocation was for a combined retail building/child care, office and medical use on Block 4, Lot 51 with a total square footage of approximately 70,000 sq. ft. and required that the developer obtain preliminary approval for the project within two years from the date the agreement was signed. Thereafter, the developer made the required applications and by Planning Board resolution memorialized on May 14, 2001, received preliminary major site plan approval for a 48,800 square foot office development to be known as “Readington Commons” consisting of seven (7) buildings and an eighth building of 7,000 sq. feet to serve as a child care center. The project received final major site plan approval by resolution memorialized on December 10, 2001. The Developer signed a development agreement for the project with the Township dated June 3, 2003 and posted performance guarantees to cover the various site improvements and a Mount Laurel fee.

2. Between 2003 and 2011, Readington Commons completed three of the approved office buildings and substantially completed the site infrastructure. Mr. Fisher provided copies of permits, certificates of approval and site pictures with his submission to the Township on behalf of Readington Commons to demonstrate the following progress:

Building #1 - completed and occupied with a Certificate of Occupancy issued on October 10, 2012 and therefore utilizing sewer capacity;

Recommendation (Readington Commons II, LLC) cont’d:

Building #2- foundations, footings and first floor slab completed and connected to sewer;

construction permit was issued for the footing foundation, partial plumbing and partial electric on July 2, 2014.

Building #3- Fully completed and occupied and utilizing sewer capacity; temporary certificate of occupancy issued on August 26, 2014.

Building #4 - Fully completed and occupied, with a Certificate of Occupancy issued on July 1, 2009; therefore using sewerage capacity.

Buildings #5, #6 and #8 - Construction permits were issued July 2, 2014 and footings, foundations, partial plumbing, partial electric and first floor slabs were completed for each building. Buildings have also been connected to sewer.

Building #7 - Permits for footings and the foundation were issued on September 13, 2014 and the permit for the sewer connection was issued on September 18, 2014. At this point, footings, foundation and the first floor slab have been completed and connected to sewer.

3. As represented by the developer's attorney, construction on the remaining buildings has not yet been completed due to the effect the great recession has had in slowing down the market for office space. The developer has proceeded by customizing the buildings according to the specific needs of the tenants (medical/professional office industries) and continues to actively market the project. In the meantime, Readington Commons has invested millions of dollars in the development and has completed, or substantially completed, all site improvements including parking, curbs, paving, underground utilities (including sanitary sewer), lighting and storm sewers. It hopes to finally complete the project by 2016-2017.

4. The developer believes that the project is protected by the Permit Extension Act ("Act") which it states was enacted to avoid the abandonment of development projects during difficult economic times and automatically suspends the running of the period for any government approval from January 1, 2007 until December 31, 2015 (with permits valid through June 1, 2016). The sewer agreement made with the Township meets the definition of "approval" under the Act because "approval" includes "an agreement with a municipality, county, municipal authority, sewerage authority or other governmental authority for the use or reservation of sewerage capacity".

Recommendation (Readington Commons II, LLC) cont'd:

5. At the Sewer Advisory Committee meeting on September 30, 2015, the Township

attorney indicated that based upon additional information she had found, the developer may have obtained a treatment works approval permit from the DEP for a lesser amount of gallonage than was allocated to the developer in the March 16, 2000 Sewer Plant Expansion Contribution Agreement, based upon the lesser square footage approved for the buildings as set forth in the developer's site plan approval. This opinion was based on a October 15, 2004 letter from the Township's engineer which discussed the treatment works approval application for the sewer extension permit and stated that the total estimated flow emanating from the project would be approximately 6,080 gpd. (The Sewer Plant Expansion Contribution Agreement was for 7,628 gpd). However, as of the September 30 meeting date, it was unknown whether or not the treatment works approval permit was actually issued for the lesser gallonage or not. The developer's attorney indicated that, rather than holding the court-ordered sewer analysis up, if it was determined that the NJDEP had issued a permit for less gallonage for the project, that his client was in agreement that the remainder should come back to the Township for repurchase.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. For the reasons set forth in the above factual findings, the Sewer Advisory Committee finds that Readington Commons has held a sewerage allocation of 7,628 gallons per day since the signing of its sewer contribution and expansion agreement in 2000 and has obtained the development approvals required by it within the time frames set forth . Since that time, a significant monetary investment has been made by the developer in developing the property and substantial progress has been made in constructing the on-site improvements and buildings comprising the project, despite the effects of the recession and the slowed economy. Those reasons, coupled with the fact that the project is already partially occupied by tenants, as well as the developer's ongoing marketing and construction efforts and its expressed intention to complete the project within the next two years, support the developer's position that its allocation is being utilized and should be retained. The Sewer Advisory Committee also agrees that the Permit Extension Act applies to the sewer agreement and recommends that the full allocation of sewer capacity remain with Block 4, Lot 51.

2. Notwithstanding the above, if it is finally determined that the developer was issued a treatment works approval permit from the NJDEP for a lesser amount of gallonage for the project to be built upon the property, then the Sewer Advisory Committee recommends that the difference be returned to the Township for repurchase and reallocation.

Recommendation (Readington Commons II, LLC) cont'd:

3. The Secretary is directed to send a copy of the above recommendation, which the

Sewer Advisory Committee acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A **MOTION** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

5. Township of Readington Sewer Advisory Committee Recommendation RE: Block 21. Lot 3 / Lot 3 Development , LLC

Greg Riley, Esq., on behalf of Wilmark Building Contractors, Inc., requested that the Committee reconsider reversing a recommendation to return 4,650 gallons of sewer capacity to the Township since the Lot 3 Development, LLC had recently entered into a contract of sale with Wilmark to purchase the property. Mr. Riley continued that Wilmark intends to develop that property along with an adjacent property, known as Block 21, Lot 29; therefore Wilmark would be making an application to retain all 5,000 gallons of capacity. Mr. Riley proceeded to cite the reasons as to why the Committee should reconsider their decision.

Attorney Dragan stated that the Sewer Advisory Committee was required to review the requests of unused capacity prior to the plaintiffs with a date of March 2010 and after that time, anything would be considered a new request. Attorney Dragan further opined that this seems to be a new request since the property has been completely rezoned, there are no approvals in place and Block 21, Lot 3 is not in sewer service area nor is the other property that Mr. Riley referred; and if Mr. Riley did want to make that request, he should make a motion in front of Judge Buchsbaum. Attorney Dragan also reminded Mr. Riley that the contract with Lot 3 Development was made after the Sewer Advisory Committee held their meeting and the client was at that meeting, therefore any contract he entered into, which was dated September 2, 2015, would have been in full knowledge of the sewer capacity analysis determination. Mr. Monaco opined that the Sewer Advisory Committee is acting under Judge Buchsbaum's order and must be fair, in addition to not wanting to incite further litigation and agreed with Attorney Dragan that Wilmark should make a motion before the court. Mrs. Allen concluded that the recommendation was made at the July 21, 2015 and the drafted recommendation this evening is merely memorializing the decision based on the

information provided at the July 21st meeting. The Sewer Advisory Committee concurred with Mrs. Allen.

The following recommendation was offered for consideration:

***TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 21, LOT 3
LOT 3 DEVELOPMENT, LLC***

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner’s development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

Recommendation (Lot 3 Development, LLC) cont’d:

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case

basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, in response to its request and questionnaire, the Township Committee received a letter and completed questionnaire from Pansy Muller, principal in Lot 3 Development LLC (hereinafter “Owner”) dated June 29, 2015 which was a named defendant in the aforementioned case with respect to property it owns known as Block 21, Lot 3 (located at 522 Mountain Road) in the Township which letter and submission was forwarded to the Sewer Advisory Committee for initial review; and

WHEREAS, Mrs. Muller and her husband Dan Muller appeared at the July 21st meeting, along with John Hisko, who was introduced as the contract purchaser of the property; and

WHEREAS, the Sewer Advisory Committee has reviewed the submission made by the Owner and considered the representations made by the above parties with respect to the circumstances surrounding the sewer allocation previously granted for the property.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. Lot 3 Development, LLC holds a total sewer allocation of 5,000 gpd capacity in connection with property it owns known as Block 21, Lot 3 in the Township of Readington, which property consists of 7.6 3+/- acres. This allocation stems from a Township-approved “Assignment of Rights Under Sewer Agreement” dated July 17, 2002 from the previous property owner Readington Mountain Associates, a N.J. Partnership, which had entered into a Sewer Agreement with the Township of Readington on June 2, 1986 for a sewer allocation of 5,000 gpd. The agreement acknowledged Readington Mountain’s request for an additional 2,500 gpd, but did not allocate anything beyond 5,000 gpd. The original Sewer Agreement pre-dated the sewer plant expansion and called for the developer to pay an initial amount of \$1,150.00 to serve a proposed commercial development to be built thereon and thereafter pay incremental portions

Recommendation (Lot 3 Development, LLC) cont’d:

of the annual sewer user charges for three years thereafter until the fourth year when the full

annual sewer user charge was due. The original Sewer Agreement states that Readington Mountain Associates had previously obtained site plan approval for the aforementioned commercial development.

2. According to the Township's records, no commercial development was ever built on the property since the site plan was first approved in 1986. In addition, Mr. Dan Muller, speaking for the current property owner, confirmed that nothing was ever built on the property, that it was purchased for investment purposes and that the property was put on the market in early 2015. Upon questioning, he stated that, to his knowledge, neither he nor his wife nor the current owner entity had never made any type of sewer user or allocation payments in connection with the property, but that sewer capacity was needed in order to make it saleable .

3. It was determined that the zoning on the property has changed at least once from the time site plan approval was originally granted and the sewer agreement was made in 1986. From inquiry with the Zoning Officer subsequent to the meeting on July 21, 2015, it was confirmed that as of 2001, the property was zoned R-O, (Research-Office) but that it is currently zoned A-R (Agricultural Residential) which does not permit commercial development. It does permit single-family residences with a minimum lot size of 8 acres.

4. The property owner produced John Hisko who represented that he was a contract purchaser of the property. He stated that it was his intention to build a single family house on the property along with a possible 20' x 30' pole barn. The Sewer Advisory Committee noted that a single family home would only require a sewer allocation of 350 gpd. After questioning, it was determined that the purchaser would not need 5,000 gpd for this use, let alone 7,500 gpd; therefore, 4,650 gpd could be returned to the Township.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. For the reasons set forth in the above factual findings, the Sewer Advisory Committee recommends that 4,650 gpd of the 5,000 gpd sewer allocation previously allocated to Readington Mountain Associates, Inc. for Block 21, Lot 3 Development, LLC be returned to the Township. The Sewer Advisor Committee specifically finds that the commercial development for which the sewer allocation was granted and site plan approval obtained, was never pursued or built and has therefore lapsed due to the zoning change to A-R Agricultural Residential, which

Recommendation (Lot 3 Development, LLC) cont'd:

does not allow commercial development as a permitted use.

2. The Sewer Advisory Committee recommends that 350 gpd sewerage capacity remain with the lot to enable the construction of a single-family residence as permitted by current zoning.

3. It does not appear that any monetary refund is due the current property owner for the return of the gallonage since no sewer user fees or allocation payments have been made by it.

4. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A *MOTION* was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

6. Township of Readington Sewer Advisory Committee Recommendation RE: Block 4, Lots 4.01, 49, 99, 100, 104 and Block 2.01, Lot 9 / Merck, Sharp & Dohme Corp.

The following recommendation was offered for consideration:

**TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 4, LOTS 4.01, 49, 99, 100, 104 and BLOCK 2.01, Lot 9
MERCK, SHARP & DOHME CORP.**

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

Recommendation (Merck, Sharp & Dohme Corp) cont’d:

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner's development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, in response to its questionnaire, the Township Committee received from Christopher Stracco, Esq. of Day Pitney, LLP: 1) a letter dated June 29, 2015 and submission containing a completed questionnaire with numerous exhibits ; and 2) a supplemental letter dated July 7, 2015. Both submissions were made on behalf of Merck, Sharp & Dohme Corp. f/k/a Merck & Co., Inc., which was a named defendant in the Litigation (hereinafter referred to as "Merck"), with respect to property known as Block 4, Lot 4.01, 49, 99, 100 and 104; and Block 2.01 Lot 9, and were forwarded to the Sewer Advisory Committee for initial review; and

Recommendation (Merck, Sharp & Dohme Corp) cont'd:

WHEREAS, Mr. Stracco appeared before the Sewer Advisory Committee at the July 21, 2015 meeting to present the case on behalf of his client; and

WHEREAS, the following exhibits were attached to the questionnaire provided by Mr.

1. Exhibit 1 - Sewer Agreement dated November 9, 1987 between Readington Township and Merck
2. Exhibit 2 - Sewer Plant Expansion and Contribution Agreement dated March 10, 1999 between Readington Township and Merck
3. Exhibit 3 - Planning Board Resolution dated June 30, 1988 granting Preliminary and Final Site Plan Approval (for Phase I office building and preliminary site plan approval only for Phase II office building - 20 years)
4. Exhibit 4 - Amended Site Plan Approval Resolution dated March 25, 1991 (Planning Board approval for a day care center and sewer pump station)
5. Exhibit 5 - Resolution - Bl. 4, Lot 4.01 Hall's Mill Road, dated April 26, 1999 (granting preliminary and final major site plan approval for 220,00 sq. ft. office building)
6. Exhibit 6 - Planning Board Resolution 2008-253 memorialized July 28, 2008 (10 year extension of June 30, 1988 resolution to June 30, 2008 for Phase II office)
7. Exhibit 7 - Letter dated June 5, 2015 to Mayor Fort of Readington from Fox, Rothschild, LLP on behalf of Readington Affordable Housing, LLC proposing affordable housing on a portion of the Merck properties, including the following properties which are not covered by the sewer agreements: Bl. 4, Lots 47, 48, 50, 96, 98 & 112; Bl. 9, Lot 2; Bl. 4, Lots 4, 102, 103 and 107; and Block 2, Lots 7Q and 13.
8. Exhibit 8 - Sewer Allocation Agreement between Merck and Readington Twp. dated July 28, 2003;
9. Exhibit 9 - Letter dated June 29, 2015 from Christopher Stracco, Esq. outlining Merck's position and enclosing the following exhibits:

Recommendation (Merck, Sharp & Dohme Corp) cont'd:

Exhibit A - May 5, 2015 Supreme Court opinion in the Litigation;

Exhibit B - First Sewer Agreement made with Merck's predecessor Imfeld dated 1983 for 70,000 gpd sewer allocation;

Exhibit C - Same as Exhibit 1 above

Exhibit D - Same as Exhibit 3 above

Exhibit E - Same as Exhibit 4 above

Exhibit F - May 1991 agreement between Merck and Readington Twp.
pertaining to installation of sewer line improvements and pro-rata
reimbursement of costs from adjacent potential users

Exhibit G - December 18, 1995 Amendment to November 9, 1987
sewer agreement changing priority allocation from 100,000 gpd
to 90,000 gpd from sewer plant expansion

Exhibit H - Same as Exhibit 2 above

Exhibit I - Same as Exhibit 5 above

Exhibit J - Same as Exhibit 8 above

Exhibit K - Same as Exhibit 6 above

Exhibit L - Amended and Restated Sewer Allocation Agreement with Township
dated June 29, 2008 (Extension of sewer allocation to coincide with Planning
Board extension heard on 5/12/08)

Exhibit M - Concept Plan submitted by Plaintiff 388 Rt. 22 Readington Realty
Holdings for “Shops at Readington”)

Exhibit N - Google Image of Plaintiff’s property on Route 22; and

Recommendation (Merck, Sharp & Dohme Corp) cont’d:

WHEREAS, the following exhibits were attached to Mr. Stracco’s letter of supplemental
letter of July 7, 2015:

Exhibit A - 2010 Chart prepared by Township Engineer Robert S. O’Brien of

Hatch Mott Mac Donald Sewer Capacity identifying those users who are not “on-line” and those who are “partially on-line”

Exhibit B - Letter invoices dated September 26, 2014 from the Township Tax Collector to Merck stating that the 2014 annual installment due for the sewer allocation fee is \$146,160.00 and that the annual sewer rent payment (for the capacity being used) is due in the amount of \$70,000

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. Merck, Sharpe & Dome, Inc. (“Merck”) holds a total sewer allocation of 211,900 gpd capacity in connection with properties it owns known as Block 4, Lots 49, 99, 100 and 104; Block 2.01, Lot 9 and Block 4, Lot 4.01 in the Township of Readington. Merck’s capacity derives from two primary agreements, beginning in 1983. The first agreement (Exhibit 1 referred to above) was made between Merck and Readington Township dated November 9, 1987 which covered ultimately 70,000 gpd for an office research park on Block 4, Lots 49, 97, 99, 100 and 104. Per this agreement it was acknowledged that Merck received 100,000 gpd capacity from a previous owner via assignment of an agreement made with Imfeld and Readington in 1983 and Merck paid \$346,245.00 to the Township for the allocation. However, the 1987 agreement provided for Merck to temporarily give up 30,000 gpd sewer capacity in order to allow another project to proceed in the Township in consideration of a refund received in the amount of \$96,792.002, plus interest and the ability to receive additional 100,000 gpd capacity from the expansion of the sewer plant including the 30,000 gpd it gave up in 1987. The future capacity set forth in the 1987 agreement was thereafter amended by an agreement made December 18, 1997 which reduced the future sewerage allocation to Merck from 100,000 gpd to 90,000 gpd. (Exhibit G). The second primary source of sewer capacity made available to Merck was as a result of a Sewer Plant Expansion Contribution agreement with Readington Twp. on March 10, 1999 for an additional 141,900 gpd sewer capacity allocation (Exhibit 2 above) which included additional properties beyond the 1987 agreement. In conjunction with the 1999 agreement, Merck paid

Recommendation (Merck, Sharp & Dohme Corp) cont’d:

\$2,196,763.80 for the right to the capacity since the sewer plant had not yet been completed at the time. (Also, since 30,000 gpd was basically a “return” of the previously allocated capacity in the 1987 agreement, Merck paid a reduced rate for this portion of the gallonage).

2. Paragraph 12 of the 1999 Sewer Plant Expansion and Contribution Agreement states that of the 141,900 gpd allocation, 90,000 gpd is to be used for “offices uses to be constructed on Block 4, Lots 49, 99, 100 and 104 for which Contributing Developer received preliminary approval by resolution memorialized by the Readington Township Planning Board on June 30, 1988 and 51,900 gpd which is to be used for those projects approved by the Readington Township Planning Board.....on Block 2.01, Lot 9 and Block 4, Lot 4.01". (Exhibit 2, p. 7, paragraph 12). Paragraph 14 of the above-referenced 1999 agreement states that “[t]his agreement shall run with the land described in paragraph 12 above and, as such, shall be binding upon the Contributing Developer or Contributing Property Owner and upon their grantees, heirs, successor and assigns. “(Exhibit 2, p. 8). The agreement provided that it could be assigned to a successor owner with the prior approval of the Township which shall not be unreasonably withheld, but that “any development proposed by a successor Contributing Developer must be consistent with the zoning in place at the time the development application is made (subject to any approved variances therefrom). (Exhibit 2, p. 8, par. 14).

3. Since receiving its sewer capacity allocation in 1983, Merck received the following approvals for developments in the Township:

- Approval from the Readington Township Planning Board by Resolution Dated June 30, 1988 for preliminary and final site plan approval with variances for two office buildings designed for 900,000 square feet each to be built in two phases. (See Exhibit 3). Phase One received preliminary and final site plan approval and the Phase II building received preliminary approval which was granted for a 20 year period, due to the complexity of the project. These approvals concerned Block 4, Lots 48, 49, 98, 99, 100 and 104; and Block 9, Lot 2. The Phase One office building, consisting of an as-built square footage of approximately 950,000 sq, feet, per Mr. Stracco, was completed in 1992, hooked into the sewer system at that time and was occupied as the Merck headquarters building until recently.

- Amended Site Plan approval memorialized March 25, 1991 for an approximately 18,904 sq. feet day care facility on a portion of Block 99, Lot 4 and a 2,097 +/- sq. foot pump station on a portion of Block 4, Lot 49, together with site improvements. (See Exhibit 4). Both these uses were considered accessory to the office buildings. The day care facility was divided into two phases, both of which were completed in approximately 1992 and the final square footage was

Recommendation (Merck, Sharp & Dohme Corp) cont'd:

23,500 sq. feet. The pump station was similarly completed and all were hooked into the sewerage system and thereafter occupied.

- Resolution from the Readington Township Planning Board memorialized on April 26,

1999 granting preliminary and final major site plan approval for an approximately 220,000 sq. feet office building on Block 4, Lot 4.01. This building was completed in 2000, connected to the sewer system and thereafter occupied.

4. The 1999 Sewer Expansion and Contribution Agreement was made before the Township's sewer plant expansion project was completed. Therefore, the agreement provided that the parties would eventually enter into an allocation agreement for the capacity granted thereunder. Accordingly, Merck signed a Sewer Allocation Agreement with the Township dated July 28, 2003 confirming 141,900 gallons per day to be allocated as follows: 90,000 gpd for Bl. 4, Lots 49, 99, 100 and 104 and 51,900 gpd for Bl. 2.01, Lot 9 and Bl. 4, Lot 4.01. In consideration of the allocation, Merck was obligated to pay \$48,720.00 the first year (1/3 the user charge), \$97,440.00 the second year (2/3 the user charge) and \$146,160, the third year and annually thereafter until such time as the capacity was used. (Exhibit 8). Mr. Stracco represented that Merck made the first three payments and has continued to make annual payments required per this agreement to the Township since that time. (See Exhibit B attached to July 7, 2015 supplemental letter).

5. The life of of 2003 Sewer Allocation Agreement was specifically intended to run with the twenty-year approval extended preliminary approval given to Merck in 1998 for the Phase II office building. This is indicated in the third "Whereas" clause of the agreement and also in paragraph 6 which stated "Should developer not begin construction on the aforementioned property by June 30, 2008 (to run in accordance with the Readington Township Planning Board approval dated June 30, 1988), or by the date final site plan approval expires (provided Developer/Owner applies for and obtains such approval prior to June 30, 2008), then the Township shall have the option to terminate this agreement and all capacity assigned hereunder shall be returned to the Township for reallocation at the discretion of the Township". (Exhibit 8, p. 3). The Sewer Advisory Committee finds that this agreement provided for additional extensions to run with any future extension(s) which might be granted by the Planning Board. The Sewer Advisory Committee agrees that it was reasonable to extend the Sewer Allocation Agreement to match the length of the Planning Board's approval in the case of this development.

6. In addition to the sewer expansion and allocation agreements, Merck also entered into a sewer agreement with the Township dated May of 1991 with respect to the installation of

Recommendation (Merck, Sharp & Dohme Corp) cont'd:

sewerage infrastructure improvements, including various sewer lines and mains along County Route 523 in the Township, at Merck's expense in order to serve Merck's development. This agreement allowed Merck to receive a pro-rata contribution from future users along Route 523 who might wish to connect to the system. (See Exhibit F). The Sewer Advisory Committee

made no findings as to whether or not any such connections have occurred.

7. To date, Merck has not sought final approval of its Phase II office building. According to the presentation made by its attorney at the meeting, Merck was barred from pursuing its approvals due to litigation instituted by P&H Clinton Partnership (“P&H”) from 2003-2006, whereby P&H unsuccessfully attempted to wrest sewerage capacity from Merck and various developers in order to pursue its own development project in Clinton, which was not part of Readington Township’s sewer service area. A recession had also begun since the 1988 site plan approval and in 1992, the State Legislature recognized a period of economic emergency by enacting the first Permit Extension Act, which was extended multiple times thereafter. During this time, Merck did request and obtain a ten-year extension of its preliminary site plan approval from the Readington Township Planning Board in 2008 which extension runs to June 30, 2018. This was memorialized in Resolution 2008-253 (Exhibit K). At the hearing for the extension request on May 12, 2008, the Planning Board determined that economic conditions at the time, as well as the considerable size of the project were sufficient reasons to support granting the request. Simultaneously with the Planning Board’s extension of the approval, Merck requested an extension of the sewer allocation agreement from the Township Committee which was made on June 29, 2008. (See Exhibit L). This Amended and Restated Sewer Allocation agreement specifically explains the reason why it was being made within the document itself as it states, in part “Whereas, the Township [ie. the Planning Board] on or about May 12, 2008, extended the vested rights period associated with the preliminary site plan approval for the Project for an additional ten years through June 30, 2018...” (Exhibit L, p.2). The agreement further provided that

Should Developer/Owner not begin construction on the remaining portion of the Project [“Project” being defined elsewhere in the agreement as “preliminary approval for a proposed development consisting of approximately 1.8 million square feet of office space and other associated improvements”] by June 30, 2018 (to run in accordance with the Extended Vested Rights Period, approved by the Readington Township Planning Board on or about May 12, 2008) or by the date final site plan approval for the remaining portion of the Project expires (provided Developer/Owner applies for and obtains such approval prior to June 30, 2018), then the Township shall have the option to terminate this Agreement.....and thereupon all capacity assigned herein and no then being utilized shall be returned to the Township for reallocation at the discretion of the Township”. (Exhibit L, p.3).

Recommendation (Merck, Sharp & Dohme Corp) cont’d:

Given the language of both the Planning Board approval and the 2008 Amended and Restated Sewer Allocation agreement, the Sewer Advisory Committee agrees that the language itself extends Merck’s remaining sewerage allocation to June 30, 2018 for the “Project” which was approved as the Phase II office use on the property.

8. With respect to the Supreme Court’s direction regarding the imminent use of the unused capacity held by Merck, it was represented at the meeting and in its correspondence in response to the Township’s questionnaire, that Merck itself has moved its headquarters to Kenilworth, NJ and that it does not intend to build out the second phase of the office development; therefore, the Sewer Advisory Committee is satisfied that Merck itself has no imminent plans to use the remaining capacity. However, Mr. Stracco represented that Merck entered into a non-contingent contract with a buyer for the purchase of the property encompassed by the existing sewer agreements, together with other properties, which is expected to close by the end of 2015. As stated above, the sewer capacity allocation runs with the land and Merck’s buyer intends to use the entire 211,900 gpd allocation. Mr. Stracco pointed to a letter dated June 5, 2015 to the Readington Township Mayor from Fox Rothschild, LLP representing “Readington Affordable Housing, LLC” (hereinafter “RAH”), the contract purchaser. (Exhibit 7). The letter states that the contract purchaser intends to develop an affordable housing project on a portion of the property which it is purchasing from Merck, but it does not state which portion of the property it is referring to. According to the letter, the purchaser’s proposal “would utilize the unused sewer allocation currently owned by Merck and devote the entirety of this sewer capacity to the creation of an inclusionary housing development that would include a substantial set-aside of affordable housing”. (Exhibit 7, p. 1) However, the Sewer Advisory Committee notes that the following properties which the contract purchaser refers to do not have sewer capacity: Block 4, Lots 47, 48, 50, 90, 96 and 112; Block 9, Lot 2; Block 4, Lots 4, 102, 103 and 107; and Block 2, Lots 7Q and 13. Further, the other portions of the property encompassed by the existing sewer agreements are not currently zoned for inclusionary housing or other residential uses. Because the current sewer agreements run with specific properties which have office-related developments designated for them already, the allocations they cover, the Sewer Advisory Committee does not find that they are transferable to these other lands without application first being made to and approval being obtained from the Township and without a determination having been made that the current properties do not need the gallonage to which they have been assigned. The Sewer Advisory Committee is not in a position to make a recommendation regarding a sewerage transfer for these lots as there has been no specific plan for any development presented as of yet, nor has the Township decided where in the Township it will be planning for its affordable housing projects. If the purchaser expects to construct affordable housing on the lots for which sewer capacity has been allocated, the Sewer

Recommendation (Merck, Sharp & Dohme Corp) cont’d:

Advisory Committee is of the opinion that this is not currently permitted unless there is a zone change or a variance granted.

9. Mr. Stracco also represented that it was his understanding that the project pursued by the contract purchaser will incorporate and continue to utilize the existing facilities on the

property, will maintain the Township's tax base and continue to provide jobs and thus contribute to the economic development of the Township. However, he did not guarantee whether the office and other improvements located on the property would continue in the same manner as Merck had used them, because he said that he could not speak for the purchaser.

10. The Sewer Advisory Committee attempted to ascertain how much capacity should be allocated to the buildings on-site. It was presented at the meeting that, based on metering, the total sewerage flowing from all Merck's completed buildings, while in use, according to the Township Engineer's records in 2010, was 65,000-70,000 gpd, even though Merck was paying consistently for those gallons and the right to the additional 141,900 gpd allocation. (See Exhibits A and B of the July 7, 2015 supplemental letter). However, the Sewer Advisory Committee discussed whether or not, as part of the analysis, it should rightly use the metered flow or design flow to gauge the amount of remaining sewer capacity available. If the metered/billed capacity was used, the available gallonage would be approximately 51,900 - 56,900 gpd from the constructed buildings and approximately 90,000 gpd from the Phase II unbuilt building. It was unknown whether or not Merck's capacity was being completely maximized when the company was in business on the site. The Committee noted that when buildings are proposed for construction, the NJDEP specifies design flow requirements which must be met in order to issue a treatment works approval. For an office building, the current designation is .1 multiplied by the number of square feet of the building; for other uses, such as schools and day camps, the sewer design is based on a certain number of gallons per student. According to DEP rules, the design flow requirements for Merck's building are as follows:

- 95,000 gpd for Phase One 950,000 sq. ft. office building;
- 22,000 gpd for 220,000 sq. ft. building (Bl. 4, Lot 4.01);
- 1,500 gpd for 23,500 sq. ft. building for 146 students (approximately- exact gallonage was not given at the meeting)
- 90,000 gpd (for 900,000 sq. ft. building - Phase II -not built)

for a total of approximately 208,500 gpd, of which 90,000 gpd has not been utilized because the Phase II building was not built. According to Mr. Stracco, there are sewer and other utility buildings on site which use some of the capacity; however, he did not present a number for them.

Recommendation (Merck, Sharp & Dohme Corp) cont'd:

Notwithstanding, if DEP design flow criteria must be utilized, which Sewer Advisory Committee believes is appropriate here, then there is very little excess capacity for any uses other than the uses which have been previously approved and that nothing would be transferable to other properties under current conditions. The Committee further finds that because there is a non-contingent contract in place for the purchase of the property wherein, as represented by

Merck's attorney, the contract purchaser intends to use the portion of the property planned for the Project for which the sewer agreements has been approved (specifically, office space) and that closing is imminent, the Committee must conclude that the use of the excess will be forthcoming or provide the contract purchaser the opportunity to demonstrate otherwise since the approvals are still in place. The Committee also finds that, due to the existence of the extended approvals set forth in the Planning Board Resolution, and extended sewer agreement and the fact that Merck has continuously paid for all 211,900 gpd, that the approvals for the office Project and sewer agreement providing the gallonage for it are still in place and does not recommend that the Township recapture the gallonage at this point.

11. Mr. Stracco also argued that the Permit Extension Act ("the Act") applies to Merck's Project and the sewer agreements made with the Township. The Act, which was first enacted by the NJ Legislature in 1992 (N.J.S.A. 40:55D-130) and was subsequently extended several more times, most recently, until December 31, 2015 and with respect to permits in place, until June 30, 2016. It was urged that the last amendment explicitly clarified that the Act was intended to include sewer agreements, as set forth in N.J.S.A. 40:55D-136.3,136.4(a)] and, accordingly, is applicable to the sewer agreements made with the Township. The Sewer Advisory Committee agrees that the Project falls into the time frames protected by the Act and that, according to the definition of the Act, covers the sewer agreements made with the Township.

12. On behalf of Merck, Mr. Stracco also argued that he is not aware of any projects which have been unable to proceed due to Merck retaining its capacity. He submitted copies of a concept map that he had obtained via an Open Public Records Request to demonstrate that the Plaintiff in the Litigation has presented no definite plans for a project on its property and no support for the gallonage it is seeking, and asked the Sewer Advisory Committee to accordingly find that the Plaintiff has demonstrated no superior need over Merck's for the capacity. The Sewer Advisory Committee takes note that N.J.S.A. 40:55D-136.4e. provides that

Recommendation (Merck, Sharp & Dohme Corp) cont'd:

In the event that any approval tolled pursuant to P.L. 2008, c. 78 (the Permit Extension Act of 2008 found at N.J.S.A. 40:55D-136.1) is based upon the connection to a sanitary sewer system, the approval's extension shall be contingent upon the availability of sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose approvals have been extended shall have priority with regard to the further allocation of gallonage over those approval

holders who have not received approval of a hookup prior to the date of enactment of P.L. 2008, c. 78. Priority regarding the distribution of further gallonage to any permit holder who has received the extension of an approval pursuant to P.L. 2008, c. shall be allocated in order of the granting of the original approval of the connection.

This statute appears to toll the approvals of those developers whose projects were approved without sufficient (or any) sewer capacity, but were contingent thereon. The Sewer Advisory takes note of Merck's argument with respect to the Plaintiff in the Litigation which appears to have no development approvals in place, contingent on sewer capacity or otherwise, for the use of its property. However, the Sewer Advisory Committee does not make any specific findings as to whether the Plaintiff or any one has a more urgent need for sewerage capacity over Merck at this time. It does note that there have been several requests made for gallonage over the years which have been denied due to an insufficient amount of remaining capacity which was necessarily due to previously made allocation agreements since the Township has a finite allocation of 939,000 gpd of capacity in the RLSA. It has also received new requests for gallonage as a result of public knowledge of the Township's within sewer capacity analysis. However, it is not considering new requests due to the need to finalize the current sewer capacity analysis per the Courts' orders. It does acknowledge that Merck has an approved site plan in place for the unused capacity and based on NJDEP design flow for all its improvements, built and unbuilt, there are perhaps several hundred to approximately one thousand gallons to spare. In any event, the Sewer Advisory Committee agrees that the above-referenced section of the Permit Extension Act would entitle Merck to continued priority capacity over other developers for the Phase II office use previously approved on the property.

13. With respect to the Courts' direction that other factors to be considered, Merck advised that it has paid several million dollars since 1983 to reserve its sewer allocation in the Township and that to recall it in the face of its current contract to sell the property would cause a breach between it and the purchaser for which it intimated that the Township would be liable, and perhaps a compensable taking. The Sewer Advisory Committee makes no specific finding with respect to this argument as it does not believe that it is within its jurisdiction to speak to the zoning issues which affect the property and the contract and leaves the resolution of same to the Township Committee.

Recommendation (Merck, Sharp & Dohme Corp) cont'd:

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. For the reasons expressed above, the Sewer Advisory Committee recommends that the Township not recapture Merck's current sewerage allocation of 211,900 gpd which the Sewer

Advisory Committee believes has been reserved for the previously approved office use and related facilities on Block 4, Lots 4.01, 49, 99, 100, 104 and on Block 2.01, Lot 9 as was recited in sewer agreements made in 1987, 1999, 2003 and 2008 with the Township. The recommendation is based on the Sewer Advisory Committee's belief that it is most appropriate to use the NJDEP design flow regulations for these uses, as opposed to metering, because it does not have sufficient information to the contrary and because, it was represented that the contract purchaser will utilize the capacity for the uses on the property for which it was allocated, but it is not known to what extent at this time. Further, although the Sewer Advisory Committee believes that the Permit Extension Act applies to protect the approvals through June 30, 2016, regardless of that fact, the Committee concludes that both Merck's current site plan approvals and its sewer allocation of 211,900 gpd are in place until June 30, 2018, pursuant to the extended resolution and 2008 Restated Sewer Allocated Agreement. The Sewer Advisory Committee specifically makes no recommendation about sewerage allocation for uses on the aforementioned lots and blocks other than the currently approved uses and, further, makes no recommendation regarding the transfer for any gallonage to any other properties owned by Merck which are the subject of its sales contract at this time.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A **MOTION** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

7. Township of Readington Sewer Advisory Committee Recommendation RE: Block 4, Lot 57 / Wilmark Building Contractors, Inc.

The following recommendation was offered for consideration:

**TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 4, LOT 57
WILMARK BUILDING CONTRACTORS, INC.**

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v.

Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner’s development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

Recommendation (Wilmark Building Contractors, Inc.) cont’d:

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, in response to its request and questionnaire, the Township Committee received a letter and submission from Greg Riley, Esq. dated June 30, 2015 on behalf of Wilmark Building Contractors, Inc., developer and successor in title and interest to Scott Carbone, who was a named defendant in the aforementioned case along with C. Delvecchio and A. Carbone, with respect to property known as Block 4, Lot 57 in the Township which letter and submission was forwarded to the Sewer Advisory Committee for initial review; and

WHEREAS, Mr. Riley appeared at the July 21st meeting, along with Mark Hartman, principal of Wilmark Building Contractors, Inc. and presented the case on behalf of the developer; and

WHEREAS, the Sewer Advisory Committee has reviewed the submission made by Mr. Riley and is familiar with the circumstances of the sewer allocation previously granted for the property.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. Block 4, Lot 57 has a total sewer allocation of 350 gpd and is zoned RR (Rural Residential). Wilmark's responsive questionnaire (and Mr. Riley at the July 22, 2015 meeting) expressed uncertainty about the history of the capacity. Subsequent to the meeting, the Township's records were searched and it was clarified that this allocation originally stems from a Sewer Plant Expansion Contribution Agreement dated March 15, 2000 made between previous property owners Norman and Kathleen Helmster and the Township for a total sewerage allocation of 1,750 gpd (ie. five (5) sewer units) for a contribution paid in the amount of \$32,952.50. Thereafter, the Helmstetters requested that four (4) units be returned to the Township. According to the minutes of its December 4, 2000 meeting, the Township Committee considered the request and approved the return of the four (4) units with the provision that any future owner would have to make formal application for capacity from a future expansion. The

Recommendation (Wilmark Building Contractors) cont'd:

Township also approved a refund amount of \$26,362.00 (\$6,595.50 x 4 units), plus \$631.97 in interest. Thereafter, Hemlsetter assigned the remaining 350 gpd to Scott Carbone, Daniel Carbone and Richard Henriksen (hereinafter "Carbone"). Carbone requested an extension of the Sewer Expansion Contribution Agreement in November 2003; on November 17, 2003, the Township Committee adopted Resolution R-2004-37 confirming the Sewer Plant Expansion Contribution Agreement for one (1) unit (350 gpd), extending its original expiration date to May 15, 2006 and requiring Carbone to enter into a Sewer Allocation Agreement (as called for by the

contribution agreement) and pay the required fee. Thereafter, Carbone entered into a Sewer Allocation Agreement with the Township dated March 26, 2004 which provided that Carbone must connect into the sewer system by May 15, 2006 or risk termination of the capacity, at the option of the Township. There are no records of any approvals of the assignment of capacity from Carbone.

2. According to the statements made at the July 22, 2015 meeting, Wilmark purchased Block 4, Lot 57 in 2014 and intends to develop it pursuant to a preliminary major subdivision approval granted by the Readington Twp. Planning Board on 1/28/08 for four (4) residential building lots as set forth in Resolution R-2008-239. Wilmark's understanding is that the approval is subject to the Permit Extension Act; neither it nor the previous owners moved forward earlier due to the economy and no additional sewer capacity was available. Wilmark then did perc and soil log tests and had septic systems designed for the three unsewered lots. It applied for final approval which was scheduled for a hearing on May 26, 2015, but adjourned it because of the Supreme Court's decision in the sewer litigation. The developer would like to purchase additional sewerage capacity, if available, and amend the application to subdivide the property further to increase the number of lots and use the additional capacity to serve those and the three lots currently planned for septic. The developer advised that the project, as approved, could be completed within two years of final approval and represented that the hearing for final approval was rescheduled for the next Planning Board meeting, July 27th, 2015.

3. The Sewer Advisory Committee advised that the purpose of the current meeting was to determine whether only holders of present of capacity should be able to retain it or not and not consider new capacity requests. To that end, it agrees that the current use for which the 350 gpd was granted complies with zoning and that the project is subject to the Permit Extension Act and that it will be constructed very shortly.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

Recommendation (Wilmark Building Contractors) cont'd:

1. For the reasons set forth in the above factual findings, the Sewer Advisory Committee agrees that Wilmark Building Contractors, Inc. holds a sewerage allocation of 350 gallons per day originating from a Sewer Plant Contribution Agreement dated in May 2000, which was thereafter amended and thereafter based upon a Sewer Allocation Agreement dated March 23, 2004 made with Carbone and sold with the land to Wilmark Building Contractors. The property has received development approvals for three (3) residential lots to be served by septic systems and one (1) lot for a single family dwelling to be served by the capacity, which complies with the Township's zone requirements and that it further intends to use the gallonage shortly.

Accordingly, the Sewer Advisory Committee recommends that the 350 gpd sewerage capacity allocated to Block 4, Lot 57 remain with it for use in connection with the development project previously approved in 2008.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A **MOTION** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

**8. Township of Readington Sewer Advisory Committee Recommendation RE:
Block 2.01, Lots 9.01 and 11 / Bellemead Development Corporation**

The following recommendation was offered for consideration:

**TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 2.01, LOTS 9.01 and 11
BELLEMEAD DEVELOPMENT CORPORATION**

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body and whose recommendations are non-binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

Recommendation (Bellemead Development Corporation) cont’d:

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner’s development plans to use some or all of the capacity and the

imminence of that happening;

- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, in response to its questionnaire, the Township Committee received from Glenn S. Pantel, Esq. of Drinker, Biddle & Reath, LLP, a letter dated June 30, 2015 , together with a submission containing a completed questionnaire with numerous exhibits attached, on behalf of Bellemead Development Corporation which was a named defendant in the Litigation (hereinafter referred to as “Bellemead”) , with respect to property known as Block 2.01, Lots 9.01 and 11, all of which were forwarded to the Sewer Advisory Committee for initial review; and

Recommendation (Bellemead Development Corporation) cont’d:

WHEREAS, Mr. Pantel appeared before the Sewer Advisory Committee at the July 21, 2015 meeting to present the case on behalf of his client; and

WHEREAS, the following exhibits were attached to the questionnaire provided by Mr. Pantel and considered by the Sewer Advisory Committee:

1. Exhibit A - Resolution of the Readington Township Planning Board memorialized on August 8, 1988 granting preliminary and final site plan approval for a 660,600 sq. ft building known as the ‘Hall’s Mill Farm Project for an eight (8) year term

2. Exhibit B - Resolution of the Readington Township Planning Board memorialized on October 28, 1996 granting extensions of the preliminary and final site plan approvals for the office building developments on Lots 5.01 and 7, Block 3.01 - the Overlook Project and Lots 9.01 and 11, Block 2.01 - Hall's Mill Project (extension granted for 5 years to 8/8/01)
3. Exhibit C - Resolution #2001-54 of the Readington Township Planning Board adopted March 26, 2001 granting an extension of the site plan approval for the Hall's Mill Project on Bl. 2.01, Lots 9.01 and 11(extension granted for 3 years to 8/8/04)
4. Exhibit D - Resolution #2006-185 of the Readington Township Planning Board adopted February 14, 2006 granting an extension of the site plan approval for the Hall's Mill Project for 18 months (from December 12, 2005)
5. Exhibit E - Resolution #2007-225 of the Readington Township Planning Board adopted on July 9, 2007 granting an extension of the final site plan approval for the Hall's Mill Project (for one year)
6. Exhibit F - Resolution # 2008-251 of the Readington Township Planning Board adopted July 14, 2008 (granting a two year extension for Hall's Mill Farm)
7. Exhibit G - Letter dated June 6, 1989 from NJDEP granting a wetlands exemption letter for the Halls Mill Farm

Recommendation (Bellemead Development Corporation) cont'd:

8. Exhibit H - Stream Encroachment Permit from NJDEP with an effective date of December 20, 1990 - 1995
9. Exhibit I - Letter of Interpretation/Line Verification re wetlands from NJDEP dated October 26, 1998
10. Exhibit J- Letter of Interpretation/Line Verification re wetlands from NJDEP dated July 23, 2009
11. Exhibit K-Letter Extending July 23, 2009 Letter of Interpretation re wetlands dated September 18, 2014 (extension granted to July 23, 2019)

12. Exhibit L- Letter from NJDEP dated 11/8/10 confirming that the Halls’s Mill Project properties (Bl. 2.01, Lots 9.01 and 11) are appropriate for identification as sewer service area within the Hunterdon County Wastewater Management Plan currently under development

13. Exhibit M - Copy of the May 5, 2015 NJ Supreme Court opinion in the Litigation

14. Exhibit N – Copy of a map entitled “Shops at Readington” 388 Route 22 West Whitehouse Station, NJ prepared by Ritter & Plante Associates, LLC dated August 2, 2010

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. Bellemead holds a total sewerage allocation of 66,060 gpd capacity in connection with properties it owns known as Block 2.01, Lots 9.01 and 11 in the Township of Readington. This capacity has been held since September of 1999 via agreement, but only became available for use in August of 2000, when the Readington Lebanon Sewerage Authority treatment plant (“RLSA”) expansion was completed. Upon review, Bellemead’s capacity derives from two sources. Specifically, 7,314 gpd of the allocation comes from prior sewer allocation agreements made between Readington Township and Bellemead’s predecessor- in- interest dated December 23,

Recommendation (Bellemead Development Corporation) cont’d:

1987, November 8, 1988 and August 6, 1996. These prior agreements allocated a total of 52,000 gpd of sewerage capacity from the RLSA treatment plant, prior to its expansion, to two office development projects known as the “Overlook Project” and the “Hall’s Mill Project”. The Overlook Project (planned for Block 3.01, Lots 5.01 and 7) received preliminary and final site plan approval via resolutions dated September 8, 1986 and September 12, 1988 (amended). The Hall’s Mill Project (planned for Block 2.01, Lots 9.01 and 11) received preliminary and final site plan approval by resolution dated August 8, 1988. Both resolutions granted eight (8) year approvals, due to the complexity of the projects and that fact that the applicant did not have sufficient sewer capacity. (See Exhibits A and B). As recounted by Mr. Pantel at the meeting, the 52,000 gpd allocation was not sufficient to build both buildings because the Overlook Project was planned for 450,000 sq. feet and the Hall’s Mill Project was planned for 660,600 sq. ft. and NJDEP requirements at that time required a design flow calculation arrived at by multiplying

.125 by the number of square feet of office space, which, in this case, equated to an allocation of 134,325 gpd. Eventually, NJDEP lowered the design flow requirements for office buildings from .125 to .1, however, this was still not sufficient for both projects, which required a total of 110,746 gpd via the new rate, so, because of this and other factors, the development did not proceed. Indeed, Halls/Overlook, L.P. (the title holding entity for Bellemead Development Corporation on the properties) sought an extension of its site plan approvals for both projects from the Readington Township Planning Board. The reasons cited for the extension included, in part, the fact that the expansion of the sewerage treatment plant had not yet occurred, as well as economic factors, the magnitude of the developments and the comprehensiveness of the infrastructure required to build both office campuses and traffic improvements. (See Exhibit B). Thereafter, the Overlook Project was built (completed in 2004 and has been occupied to date), but because the expansion was not yet completed (as well as stated economic and other factors), an additional extension was granted for the Hall's Mill Project in 2001 (See Exhibit C). Prior to that, however, Halls/Overlook Associates, LP entered into a Sewer Expansion Contribution Agreement with the Township dated September 9, 1999 (hereinafter "Expansion Agreement") which entitled the developer to an additional 58,746 gpd "future capacity allocation" contingent on completion of the sewer plant expansion and payment in the amount of \$1,106,187.00, which payment was made to the Township. The Expansion Agreement required annual sewer allocation payments (ie. user fees) to begin once the sewer plant expansion was completed and the capacity became available. Once that occurred (in August of 2000), Bellemead began paying user fees and to that end, as of October 13, 2014, Mr. Pantel represented that Bellemead had paid \$968,270.00 to the Township in user fees, which together with the Expansion Agreement, totals

Recommendation (Bellemead Development Corporation) cont'd:

over \$2,074,000.00 paid to the Township for the sewerage capacity. Per the 1999 Agreement, any sewerage capacity taken back by the Township would have to be refunded to Bellemead, pro-rata, along with interest.

2. With respect to the question as to why the Hall's Mill office building project has not been constructed, Mr. Pantel's position was that it was mainly due to complexity of the project and several outside factors beyond its control, including the economy (a severely depressed market for office space) and intervening lawsuits which, together, have spanned almost twenty years. From the face of the 1988 resolution approving preliminary and final site plan approval for the Hall's Mill Project (attached as Exhibit A), it is obvious that the development, the number of improvements and the breadth of the infrastructure required to build it was involved and complex. The Township Planning Board recognized this, when it noted in its findings of fact that, it had reviewed "the voluminous amount of material submitted" and further on, in sub-

paragraph 17 which stated in part,

[B]ecause this resolution contemplates a gradual build-out over a number of years and because it is in the best interest of the Applicant and the Township of Readington that the Applicant be secure in its approval and have ample time for full development of the project, this preliminary and final site plan approval shall receive protection for a period of eight (8) years from the date hereof pursuant to N.J.S.A. 40:55D-52. (See Exhibit A).

Further, from the start, the project was delayed because Bellemead was unable to use its 66,060 gpd allocated sewerage capacity until the plant expansion was completed in August 2000, even though it had site plan approval since 1988. However, it continued to market the property and obtain the necessary outside agency approvals needed to move the project forward. In support of this argument, attached to the questionnaire submitted to the Township were the following approvals/permits obtained for the Hall's Mill Project: 1989 freshwater exemption letter from NJDEP (Exhibit G); 1990 stream encroachment permit from NJDEP (Exhibit H); and Interpretation/Line Verification re wetlands from NJDEP dated October 26, 1998. (Exhibit I) All those approvals (save the stream encroachment permit which Mr. Pantel represented can be readily updated) have been extended and are current. (See Exhibits J and K). In addition, as set forth in its response to the Township's questionnaire, Bellemead and other parties executed a Water Agreement with Readington Township in 1990 to provide for cost-sharing and implementation of water infrastructure improvements. It also participated in a Traffic Improvement District established by the County of Hunterdon and a later Traffic Development

Recommendation (Bellemead Development Corporation) cont'd:

District, encompassing the Halls Mill Farm site and examining future potential traffic improvement needs in the vicinity of the property.

3. After the sewer plant expansion was completed in 2000, Bellemead continued its efforts to find an occupant for the building and develop its property; Bellemead did in fact secure a contract with Verizon for this purpose. However, during the contract period, P&H Clinton Partnership ("P&H"), an affiliate of Pulte Homes, instituted litigation against Bellemead, and others, in an attempt to take away their sewerage allocations in order to service P&H's proposed inclusionary housing project in neighboring Clinton Township. This litigation lasted 3 and ½ years and Bellemead eventually prevailed in the Law Division, Appellate Division and the Supreme Court. However, during that time, the contract with Verizon did not move forward due to the uncertainty of the litigation's final outcome and the inability to satisfy the concerns of investors/financing entities until the case finally concluded. The length of time the case took

ended with Bellemead losing its contract with Verizon during a relatively healthy market, per Mr. Pantel. As a result, Bellemead sued P&H for tortious interference in a case that ultimately settled, but lost the opportunity to complete the office project and thus utilize its sewerage capacity. After the December 2006 Supreme Court ruling in the P&H litigation, the “Great Recession” struck and Bellemead was affected by it, as its continuing attempts to market the property and develop it were unsuccessful. The severity of this recession was acknowledged by the New Jersey legislature which enacted the Permit Extension Act of 2008 in response to “one of the longest economic downturns since the Great Depression of the 1930’s...which drastically affected various segments of the New Jersey economy, but none as severely as the State’s banking, real estate and construction sectors”. N.J.S.A. 40:55D-136.2.a. With the additional extensions it has enacted since the Permit Extension Act of 2008, the legislature has recognized, within the legislation itself, that the period of economic emergency in New Jersey has lasted from January 1, 2007 to December 31, 2015 and the Sewer Advisory Committee agrees that this project falls within the Permit Extension Act and that it has accordingly tolled Bellemead’s approval and its time for performance.

4. Prior to the enactment of the Permit Extension Act of 2008 Bellemead obtained additional extensions from the Planning Board by reason of the litigation with P&H. Indeed, an 18 month extension granted on February 14, 2006 cited the pending outcome of the appeal filed by P&H in the Appellate Division as the primary ground in support of and reason for granting the request; conditions of the Board’s approval of that extension obligated Bellemead to comply

Recommendation (Bellemead Development Corporation) cont’d:

with the Township’s “Third Round” affordable housing implementation ordinances, as well as newly enacted NJDEP stormwater management requirements, and certain new enhanced municipal design standards applicable to shade tree parking lots and buffers.(See Exhibit D). Another one year extension, reflected in a Planning Board Resolution adopted on July 9, 2007, was granted primarily due to additional delays and the uncertainty of Bellemead’s sewer allocation as a result of P&H’s appeal of the Appellate Court’s decision against it to the New Jersey Supreme Court, which denied cert on December 8, 2006. This extension approval required Bellemead to comply with additional municipal design standard requirements which had been adopted by the Township since the 2006 extension, as well as new conservation easement requirements, net lot area and stream corridor buffering. (See Exhibit E). Bellemead again requested and received a two-year extension from the Planning Board dated July 14, 2008 citing as its reasons, loss of its prospective tenant (Verizon–due to the P&H litigation) and the state of the economy, which the Board agreed was reasonable in light of the circumstances. (See Exhibit F).

5. Mr. Pantel stated that Bellemead was unable to successfully market the property during the extension period (which it represented is now extended through June 30, 2016 due to additional extensions of the Permit Extension Act), not only because of the depressed market for office space, but because the suit instituted by Plaintiff in 2010 threw its sewer allocation into question yet again. He calculated that, since August 2000, all but two years and 11 months of that period has been encumbered by litigation and/or economic emergency recognized by the Permit Extension Act, which actually extends back to the original Act first enacted in 1992.

6. With respect to the imminence of the Halls Mill Project moving forward and the developer's plans for it, Mr Pantel maintained that, throughout the period of the litigation and economic emergency, Belle Mead has continued to keep its municipal approvals (discussed above) and its outside agency approvals intact so that it will be in a position to promptly move forward once a buyer is found. The most recent outside agency approvals attained include an extension of the freshwater wetlands letter of interpretation (good through July 23, 2019) (Exhibit K) and a letter from the State of NJDEP in 2010 confirming that the property should be included in Hunterdon County's Wastewater Management Plan which was being developed at the time (Exhibit L). He stressed that Bellemead is actively marketing the property and pursuing opportunities to find a buyer or tenant so that it can develop the property, but noted that there is a twenty-five percent vacancy rate as of first quarter 2015 for Class A office space in Central

Recommendation (Bellemead Development Corporation) cont'd:

Jersey. This project is planned to be developed into four buildings (phases), but trying to build a development to this scale on a speculative basis is not viable in this economy. As stated in its questionnaire, Bellemead's experience is that substantial purchasers or tenants need to be secured in order to initiate construction. To that end, Bellemead has actively continued its marketing efforts to identify a purchaser/user for the project site and all major brokerages covering the New Jersey office market are aware of it and know that Bellemead is open to all discussions and that it cooperates with brokers. To date, Bellemead has had discussions/engaged in negotiations with several companies and/or their brokers, including Verizon, Higgins Development, Simon Properties and Bank of America, for the purchase/use of the site and continues these efforts today. Accordingly, the Sewer Advisory Committee finds that Bellemead still plans to develop the project and has not abandoned it.

7. In discussing the importance of the project to the community, Mr. Pantel pointed out Bellemead's previous track record in Hunterdon County in successfully developing the 400,000 sq. ft Overlook Farm project in Readington Twp., as well as an office park site in Lebanon

Borough containing a hotel, as well as three office buildings totaling over 300,000 sq. feet of floor area. If given the chance to continue with the project (which will not be possible without the allocated sewer capacity), successful development of Bellemead's site has the ability to generate a ratable to the Township of some \$82.5 million dollars upon completion which would translate into, according to current rates, \$2,244,000 million dollars in property taxes between the local school district and the municipality. He also surmised that an office development could create an additional 2,500 new jobs (4 employees per 1,000 sq. ft of office space) which would be relatively high paying service industry jobs as opposed to, for example, retail or restaurant jobs. In addition to the benefit to the local economy generated by real estate tax payments and potential jobs, development of the Bellemead project will assist the Township in its affordable housing obligations. Specifically, Bellemead previously committed to contribute \$1,605,820 million dollars in affordable housing contributions as a condition of procuring its reserved sewerage capacity in the pre-expansion sewer agreements. To date, \$618,483.00 has been paid in connection with development of the Overlook Farm; the remaining \$987,337.00 is due upon completion of the Hall's Mill project. Bellemead has also committed to comply with any applicable ordinances implementing the Township's third round affordable housing obligations.

8. In keeping with the Courts' directive in the Litigation, Mr. Pantel compared the extent to which Bellemead has gone to develop its project in comparison with the Plaintiff and whether,

Recommendation (Bellemead Development Corporation) cont'd:

by virtue of continuing to hold the capacity, Bellemead has prevented Plaintiff from moving forward with its development plans. Mr. Pantel reviewed the fact that Bellemead, at the time it entered into the sewer agreement for the capacity it now holds, had already gone through the expense and efforts of applying for and obtaining the development approvals for the office project, making contributions which helped the sewer plant expansion to be built and securing the needed capacity. Since then it has made efforts to keep its approvals alive and still intends to complete the project. It does not agree to give up any capacity because according to NJDEP design flow criteria, Bellemead needs 66,060 gpd to build the 660,600 sq. ft. office building and to recapture any capacity, would mean that it cannot build the project as was designed and this would make it less attractive and valuable at this point. He produced the only plan that was on file with the Township in relation to the proposal made by 388 Route 22 Readington Realty Holdings, LLP ("388 Route 22") to develop the property for which it is seeking 11,000 gpd and urged that it did not constitute a proper conceptual layout for a proposed restaurant and retail development because it did not have enough information about the property or the proposed use on it to enable a Board to make a decision about it. As stated in Bellemead's responsive questionnaire, the "Existing Features" plan proffered by the Plaintiff was confusing in that some

of the information that was placed on it (ie. acreage of the property being 6.534 acres) was in conflict with the Township's Tax map which reflects a lot size of 6.0 acres, so it was difficult to determine the zoning requirements which are determined by acreage in Readington Township's Land Use Ordinance. However, in studying the Plaintiff's total listed floor area for its development (62,351 sq. ft) in relation to the size of the site, it appeared that it did not meet at the very least, the side yard or buffer requirements of the zone, that it would exceed the floor area ratio requirements for the acreage, whether the property was 6 acres or 6.534 acres and, therefore, would require a "D" variance (See Exhibit N). In sum, he did not believe there was enough information given by the Plaintiff to the Township to substantiate the amount of gallonage it was seeking so that it could determine whether or not the gallonage ought to be set aside. The Sewer Advisory Committee notes the argument that Bellemead has made here and, while it acknowledges that Bellemead is much farther along in its approvals and has made a much greater monetary commitment and effort to develop the property and thus, should be entitled to keep its sewer capacity allocation on that basis, it makes no judgment as to whether the Plaintiff or Bellemead's development would ultimately be of greater "importance" to the community in terms of land use planning and leaves that decision to the Township Committee.

Recommendation (Bellemead Development Corporation) cont'd:

9. As to whether or not the sewer agreements, especially the September 9, 1999 Sewer Plant Expansion Contribution Agreement, are still in effect or covered by the Permit Extension Act, the Sewer Advisory Committee notes that there is no expiration date set forth in the agreement of 1999. Further, the 1999 agreement specifically stated that the agreements dated "December 23, 1987, November 8, 1988 and on August 6, 1996 continue in full force and effect except as modified by this agreement". The Township's sewer ordinance provides for a discretionary termination of a sewer agreement, not an automatic one, if construction does not begin two years after the preliminary approval is obtained. No such termination was ever exercised. The Sewer Advisory Committee also agrees that the sewer agreements fall within the Permit Extension Act (the "Act") and that the Act has always applied to them. Since its first enactment in 1992, there were additional extensions of same. The first Act, which applied from January 1, 1989 through December 31, 1996, applied to a myriad of permits, including among numerous listed items: sewer extension permits, approvals by sewerage authorities, municipal utilities and any other permit related thereto "whether that authorization is in the form of a permit, approval, license....*agreement* or any other executive or administrative decision which allows a development to proceed" (emphasis supplied). The same language is contained in the Permit Extension Act of 2008. N.J.S.A. 40:55D-136.3. Further, the last amendment to the

Permit Extension Act of 2008 explicitly clarified that the Act was intended to include sewer agreements, as set forth in N.J.S.A. 40:55D-136.3,136.4(a)] and , accordingly, is applicable to the sewer agreements made by Bellemead with the Township.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. For the reasons expressed above, the Sewer Advisory Committee recommends that the Township not recapture Bellemead's remaining sewerage capacity allocation of 66, 060 gpd which the Sewer Advisory Committee agrees has been reserved for the previously approved office use on Block 2.01, Lots 9.01 and 11 as was recited in sewer agreements made in 1987, 1988, 1996 and 1999 with the Township. The recommendation is based on the Sewer Advisory Committee's belief that Bellemead, through its response to the Township's questionnaire, the exhibits attached thereto and the presentation made by its attorney, has provided a credible case for the Township to conclude that the project is covered by the Permit Extension Act which carries the validity of the sewer agreement and its preliminary site plan approval to at least June

Recommendation (Bellemead Development Corporation) cont'd:

of 2016. The Sewer Advisory Committee also believes that a good and reasonable argument has been made that extension of the sewer agreement, so as to permit construction of the project would be in the Township's best interest, particularly the points made with respect to it being an important ratable for the Township and the fact that if built, will generate a substantial COAH contribution. In addition, the project still falls within the Township's zone plan for the property and Bellemead has represented that it will build the project in accordance with the approval that was given within the zone, as soon as it can.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory Committee acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A ***MOTION*** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

9. Township of Readington Sewer Advisory Committee Recommendation RE: Block 14, Lots 29, 29.02 29.03 and Others / Ryland Office Park, LLC

The following recommendation was offered for consideration:

**TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 14, LOTS 29, 29.01, 29.02, 29.03, BLOCK 18, LOT 19.01
AND OTHERS
RYLAND OFFICE PARK, LLC**

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

Recommendation (Ryland Office Park, LLC) cont’d:

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner’s development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, Ryland Office Park, LLC was not listed as defendant in the Litigation, but is a holder of sewerage capacity in the Township, and as such, was sent a notification and questionnaire in conjunction with the Township's analysis ; and

WHEREAS, in response to its request, the Township Committee received a letter and completed questionnaire from Lloyd H. Tubman, Esq., dated July 7, 2015 on behalf of Ryland Office Park, LLC; and

WHEREAS, the submission received did not provide a complete picture of the utilization of the entire gallonage allocated to Ryland Office Park, LLC and its predecessor entities. Accordingly, in addition to the submission received from Ms. Tubman, the Township ***Recommendation (Ryland Office Park, LLC) cont'd:***

Attorney reviewed the Township's files in order to supplement the record and the Sewer Advisory Committee has adequate information regarding the utilization of the sewerage capacity by Ryland Office Park, LLC and its predecessor entities to enable it to make a recommendation to the Township Committee.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. According to the Township's records, the sewerage capacity held by Ryland Office Park, LLC originated from two sewer agreements made with the Township, both of which predated the sewer plant's expansion. The first sewer agreement was made with the Township on November 4, 1988 with a predecessor in interest to Ryland Office Park, LLC, specifically, Ferber Properties II, N.J. Limited Partnership, whose sole general partner was Paul L. Ferber . This agreement allocated sewerage gallonage for use on Block 14, Lots 29 and 29.01 in the amount of 12, 250 gpd with the potential for an additional 4,200 gpd (provided the owner paid for it), plus 40,000 gpd from the sewer plant's expansion (also to be paid for by the developer) for a total possible gallonage of 56,450 gpd for all the uses (including an office complex and existing uses) contemplated on Block 14, Lots 29 and 29.01. Thereafter, a second agreement was made dated December 27, 1991 between the Township of Readington and Ry-Sew, Inc., a holding entity for Paul L. Ferber, sole general partner in Ferber Properties, II a N.J. limited partnership; this agreement allocated 30,000 gpd sewerage capacity to several lots in the Township that were

either owned by Paul L. Ferber individually or Ferber Properties II. The properties included Block 14, Lots 29, 29.02 and 29.03 and Block 8, Lot 19.01. The Sewerage Agreement allowed Ry-Sew, its successors and/or assigns to use or assign the capacity or any portion thereof to any other project or development “in which Paul L. Ferber has or may have an interest”, with the consent of the Township, provided the project or development was within the Township’s sewer service area. Ry-Sew, Inc. thereafter assigned its interest in 30,000 gpd capacity to Ferber Properties, II on May 17, 1993. Ryland Office Park, LLC succeeded became a successor in interest to Ferber Properties II. Neither Ferber Properties II nor RySew, Inc. nor any other Ferber entity ever entered into a Sewer Plant Expansion and Contribution Agreement for the 40,000 gpd allocation referenced in the 1988 agreement and no allocation was ever granted by the Township. Certain assignments were thereafter made by the Ferber/Ryland Office Park entities to others which were not reviewed or approved by the Sewer Advisory Committee or the Township; this resulted in eventual confusion at the Township’s billing offices. A review of the sewerage capacity, the billings and payments made, was undertaken in 2007 by the Township and it was determined that, the 4,200 gpd referenced in the 1988 was neither billed for nor paid for. As a result, based on payments billed and received, it was finally determined and agreed to by the parties that the total sewerage allocation allotted to the Ferber entities (including Ryland Office

Recommendation (Ryland Office Park, LLC) cont’d:

Park, LLC) was 42,375 gpd. On November 1, 2007, the Township Attorney sent a letter confirming the gallonage and reciting the assignments of capacity which were made over the years as follows:

30, 125 gpd for use on Block 14, Lots 29.02 and 29.03 (now held by Ryland Developers, LLC, after assignment from Maxwell and Black in November of 2005);

9,450 gpd for use on Block 14, Lot 29 to Shelton Land, LLC (now held by Cretella/Landmark)

489 gpd for use on Block 19.01 for Commerce Bank (now TD Bank)

2,311 gpd remaining to Ryland Office Park, LLC

2. As set forth in the July 7, 2015 submission to the Township from attorney Lloyd Tubman, the Sewer Advisory Committee recommended, and the Township Committee approved, an assignment from Ryland Office Park, LLC of 1,365 gpd to Walgreens for a retail pharmacy be used on Block 8, Lots 4,5,6 and 7 (to become Lot 13); this assignment was approved by the Township in November 2009 and left a remaining sewerage allocation to Ryland Office Park, LLC of 946 gpd.

3. Ryland Office Park, LLC applied to the Readington Twp. Board of Adjustment for subdivision/site plan approval with variances to construct the aforementioned Walgreens Pharmacy on Block 8, Lots 4,5,6 and 7 (to become Lot 13) and same was granted in 2013 via Resolution 2013-257. The Walgreens is currently in the process of being completed and connected to the sewer system. The Commerce Bank (now TD Bank) was built several years ago and is also hooked into the sewer system; the status of the developments on the remaining properties have been addressed in other resolutions adopted by this Committee.

4. Although the questionnaire provided the opportunity to do so, nothing in its response to the Township indicated that Ryland Office Park, LLC has any future plans to use the remaining 946 gallons of sewerage capacity it currently holds.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

Recommendation (Ryland Office Park, LLC) cont'd:

1. For the reasons set forth above, the Sewer Advisory Committee finds that there is 946 gpd sewerage capacity remaining to Ryland Officer Park, LLC which has not been allocated toward any project or property, for any purpose. Further, the owner has given no indication of any future plans for the capacity. Accordingly, the Sewer Advisory Committee recommends that the remaining 946 gpd be returned to the Township.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A MOTION was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

10. Township of Readington Sewer Advisory Committee Recommendation RE: Block 4, Lot 77, 77.01 and 77.02 / Now or Formerly Ackerman /Dos Santos / Tadros & Samaan

The following recommendation was offered for consideration:

***TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 4, LOTS 77, 77.01 AND 77.02***

NOW OR FORMERLY ACKERMANN/DOS SANTOS/TADROS & SAMAAAN

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

Recommendation (Formerly Ackermann/Dos Santo/Tadros & Samann) cont’d:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner’s development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township;

and

WHEREAS, Rolf Ackermann, Ramyz Tadros and Shadia Samaan (hereinafter referred to as “Ackermann”, “Tadros” and “Samaan”, respectively) were all listed as defendants in the Litigation with respect to property known as Block 4, Lots 77, 77.01 and 77.02, and were sent a letter and questionnaire by the Township, but did not respond to same; and

WHEREAS, despite the lack of response, by Ackermann, Tadros and Samaan, the Township, its attorney and engineer all have and/or provided adequate information about the sewer allocation granted to the properties and its utilization to enable the Sewer Advisory Committee to make a recommendation to the Township Committee.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

Recommendation (Formerly Ackermann/Dos Santo/Tadros & Samann) cont’d:

1. According to the Township’s records, Rolf Ackermann (now deceased) was allocated 1,050 gpd sewerage capacity to serve a single family residence on each of three building lots on property he owned known as Block 4, Lots 77, 77.01 and 77.02. The allocation originated with a Sewer Plant Expansion Contribution and Allocation Agreement entered into with the Township dated February 4, 2002 and Resolution #2004-15 by the Township Committee on January 5, 2004 approving an amendment to that agreement.

2. Subsequent to entering into the above sewer agreements with the Township, Ackermann built a house on Block 4, Lot 77 and connected it to the sewer system; sold Block 4, Lot 77.01 to a party named Dos Santos who had a house built on that lot and connected it to the sewer system; and sold Block 4, Lot 77.02 to Tadros and Samaan who likewise had a house built upon it and connected to the sewer system. All three houses are occupied and “on-line”.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. For the reasons set forth above, the Sewer Advisory Committee finds that the 1,050 gpd sewerage capacity originally allocated to Rolf Ackermann for one (1) single family dwelling on each of Block 4, Lots 77, 77.01 and 77.02, respectively, has been put to use and should not be returned to the Township.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A **MOTION** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

**11. Township of Readington Sewer Advisory Committee Recommendation RE:
Block 36, Lots 93, 94 and 95 / Country Classics Legacy At Readington, LLC**

The following recommendation was offered for consideration:

**TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 36, LOTS 93, 94 and 95
COUNTRY CLASSICS LEGACY AT READINGTON, LLC**

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner’s development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;

- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

Recommendation (Country Classics Legacy at Readington, LLC) cont'd:

WHEREAS, the Township Committee received a letter and submission in response to the questionnaire from Alexander G. Fisher, Esq. dated June 29, 2015 on behalf of Country Classics Legacy at Readington, LLC, which was a named defendant in the aforementioned case, with respect to property known as Block 36, Lots 93, 94 and 95 which letter and submission was forwarded to the Sewer Advisory Committee for initial review; and

WHEREAS, in addition to the letter submitted by Mr. Fisher, the Sewer Advisory Committee is familiar with sewer allocation it previously granted for the property and the status of the development project approved thereon.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. Country Classics Legacy at Readington, LLC (“Country Classics”) holds a sewer allocation of 11,700 gpd capacity in connection with property known as Block 36, Lots 93, 94 and 95 in the Township of Readington. The capacity was obtained and paid for by a previous property owner via a sewer agreement entered into with the Township in 2001; the capacity ran with the land. Since then, the full allocation of the sewerage capacity has been used to service a 51 unit residential, age restricted-development built adjacent to Route 22 in the Township. The Sewer Advisory Committee acknowledges that this development has been fully built-out and is in use.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. Because the 51 unit residential development planned for Block 36, Lots 93, 94 and 95 for which the 11, 700 gpd sewerage capacity was allocated has been fully built out and is being utilized, the Committee does not recommend returning any of the sewerage capacity which was allocated for the property to the Township.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A ***MOTION*** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

12. Township of Readington Sewer Advisory Committee Recommendation RE: Block 36, Lot 96 / WPS Realty, LLC – Serra/Doyle

The following recommendation was offered for consideration:

***TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 36, LOT 96
WPS REALTY, LLC - SERRA/DOYLE***

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by

private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner's development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

Recommendation (WPS Realty, LLC / Serra-Doyle) cont'd:

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, the Township Committee received a completed questionnaire dated June 30, 2015 from Thomas and Teresa Doyle with respect to property known as Block 36, Lot 96 which letter and questionnaire were forwarded to the Sewer Advisory Committee for initial review; and

WHEREAS, the Sewer Advisory Committee notes that the response also appears to apply to the entity listed as WPS Realty, LLC which was listed as a defendant in the Litigation since it concerns the same property; and

WHEREAS, in addition to the questionnaire submitted by the Doyles, the Sewer Advisory Committee is familiar with sewer allocation it previously granted for the property and the status of the development project approved thereon.

***WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE
FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE
TOWNSHIP COMMITTEE:***

1. Thomas and Teresa Doyle (“Doyle”) owners of Block 36, Lot 96 were allocated 1,500 gpd sewerage capacity by virtue of a Sewer Expansion Contribution and Allocation Agreement (“Agreement”) made with Readington Township on September 17, 2001. This capacity was in addition to the existing gallonage of 350 gpd that was already allocated to an existing residence on that property, making the total allocation 1,850 gpd. According to the Agreement supplied with the questionnaire, the amount paid for the 1,500 gpd allocation was \$28,245.00, plus user charges which were \$120.00 per unit at signing for the first year, \$240.00 per unit the second year and \$360.00 the third year. Thereafter, additional user charges were to be paid annually in accordance with the current sewer use charges established by ordinance.

Recommendation (WPS Realty, LLC / Serra-Doyle) cont’d:

2. On or about 2007, Doyle contracted to sell Bl. 36, Lot 96 to Anthony and Judy Serra (Serra) for a preparatory school for children ages 2 and 1/2 through 5. As a result, Doyle and Serra approached the Township for an approval of the transfer of the capacity such that 800 gpd would be used for the Whitehouse Preparatory School and the remaining 1,050 gpd would remain with the property, but be billed to Doyle (350 gpd was not from the Sewer Expansion Agreement). The revised allocation was reflected in an Assumption of Sewer Capacity Agreement dated December 7, 2007 (“Assumption Agreement”), recommended by the Sewer Advisory Committee and thereafter authorized by the Readington Township Committee on 12/7/07. The Assumption Agreement provided that the remaining capacity of 1,050 was assignable by Doyle or Serra.

3. The Whitehouse Preparatory School has been fully built and is utilizing 800 gpd capacity. Per Doyle’s letter, Doyle has continued to pay for the capacity throughout the years, is willing to sell back 1,050 gpd capacity back to the Township and is also willing to provide information regarding the amount they have paid to the Township in order to determine compensation.

4. Since the meeting date, upon inquiry, the Township Attorney received a letter dated August 30, 2015 from Anthony J. Serra, on behalf of Whitehouse Preparatory School confirming the status of the project to be as stated in the Doyles’ letter and also confirming that the Assumption Agreement made on December 3, 2007 is still in effect and has not been modified.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. Because the Whitehouse Preparatory School has been built since the Township Committee's approval of the sewer allocation and is fully utilized, there is no reason to return that capacity.

2. The Sewer Advisory Committee recommends the return of 1,050 gpd offered by Doyle to the Township and the Township Committee's repurchase of same.

3. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A **MOTION** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

13. Township of Readington Sewer Advisory Committee Recommendation RE: Block 36, Lot 2; Block 31, Lots 37 and 37.02; Block 34, Lots 10 and 11; and Block 32, Lot 12 / Fallone Properties, LLC

The following recommendation was offered for consideration:

**TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 36, LOT 2; BLOCK 31, LOTS 37 AND 37.02;
BLOCK 34, LOTS 10 AND 11; AND BLOCK 32, LOT 12
FALLONE PROPERTIES, LLC**

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as "the Litigation") and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township's sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner's development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

Recommendation (Fallone Properties, LLC) cont'd:

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, the Township Committee received a letter response from Robert Fallone on behalf of Fallone Properties, LLC, Fallone at Readington, LLC and Fallone at Spring Meadow, LLC (applicant) in response to the Sewer Capacity Analysis Questionnaire with respect to properties known as Block 36, Lot 2 (located on School Road); Block 31, Lots 37 and 37.02 (located on Whitehouse Avenue); Block 34, Lots 10 and 11 and Block 32, Lot 12 (located on Nelson Street and Cleveland Place, both paper streets), which letter was forwarded to the Sewer Advisory Committee for initial review.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. Fallone Properties was allocated 350 gallons per day sewer capacity for use on

property known as Block 36, Lot 2 on School Road. According to existing Township records, this capacity was the result of sewer allocation agreement made with the Township dated October 16, 1995. A single family house was built on the property, was hooked up to the sewer system and is occupied; from the facts presented it appears that the developer has used this capacity.

2. Fallone Properties, LLC was allocated 2,800 gpd capacity for use in connection with 8 residences proposed to be built on Block 31, Lots 37 and 37.02 as a part of an agreement dated April 1, 2011. The Sewer Advisory Committee notes that this allocation originated from a request for 4,200 gpd made and recommended for approval at a meeting held on October 25, 2000 for sewerage capacity to serve single family residences to be built on Bl. 31, Lots 37 (proposed at that time to be subdivided) and 37.02, Bl. 34, Lots 10 and 11 and Block 32, Lot 12. The request was approved by the Township Committee held on April 16, 2001, subject to the above-referenced April, 2011 sewer agreement which addressed 4,200 gpd, including 1050 gpd for Bl. 34, Lots 10 and 11 and Block 32, Lot 12; 2,800 gallons for the 8-lot subdivision on Bl. 31, Lot 37 and 350 gpd for Bl. 31, Lot 37.02 which had been built and hooked-up prior to 2011) . Applicant paid \$79,086.000, plus annual user charges for the remaining unused 3,850 gpd capacity. Therefore, ultimately, as stated in Applicant's 6/22/15 letter, by 2013, one home had ***Recommendation (Fallone Properties, LLC) cont'd:***

been built and connected on Bl.31, Lot 37.02; and four homes were built and connected to the sewer system on subdivided Lot 37. Subsequently, Fallone Properties, LLC and Toll made application to the Sewer Advisory Committee to revise the 350 gpd sewer allocation units originally assigned to the homes to be built on Block 31, Lot 37 and 37.02 to 300 gpd (as used by DEP) and to transfer the remaining gallonage (1,626 gpd) to Toll for use on Block 36, Lot 49 which Fallone Properties, LLC owned and was selling to Toll. The transfer application was approved by both the Sewer Advisory Committee and Township Committee; accordingly, it appears that Fallone Properties, LLC has used the capacity allocated to Block 31, Lots 37 and 27.02 and no longer holds the remainder.

3. Fallone Properties, LLC sold its remaining sewer allocation in the amount of 1,050 gpd to the Township of Readington in connection with the sale of Block 34, Lots 10 and 11 and Block 32, Lot 12 on January 15, 2015. The Township attorney stated that the sewer capacity purchased as part of the land acquisition is intended to be used for an affordable housing project on that site.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. Because a home was built in 2008 and has been occupied on the property known as Block 36, Lot 2 (School Road), the Sewer Advisory Committee recommends that there is no

basis to return the 350 gpd sewerage capacity allocated to this lot.

2. The Sewer Advisory Committee agrees that there is no basis to return the capacity allocated to the four homes on Block 31, Lot 37 or to the fifth home on Block 31, Lot 37.02 (located on Whitehouse Avenue) because those homes have been built and occupied since 2013.

3. With respect to the remaining gallonage of 1050 gpd which was allocated to Block 34, Lots 10 and 11 and Block 32, Lot 12, the Sewer Advisory Committee agrees that this capacity was already purchased by and returned to the Township with its purchase of those lots in January 2015. The Sewer Advisory Committee notes that this capacity is earmarked for an affordable housing project on those lots.

4. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A **MOTION** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

**14. Township of Readington Sewer Advisory Committee Recommendation RE:
Block 36, Lot 48 / The Farm Property, LLC**

The following recommendation was offered for consideration:

**TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 36, LOT 48
THE FARM PROPERTY, LLC**

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by

private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner's development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

Recommendation (The Farm Property, LLC) cont'd:

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, the Township Committee received a letter and submission in response to the questionnaire from Greg Riley, Esq. dated July 6, 2015 on behalf of The Farm Property, LLC, successor in interest to Urb-Fi Development, which was a named defendant in the aforementioned case, with respect to property known as Block 36, Lot 48 which letter and submission was forwarded to the Sewer Advisory Committee for initial review; and

WHEREAS, Mr. Riley appeared before the Sewer Advisory Committee on July 21, 2015 on behalf of The Farm Property, LLC; and

WHEREAS, in addition to the letter submitted by Mr. Riley, the Sewer Advisory Committee is familiar with sewer allocation it previously granted for the property and has additional information regarding same, as well as knowledge of the status of the development project approved thereon.

***WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE
FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE
TOWNSHIP COMMITTEE:***

1. The Farm Property, LLC (“The Farm Property”) holds a total sewer allocation of 8,100 gpd capacity in connection with property known as Block 36, Lot 48 in the Township of Readington. A portion of the capacity, 2,500 gpd, was obtained and paid for (\$47,075.00 plus user charges) by the previous property owner Urb-Fi Development Corp. as part of a sewer agreement entered into with the Township on August 12, 2003. Thereafter, the Farm Property’s principal, Mark Hartman (“Hartman”) requested an additional 5,600 gpd to serve a mixed use development on the property consisting of retail space and 16 residential rental units, 15 of which were to be restricted for low or moderate affordable housing. Upon recommendation by the Sewer Advisory Committee, the Township Committee approved the additional allocation and entered into a sewer agreement with Hartman dated October 13, 2011; the total amount payable for the capacity was \$105,448.00 which was divided into five annual payments of \$21,089.60 each, beginning October 13, 2011. Per the agreement, Hartman also responsible for annual sewer

Recommendation (The Farm Property, LLC) cont’d:

user charges, one-third in 2011; two-thirds in 2012 and the full amount starting in 2013, as well as its prorata share of the improvement costs of the Oakland Drive Pump Station.

2. The Farm Property purchased and took title to the property. It obtained the necessary development approvals for the development which consists of four buildings (three principal buildings) totaling approximately 64,137 sq. feet from the Board of Adjustment on July 15, 2010. The Board of Adjustment required all affordable housing to be built prior to the commercial use and the development proceeded in phases. Since then, the developer signed affordable housing and developer agreements with the Township in conjunction with the property, built the sewer extension and has installed all the connections to the buildings. The first building (containing affordable housing) was completed in July and received approval for occupancy. The other buildings are in the process of being constructed. The Sewer Advisory Committee acknowledges that this development is under construction and is close to being built out.

3. The Sewer Advisory Committee finds that this project, which provides fifteen Mount Laurel units to the Township, is an important asset to the Township.

***BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE
FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP
COMMITTEE REGARDING THE WITHIN MATTER:***

1. For the reasons set forth above, and because the mixed affordable housing/commercial development planned for Block 36, Lot 48 is under construction and almost fully built out, the Committee agrees that the full amount of capacity allocated (8,100 gpd) is or will be utilized and does not recommend returning any of the sewerage capacity which was allocated for the property to the Township.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A **MOTION** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

15. Township of Readington Sewer Advisory Committee Recommendation RE: Block 8, Lot 3 Now or Formerly / Winfield Management

The following recommendation was offered for consideration:

**TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 8, LOT 3
NOW OR FORMERLY WINFIELD MANAGEMENT**

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner’s development plans to use some or all of the capacity and the imminence of that happening;

- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as

Recommendation (Winfield Management) cont'd:

holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, Winfield Management was listed as defendant in the Litigation with respect to property known as Block 8, Lot 3, located on Route 22 West, and was sent a letter and questionnaire by the Township, but did not respond to same; and

WHEREAS, despite the lack of response from Winfield Management, the Township, its attorney and engineer all have and/or provided adequate information about the sewer allocation granted to the property and its utilization to enable the Sewer Advisory Committee to make a recommendation to the Township Committee.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. According to the Township's records, Winfield Management was allocated a total of 6,100 gpd sewerage capacity (4,700 gpd came from the sewer plant expansion and was paid for, and the remainder of 1,400 gpd came from a pre-existing pre-expansion allocation). The purpose of the allocation was to serve a mixed use commercial and 12 unit affordable housing development on property it owns (or formerly owned) known as Block 8, Lot 3, along Hwy. 22 West in the Township. The allocation originated with a Sewer Plant Expansion Contribution and

Allocation Agreement approved by the Township Committee on November 16, 2009 and was subsequently signed by the parties.

2. After entering into the above sewer agreement with the Township, Winfield Management obtained approvals for and built-out the project as contemplated by the sewer agreement and the development is now on-line and is mostly occupied.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. For the reasons set forth above, the Sewer Advisory Committee finds that the 6,100 gpd sewerage capacity allocated to Winfield Management is being utilized and should not be returned to the Township.

Recommendation (Winfield Management) cont'd:

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A ***MOTION*** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

16. Township of Readington Sewer Advisory Committee Recommendation RE: Block 36, Lot 49 / Toll, NJ I, LLC

The following recommendation was offered for consideration:

***TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 36, LOT 49
TOLL, NJ I, LLC***

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, according to said Orders, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

Recommendation (Toll NJ I, LLC) cont’d:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner’s development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, the Township Committee received a letter and submission in response to the questionnaire from Richard J. Hoff, Esq. dated June 26, 2015 on behalf of Toll, N.J. I, LLC with respect to property known as Block 36, Lot 49, which letter and submission was forwarded to the Sewer Advisory Committee for initial review.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. Toll NJ I, LLC (“Toll”) holds a sewer allocation of 36,286 gpd capacity in connection with property known as Block 36, Lot 49 in the Township of Readington which it purchased in 2013 from Spring Meadows at Readington, LLC and related Fallone entities for use as a 210 unit residential, age restricted-development in 2013. Toll purchased the sewer allocation by virtue of an assignment of agreement recommended for approval by the Sewer Advisory Committee and approved by resolution of the Township Committee on July 1, 2013.

Recommendation (Toll NJ I, LLC) cont’d:

Toll paid \$96,367 for the reservation charges and is paying user fees to the Township.

2. Although Toll has held the above-referenced capacity since 2013, Toll’s predecessor, Fallone Properties, LLC (“Fallone”) first obtained an allocation of 32,000 gpd for the property as a result of a stipulation of settlement first made among the parties on June 2000 and thereafter filed with the court in certain zoning litigation entitled Fallone Properties, LLC v. Township of Readington, et al., Docket No. HNT-L-123-99 and Fallone Properties, LLC v. Township of Readington and the Readington Township Board of Health, Docket No. HNT-L-673-98. An amended Stipulation of Settlement was signed by the parties and filed with the Court on August 12, 2002. In addition to the gallonage, the Stipulation of Settlement addressed a proposed senior citizen development on the property consisting of 210 residential units, clubhouse and various amenities. Because the 32,000 gpd allocation was only expected to serve 188 units, the settlement agreement explicitly provided that Fallone could seek sewer capacity from other holders of unused capacity who might be willing to sell same and that the approval could proceed in phases to coincide with the amount of capacity obtained. Fallone signed a Sewer Expansion Contribution and Allocation Agreement with the Township dated July 26, 2002 and paid \$602,560 for the capacity, plus annual sewer user charges. Fallone also obtained an additional 2,660 gpd sewerage capacity as a result of a three-way development agreement made for improvements to the Oakland Drive Sewerage Pumping Station made among the Township and Country Classics, LLC, et al. which helps service Block 36, Lot 49 and the Country Classics Development. The remaining allocation of 1,626 gpd transferred from Fallone to Toll was derived from the remaining capacity left from the residences developed by Fallone on Block 31,

Lots 37 and 37.02 as a result of the sewer allocation agreement dated April 1, 2011, and first approved by the Township Committee on April 16, 2001.

3. With respect to efforts to develop the residential housing project on Block 36, Lot 49, according to the information submitted with Toll's questionnaire response, Fallone first received preliminary major subdivision and site plan approval for the 210 residential unit development by Planning Board Resolution memorialized on August 11, 2003. Final subdivision and site plan approval was obtained by Planning Board Resolution memorialized on December 12, 2005 and extended by Resolutions 2007-228 on September 10, 2007. Thereafter, an amended preliminary and final subdivision/site plan approval was approved by Resolution 2010-285 on August 23, 2010 and further amendment of final approval for Phases 2-5 was obtained and memorialized in Resolution 2013-309 on October 23, 2013 and Resolution 2014-311 on March 14, 2014 by Toll as successor applicant and developer.

4. In terms of building out the project and using the capacity, Toll began construction in July of 2013, signed the required developer agreements with the Township and posted the ***Recommendation (Toll NJ I, LLC) cont'd:***

necessary performance bonds due in conjunction with each of the five (5) phases of the project. Toll has constructed the infrastructure, including the sewer mains, storm water management facilities, roadways, on-site sewer pump station, and building amenities. It has formed the requisite homeowners association, sold and delivered thirty (30) residential units which are occupied and has built forty (40) units which are either completed and awaiting occupancy or under construction. As of the date it submitted its questionnaire to the Township (June 26, 2015), the Clubhouse was nearing completion and there were an additional 16 residential building permits submitted to the Township for approval, bringing the total residences to eighty-six (86) as of the date of its response. Toll further reported that, it continued to actively market its remaining units within the Project and that sales remain ongoing.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. The Committee acknowledges that the sewer capacity allocated for this project was obtained in conjunction with the settlement of zoning litigation involving Block 39, Lot 49 by Toll's predecessor in title stemming from 2000. From the information presented, the Committee is satisfied that Toll, as well as Fallone Properties, LLC before it, have both in fact, proceeded to develop the 210 unit age-restricted development contemplated by the settlement agreement, and for which the 36,286 gpd sewer capacity was allocated, by pursuing all necessary approvals and installing all the required infrastructure improvements. Further, Toll has constructed and sold least eighty-six (86) of the residences since it purchased the Project in 2013 and continues to

market them. There is no reason to believe that Toll will not continue to proceed with the remainder of the development. In addition, it appears that from all the work performed on or about the project to date since the time of its purchase, Toll has made an adequate case that it has a vested interest in keeping the entirety of the gallonage it was assigned, allocated and paid for. Accordingly, the Committee does not recommend returning any of Toll's allocated sewerage capacity to the Township.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A *MOTION* was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

17. Township of Readington Sewer Advisory Committee Recommendation RE: Block 36, Lot 7 / Tom Jr. Property, Inc.

The following recommendation was offered for consideration:

**TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 36, LOT 7
TOM JR. PROPERTY, INC.**

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as "the Litigation") and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township's sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;

- 2) The holders or landowner's development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

Recommendation (Tom Jr. Property, Inc.) cont'd:

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, Tom Jr. Property, Inc. (hereinafter "Tom Jr. Property") was listed as defendant in the Litigation with respect to property it owns known as Block 36, Lot 7, and was sent a letter and questionnaire by the Township, but did not respond to same; further no one appeared its behalf at the July 21, 2015 meeting; and

WHEREAS, despite the lack of response from Tom Jr., Property, the Township, its attorney, engineer and sewer advisory members all have and/or provided adequate information about the sewer allocation granted to the property and its utilization to enable the Sewer Advisory Committee to make a recommendation to the Township Committee.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. According to the Township's records, Tom Jr. Property obtained the right to a sewer allocation of 2,450 gpd as a result of litigation instituted and won against the Township several years ago. The owner never signed a sewer allocation agreement with the Township nor did it pay for the allocation. According to Mrs. Allen, an application was made for a four lot residential subdivision in 2008 and the Planning Board granted preliminary approval of same in

approximately 2013. Four lots requires a sewerage allocation of 1,400 gpd. To her recollection, the property contained a good deal of critical land, so there was no real potential for a more intensive development. No steps have been taken to construct the approval granted on the property. The owner approached the Township Open Space Committee approximately six months ago to sell the property as open space. At that time, he stated that if they did not sell the property for open space, he would proceed to develop it.

2. Based on the information provided, it appears that the property has approximately 1,050 gpd that can be returned and still allow the approval that was obtained in 2013 to be built.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

Recommendation (Tom Jr. Property, Inc.) cont'd:

1. For the reasons set forth above, the Sewer Advisory Committee finds that 1,050 gpd of the 2,450 gpd sewerage capacity previously reserved for use by Tom Jr. Property, Inc. was not paid for, is not being utilized and will not be needed in the future since it is not necessary to serve the four (4) lot single-family residential development which previously received preliminary subdivision approval. Further, it does not appear that a more intense use may developed under the current zoning. Accordingly, the Sewer Advisory Committee recommends that 1,050 gpd be returned to the Township.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory Committee acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A ***MOTION*** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

***18. Township of Readington Sewer Advisory Committee Recommendation RE:
Block 14, Lot 29 / Formerly Valley National Bank***

The following recommendation was offered for consideration:

***TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 14, LOT 29
FORMERLY VALLEY NATIONAL BANK***

WHEREAS, at the request of the Readington Township Committee, the Readington

Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

Recommendation (Valley National Bank) cont’d:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner’s development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, Valley National Bank was listed as defendant in the Litigation with respect to property known as Block 14, Lot 29, located on Route 22 West, and was sent a letter and

questionnaire by the Township, but did not respond to same; and

WHEREAS, despite the lack of response from Valley National Bank, the Township, its attorney and engineer all possess and/or have provided adequate information about the sewer allocation granted to the property and its utilization to enable the Sewer Advisory Committee to make a recommendation to the Township Committee.

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. According to the Township's records, sewer capacity for Block 14, Lot 29 was originally the subject of two Sewer Agreements, one between a previous title holder, Ferber Properties II dated November 4, 1988 for a possible total of 56,450 gpd, but ultimately for 12,375

Recommendation (Valley National Bank) cont'd:

gpd** and a subsequent Sewer Agreement dated December 27, 1991 between the Township of Readington and Ryland Office Park (successor in interest to Ry-Sew, Inc.) which allocated 30,000 gpd to several lots, including a portion to be used for Block 14, Lot 2,9 which contains the Ryland Inn Restaurant and other existing buildings. These sewer agreements pre-dated the expansion of the Township's sewerage treatment plant. Thereafter, Ryland Office Park assigned approximately 9,450 gpd sewerage capacity to Shelton Land, LLC for use of the Ryland Inn and the other buildings on Block 14, Lot 29. Shelton Land, LLC's interest in the property was eventually foreclosed or otherwise conveyed to Valley National Bank which became a defendant in the Litigation. The property was eventually sold to Ryland Inn Property, LLC. Ryland Inn Property, LLC, through its principal and applicant Frank Cretella appeared before the Sewer Advisory Committee in January of 2011 requesting that the Committee agree that the sewerage usage on the property should be measured by the average daily flow in order to accommodate the existing restaurant and a proposed expansion of facilities on the site, including a new hotel and other buildings for various social events to be developed and conducted on the property. The Sewer Advisory Committee recommended the request and it was thereafter approved by the Township Committee on February 6, 2012 as set forth in Resolution #R-2012-36.

2. As of the date of the July 22, 2015 meeting, Ryland Inn Property, LLC and/or Cretella's developer, Landmark Developers, has applied for and received site plan and other required approvals to build an expansion of the restaurant facilities to include a hotel and other amenities. The developer is proceeding in phases. Thus far, according to the Township Engineer, Phase I(a) of the project has been built out, is on-line and is utilizing the sewer system.

** The sewer agreement and a developer agreement made between Readington Township and Ferber Properties II on 11/4/88 provides for additional allocations to the property in the amount of 4,200 gpd (subject to payment) and 40,000 gpd to come from the Township's sewer plant, but neither Ferber Properties II nor Ry-Sew ever pursued the 40,000 gpd allocation and it was also determined, after analysis done in 2007, that of the 4,200 gpd allocation, only 125 gpd was ever paid for, so the allocation was effectively reduced to 12,375 gpd.

Member Allen added that preliminary site plan approval was granted by the Planning Board for Phases 2-4 in 2014 and that the resolution for same was only recently adopted in 2015. It is expected that the project will move quickly to construction and that the full allocation of 9,450 gpd will be utilized .

Recommendation (Valley National Bank) cont'd:

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. For the reasons set forth above, the Sewer Advisory Committee finds that the 9,450 gpd sewerage capacity allocated to Block 14, Lot 29 is being utilized for the uses approved and built, or in the process of being built on the property, and should not be returned to the Township.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A ***MOTION*** was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

19. Township of Readington Sewer Advisory Committee Recommendation RE: Block 14, Lot 49 / National Realty & Development Corp/Readington Holdings, L.P. Whitehouse Plaza (Walmart)

The following recommendation was offered for consideration:

***TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 14, LOT 49
NATIONAL REALTY & DEVELOPMENT CORP/READINGTON HOLDINGS, L.P.***

WHITEHOUSE PLAZA (WALMART STORE)

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

Recommendation (Whitehouse Plaza/Walmart) cont’d:

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner’s development plans to use some or all of the capacity and the imminence of that happening;
- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent out a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, the Township Committee received a letter and submission in response to the questionnaire from Richard A. Kaufman, Executive V.P. and General Counsel to National Realty & Development Corp. dated July 8, 2015 on behalf of Readington Holdings, L.P. owner of the Walmart store located Block 14, Lot 49, which letter and submission was forwarded to the Sewer Advisory Committee for initial review; and

WHEREAS, in addition to the letter submitted by Mr. Kaufman, the Sewer Advisory Committee is familiar with sewer allocation it previously granted for the property and the status of the development project approved thereon.

Recommendation (Whitehouse Plaza/Walmart) cont'd:

WHEREFORE THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS OF FACT IN SUPPORT OF ITS RECOMMENDATIONS TO THE TOWNSHIP COMMITTEE:

1. National Realty & Development Corp./Readington Holdings, L.P. (“Developer” or “Readington Holdings”) leases a portion of property known as Block 14, Lot 49 in the Township which contains an existing development known as “Whitehouse Plaza” , upon which a Walmart store is located.

2. Due to a failing septic system on the property, the Sewer Advisory Committee only recently (on December 18, 2014) recommended Developer’s request for a sewerage allocation of 15,000 gpd, 12,000 gpd which was to serve the existing 119,123 sq. ft. building and 3,000 gpd to serve a proposed 30,000 sq. ft. addition to the facility. The sewer allocation request was thereafter approved by the Township Committee by resolution memorialized on January 20, 2015, a copy of which was attached to Mr. Kaufman’s letter. The approval was subject to the Developer entering into a Sewer Agreement with the Township for the allocation requested.

3. As of the date of the letter (July 8, 2015), the sewerage allocation was not used; however, Developer represented that it anticipates that a connection will be made soon, as soon as all necessary approvals for the proposed expansion are obtained. The Township is in the process of preparing the requisite Sewer Agreement.

4. It was recalled that when the request for the sewer allocation was discussed by Sewer Advisory Committee, the Committee acknowledged the importance of having a Walmart store at its present location . The Committee wanted to ensure that it stayed viable and felt that the

expansion of the Walmart (and the allocation of the additional capacity) would help keep it viable.

5. The Sewer Advisory Committee further reiterated that at the time the application was made, the Developer adequately explained that their existing system was failing and that there were no possibilities on the site for rebuilding it in a safe manner.

6. The Sewer Advisory Committee noted that the approval given to Walmart was conditioned on the applicant installing metering to monitor the sewerage flows on the premises, submit quarterly reports and to maintain the metering during the life of the project; therefore there was a possibility that unused capacity could be returned to the Township. In addition, the approval also stated that if the expansion plans do not proceed or the allocation is not used for the property in accordance with the use described, then the capacity would have to be returned to the Township.

Recommendation (Whitehouse Plaza/Walmart) cont'd:

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. For the reasons set forth above , and due to the recent approval of the request by National Realty & Development Corp./Readington Holdings, L.P., the Committee agrees that the full amount of capacity allocated (15,000 gpd) will be utilized and does not recommend returning any of the sewerage capacity which was allocated for the property to the Township.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory Committee acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A MOTION was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

20. Township of Readington Sewer Advisory Committee Recommendation RE: Block 21.12, Lot 94 / Whitehouse Athletic Association

Ray Facinelli, Executive Vice President of Readington Jr. Baseball, gave a brief background on Readington Jr. Baseball organization. Mr. Facinelli explained that the cost of repairing /replacing the septic system in the future would be both physically and cost prohibitive to the organization which was why the organization had requested to reserve the minimum capacity of 350 gallons to tie

into the sewer line in the event the system failed. Mr. Facinelli admitted that as a result of the organization being strictly volunteers focused on baseball, there was a failure to respond to the June 11, 2015 questionnaire, although with no ill intent, in addition to the 2000 Sewer Agreement not being signed but requested consideration from the Sewer Advisory Committee to allow Readington Jr. Baseball to retain their sewer capacity. Mr. Monaco asked Mr. Facinelli if the organization would be able to enter an agreement and Mr. Facinelli believed they would be able to do so. The Sewer Advisory Committee agreed it would be in the best interest of the organization to allow them to retain their allocation of 350 gallons.

The following recommendation was offered for consideration:

***TOWNSHIP OF READINGTON SEWER ADVISORY COMMITTEE
RECOMMENDATION RE BLOCK 21.12, LOT 94
WHITEHOUSE ATHLETIC ASSOCIATION***

WHEREAS, at the request of the Readington Township Committee, the Readington Township Sewer Advisory Committee, which acts as an advisory committee to the governing body, whose recommendations are not binding, held public meetings on July 21, 2015 and on September 30, 2015 to assist the Township Committee in conducting a sewer capacity analysis as mandated by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) (hereinafter referred to as “the Litigation”) and as directed by a subsequent court order issued on June 4, 2015 by Judge Buchsbaum, on remand; and

WHEREAS, the aforesaid analysis requires the Township of Readington to review the Township’s sewer capacity agreements to determine what amount of unused gallonage can be recalled for possible re-allocation purposes; and

WHEREAS, the Township must analyze the unused sewerage capacity being held by private parties in accordance with the following criteria established by the NJ Supreme Court:

- 1) Length of time the landowner has possessed unused sewer capacity;
- 2) The holders or landowner’s development plans to use some or all of the capacity and the imminence of that happening;

- 3) The complexity of the project and importance of it to the community;
- 4) Whether the economy has retarded economic development;
- 5) Whether there are proposed development projects by others that cannot proceed because of the unavailability of sewer capacity and the importance of those projects to the community; and
- 6) Any other relevant factors; and

WHEREAS, in addition to the above, the Township also must analyze on a case-by-case basis which holders are affected by the N.J. Permit Extension Act; and

Recommendation (Whitehouse Athletic Association) cont'd:

WHEREAS, in furtherance of reviewing the above criteria, the Township of Readington sent a notification letter and Sewer Capacity Analysis Questionnaire on June 11, 2015 to all persons and/or entities that it was aware 1) were identified by the plaintiff in the Litigation as holders of unused sewer capacity and/or 2) had been issued sewer allocations by the Township; and

WHEREAS, Whitehouse Athletic Association (“the Association”) was listed as defendant in the Litigation with respect to property known as Block 12.12, Lot 94, and was sent a letter and questionnaire by the Township, but did not respond to same; further no one appeared on behalf of the association at the July 22, 2015 meeting. However, after receiving notification of the Sewer Advisory’s pending resolution as a result of that meeting, Ray Facinelli, who identified himself as the Executive Vice President of Readington Township Junior Baseball, appeared at the September 30, 2015 meeting to ask the Sewer Advisory Committee to reconsider its pending action; and

WHEREAS, the Sewer Advisory Committee was willing to reconsider its recommendation, based on the circumstances presented.

WHEREFORE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING FINDINGS IN SUPPORT OF ITS RECOMMENDATION TO THE TOWNSHIP COMMITTEE:

1. According to the Township’s records, a reserve of 350 gpd sewerage capacity was set aside for the Whitehouse Athletic Association, through its predecessor Readington Township Junior Baseball League (hereinafter “Association”), as a result of a request initially made by the

Association in connection with sewer plant expansion. The Township approved, signed and sent the Association a Sewer Plant Expansion Contribution and Allocation Agreement on October 13, 2000. The Agreement was never signed by the Association nor was the capacity paid for, pursued or used. The Association did not respond to subsequent inquiries or to the questionnaire and notice sent by the Township in June of 2015.

2. At the September 30, 2015 meeting, Mr. Facinelli stated that Readington Township Junior Baseball is a nonprofit organization which provides baseball to youth in the community. It has a long-term ground lease for the property with the proviso that it will become the owner of the property at some time. The property is deed-restricted for the use as a baseball facility, only. The owner and Readington Township Junior Baseball have no intention to develop or use it for anything other than baseball. He explained that the facility has an aging septic system that is likely to fail at some point in the future. If so, the cost of replacement would likely bankrupt the organization and, in addition, would destroy the property because there is no place on it to locate

Recommendation (Whitehouse Athletic Association) cont'd:

a new system after taking into consideration the existing the ball fields and the parking lot and he understood that it was for those reasons that the Association had originally wanted the 350 gpd sewerage allocation. Not having been a member of the Board at the time the original agreement was sent out in 2000, Mr. Facinelli was not able to explain why the Association had not executed the sewer agreement, but he stated that it was willing to enter into an agreement now. When questioned, he also apologized that the organization had not responded to the June 2015 questionnaire, offering that it was run by volunteers who were focused on baseball and that there was no ill intended.

3. The Advisory Committee Chairman noted that the baseball field is located in the middle of Whitehouse Station, an area of the Township which is notoriously bad for septic systems. He stated that addressing the septic problems in that portion of the municipality was the reason the Township decided to build the sewerage system in the first place. In addition, the zoning in the area of the baseball field has not changed and the original use for which the Township had agreed to make the allocation was still the same as when the sewer agreement was prepared in 2000.

BASED ON THE ABOVE, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE REGARDING THE WITHIN MATTER:

1. For the reasons set forth above, specifically, that the property has, for a long time, been used as a baseball facility run by a non-profit and volunteer organization provides the youth of the community with valuable recreational opportunities to play baseball, thus serving

the public good; that its use as a baseball facility is intended to continue long-term by virtue of the deed restriction; that the zoning has not changed so as to preclude its continued use as a baseball facility; that the property contains an aging septic system which, in the future, would be both cost-prohibitive and physically prohibitive (due to the nature and size of the lot) to replace; and the Committee's recognition that this area of the Township does not support the use of septic systems (which is why the Township agreed to allocate the gallonage originally), the Sewer Advisory Committee recommends that the 350 gpd sewerage capacity originally reserved to Whitehouse Athletic Association and/or Readington Township Junior Baseball should be retained, subject to the Association entering into a sewer agreement with the Township for the allocation as soon as possible.

2. The Secretary is directed to send a copy of the above recommendation, which the Sewer Advisory Committee acknowledges is non-binding and advisory only, to the Mayor and Township Committee for further disposition.

A MOTION was made by Mrs. Allen to adopt this recommendation seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

ADJOURNMENT:

As there was no further business, *A MOTION* was made by Mr. Meglaughlin to adjourn at 7:40 p.m., seconded by Mrs. Allen with a vote of ayes all, nays none recorded.

Respectfully Submitted:

Karin M. Parker, *RMC*
Sewer Advisory Secretary