

**READINGTON TOWNSHIP SEWER ADVISORY COMMITTEE  
MEETING – June 14, 2016**

Chairman Monaco called the meeting *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:** William Meglaughlin, Ron Monaco, David Olsen

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

**ABSENT:** None

**APPROVAL OF THE MINUTES** of meeting of May 25, 2016

A **MOTION** was made by Mr. Olsen to approve the minutes of the May 25, 2016 meeting, seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

**CORRESPONDENCE**

There was none.

**NEW BUSINESS**

1. ***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 is 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**, the Township of Readington was mandated to initiate the recapture of sewer capacity held by Merck, Sharp & Dohme Corp. (hereinafter “Merck”), subject to review of a court appointed Special Master, as a result of a Case Management Order issued on March 9, 2016 by the Hon. Peter A. Buchsbaum J.S.C., in connection with remand proceedings directed by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) and

***Recommendation #1 cont'd:***

**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, held a public hearing on May 25, 2016, for the purpose of making a recommendation to the Township with respect to the issue of recapturing sewer capacity held by Merck; and

**WHEREAS**, at the meeting before the Sewer Advisory Committee, Merck was represented by Christopher John Stracco of the law firm of Day Pitney, LLP ; and

**WHEREAS**, Mr. Stracco presented the following witnesses who were sworn in and gave testimony in connection with the presentation on behalf of Merck, which testimony is made a part hereof:

1. Ronald Kennedy, a licensed professional engineer and planner in the State of New Jersey and a licensed professional engineer in New York and was qualified as an expert in both engineering and planning; and

2. Glenn Stock of Stock Development Group, representative of BHN Associates and LHR Group, both New York-based entities, the contract purchaser(s) of the Merck property.

**WHEREAS**, during the hearing the Sewer Advisory Committee reviewed the following exhibits presented by on behalf of Merck, which are made a part hereof:

1. Merck- 1 Resume of Ronald Kennedy;

2. Merck-2 Aerial Photograph with outlines of the properties associated with Merck Holdings overlay

3. Merck-3 Aerial photograph with outline of the expansion of the 900,000 square foot addition overlay

4. Merck-4 Existing site layout; and

**WHEREAS** the Sewer Advisory Committee based its review of the presentation and its findings on the submissions and exhibits identified above and the testimony provided, as well as on its own knowledge of and expertise in the subject matter; and

**WHEREAS**, after due discussion and review, the Sewer Advisory Committee makes the following findings of fact:

***Recommendation #1 cont'd:***

1. The findings set forth in the above preamble in this Resolution are incorporated herein as if set forth at length.

2. The sewer capacity held by Merck is for use on property it owns known as Block 4, Lots 4.01, 49, 99, 100 and 104; and Block 2.01, Lot 9 in the Township of Readington. The property is adjacent to Interstate Hwy. 78, State Hwy. 22, County Route 523 and Hall's Mill Road in the Township, is zoned RO (Research Office) and contains one 900,000 sq. foot office building, a second 220,000 sq. ft office building, a 23,500 sq. ft former day care center for a maximum of 230 children, gatehouses and an approximately 50,000 sq. ft. maintenance building on about 703.51 acres. It also has preliminary approval dating back to 1988 to build a second office building of 900,000 sq. ft. on the same site. Merck has since moved its headquarters from the premises, no longer occupies the buildings (except for the 220,000 sq. ft. office) and represented that it is under contract to sell the aforementioned property, as well as other parcels it owns (but which do not have sewer capacity) to a contract purchaser who seeks to purchase all of Merck's sewerage capacity and requests the Township to transfer it for use on all of the parcels it is buying which total approximately 1000 acres; and

3. As testified to by Merck's engineering and planning expert the various sewer agreements made between Merck, and/or its predecessor in title (Louis Imfeld) and the Township date back to December 1983. The Sewer Advisory Committee notes that these agreements were also reviewed and considered at its earlier hearing concerning this matter held in July, 2015. The sewer agreements comprise the following:

(a) Initial sewer agreement made with Merck's predecessor Imfeld dated 1983 for 70,000 gpd sewer allocation. The fees paid for this allocation included an initial payment of \$23,606.00 and a user charge of \$299,000.00 for a total of \$322,639.00;

(b) November 1987 agreement with Readington Twp. whereby Merck agreed to release 30,000 gpd to Readington in exchange for a priority allocation and reservation up to 100,000 gpd conditioned on Merck participating in the planning and financing of the sewer plant expansion. As part of this agreement, the Township reimbursed Merck \$108,865.00.

(c) 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

(d) December 18, 1995 Amendment to November 9, 1987 Sewer Agreement revising the priority allocation to Merck from 100,000 gpd to 90,000 gpd from sewer plant expansion.

***Recommendation #1 cont'd:***

(e) Sewer Plant Expansion and Contribution Agreement dated March 10, 1999 between Readington Township and Merck for an additional 141,900 gpd; the pro-rata share paid by Merck was \$2,196,763.00.

(f) Sewer Allocation Agreement between Merck and Readington Twp. dated July 28, 2003 for the same 141,900 gpd mentioned in the 1999 agreement, in exchange for an annual reservation payment of \$146,160.00. To date, eleven payments have been made, totaling \$1,607,760.00.

(g) Amended and Restated Sewer Allocation Agreement with Township dated June 29, 2008 (this agreement extended the 141,900 gpd sewer allocation to the end of June 2018 to coincide with the ten year Planning Board extension for the Phase II office building heard and approved on 5/12/08).

4. The total sewerage allocation conveyed to Merck as represented by it via agreement is 211,900 gpd. This also coincides with the Township's records and sewer allocation spreadsheets. All the aforesaid sewer agreements confirm that the sewer capacity was for use on Block 4, Lots 4.01, 49, 99, 100 and 104 and/or Block 2.01, Lot 9. The March 10, 1999 Sewer Expansion and Contribution Agreement specified that 90,000 gpd of the 141,900 gpd sewer capacity was for use on Block 4, Lots 44, 99, 100 and 104 (for which the Phase I and II office building approvals were received) and that 51,900 gpd sewer capacity was for use on Block 2.01, Lot 9 and Block 4, Lot 4.01. These allocations were confirmed in the 2003 and 2008 sewer allocation agreements.

5. The total payments for sewerage capacity made by Merck to date, in accordance with its sewer agreements with the Township, is \$4,018,297. In addition, it pays an annual user rate charge of \$70,000 for the 70,000 gpd capacity which is in use. According to Merck, the total sewer fees paid to date equals \$5,208,000; this amount is subject to confirmation by the Township's administration and finance office.

6. Merck's engineering and planning expert also testified that he reviewed the previous development approvals obtained from the Planning Board. Those approvals include:

(a) 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).

(b) Amended Site Plan Approval Resolution by the Planning Board dated March 25, 1991 for a day care center and sewer pump station;

***Recommendation #1 cont'd:***

(c ) Resolution - Bl. 4, Lot 4.01 Hall's Mill Road, dated April 26, 1999 granting preliminary and final major site plan approval for 220,000 sq. ft. office building (known as "Whitehouse West")

(d) 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)

(e) various approvals in the early 1990's for accessory uses such as a helistop, additional parking spaces for the main facility and an expansion to the day care facility which increased its size to 23, 500 sq. feet.

Of all the buildings and facilities approved, the only one not constructed to date is the Phase II 900,000 sq. ft office building for which preliminary approval was originally granted in 1988 and extended by the Planning Board to June 2018.

7. In describing the various development approvals obtained for the property, Mr. Kennedy testified that Merck obtained Treatment Works Approvals ("TWAs") from N.J.D.E.P. (hereinafter "DEP") in accordance with the State standards set forth in N.J.A.C. 7:14(a), et seq. for the projected sewerage flow for the buildings and facilities to be constructed as part of the project. When preliminary and final site plan approval was granted in 1988, the design flow criteria for office buildings was .125 gpd per square foot. In the mid-1990's, however, DEP lowered the number to .1 gpd per square foot. Merck obtained two TWAs: one was for a total of 112,000 gpd to serve the Phase I 900,000 sq. ft. office building, and the second, for a total of 22,000 gpd, was to serve the 220,000 sq. ft office building known as Whitehouse West. Upon questioning by the Sewer Advisory Committee, it was determined that there was no Treatment Works Approval applied for or issued for the Phase II office building. Accordingly, the Sewer Advisory Committee finds that the total gallonage for which TWAs were issued for the site was 134,000 gpd. The Sewer Advisory Committee noted that there was no specified TWA for the other uses on site, such as the maintenance building or day care facility; however, since the design flow criteria for office buildings was reduced to .1 gpd per square foot, the Sewer Advisory Committee finds that the miscellaneous buildings were covered by the initial permit. Moreover, from the Township's sewer flow records, and as confirmed by Merck, the highest sewerage flow from the entirety of the property was between 65,000-70,000 gpd, which is much less than the project flow criteria.

***Recommendation #1 cont'd:***

8. Mr. Kennedy opined that DEP's numbers with respect to its projected design flow criteria were conservative and that Merck's buildings flowed at a rate much less than what was required by the State. However, he described to the Sewer Advisory Committee the recent trends in office development throughout the State of New Jersey and how it would be problematic to limit the gallonage actually utilized by Merck to other potential office users in the future, especially in view of the pending sale of the property. Specifically, he noted that when the Merck facility was designed in the 1990s, it and other companies incorporated large atriums, large private offices and large work spaces into their buildings. Now, the corporate office building environment is changing; the trend is toward much smaller work spaces per square foot. He relayed that he has been involved with at least a half-dozen site plan applications requesting approval for increased parking for office buildings because employers are housing more employees in the same amount of space; this translates to more sewerage flow from those buildings and, given the fact that Merck's buildings exist and are zoned for office use, it is his opinion that limiting the sewer allocation to what flowed from Merck would have a negative impact on the future use of the property. The Sewer Advisory Committee accepts the opinions proffered by Merck's expert with respect to changing trends in office usage and design.

9. Merck's engineering and planning expert also testified that Merck's holdings total more than 1,000 acres (the largest tract of land in the Township) and that the Township's OR zone currently permits uses on the property other than office space, such as hotels, corporate conference centers, research and medical facilities, which would require increased sewer capacity. If the capacity was taken away, it would then limit any further development of the site even though these uses are permitted by the Township's zoning ordinance and the site, in his opinion, could support more development. He predicted that without adequate sewer, there would be up to a 30- 35 per cent reduction in floor area ratio which zoning currently allows.

10. Merck also presented Glenn Stock, a principal in Stock Development Group, which is representing the contract purchaser BHN Associates and LHR Group, both out of New York. Mr. Stock declined the Sewer Advisory Committee's request for a copy of the contract so that the Township could confirm its status and the parties' intentions with respect to the property and sewer usage. However, he testified that the contract purchaser wishes to use the entirety of Merck's sewer capacity allocation (211,900 gpd) in connection with its future development plans for the property which the Sewer Advisory Committee finds include not only the lots covered by the sewer agreements made between Merck and the Township, but the following properties which are not covered by the sewer agreement: 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.

***Recommendation #1 cont'd:***

The Committee notes that specific lots and blocks were included in a 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; this letter was attached as an Exhibit to Merck's prior submissions which were made part of the findings in the Sewer Advisory Committee's June 15, 2015 hearing on Merck's sewer capacity.

11. Mr. Stock reviewed the layout of the property in the Merck-4 exhibit entitled "Existing Site Layout". He stated that the contract purchasers' primary objective was to backfill the 900,000 sq. ft office space with a single tenant user, but they have been unsuccessful to date. They have studied potential assisted living facilities, hospitality and conference centers, medical-type buildings, among other uses. They are also considering a possible lease-back of the 220,000 sq. foot building to Merck. He believes that because of the campus-like layout of the property, including size, walking paths, natural buffers and its interstate access which allows easy commuting into New York and other parts of New Jersey, the most attractive development proposal would be a campus redevelopment project utilizing a "live-work" concept whereby commercial uses and residential uses would be integrated on the property. As an example of this, he cited the former Honeywell global headquarters in Morris Township and stated that his company re-purposed 1.1 million square feet of office space there into a general development plan which is currently approved for 700,000 square feet of new office space and 235 town homes. He opined that, given the trend and great demand for e-commerce in America, the site would also lend itself well as a distribution center, which he clarified meant "a warehouse for consumer products". Other development concepts he suggested were light industrial or technology manufacturing companies which would then also offer distribution of their products. In conjunction with his presentation regarding potential manufacturing, distribution or light industrial uses, he opined that such uses would use lesser amounts of sewer capacity. He also confirmed that the contract purchaser is strongly interested in constructing residential housing on the site with an affordable housing component as they have a letter of intent from a very large publicly-traded home builder, and that they have demonstrated their commitment by hiring an attorney (Fox Rothschild) which has intervened in the Township's affordable housing litigation in order to pursue that objective.

12. Upon further questioning, Mr. Stock stated that the contract purchaser has no imminent proposals for use of the existing buildings on the site and no lease agreements with any prospective tenants for the office buildings; therefore, the Sewer Advisory Committee finds there is no specific prospective use proposed for the existing buildings which coincides with the existing approvals obtained by Merck or with the Township's existing land use ordinances.

***Recommendation #1 cont'd:***

In addition, both Merck and Mr. Stock, for the contract purchaser, confirmed that neither party has any plans to build the 900,000 sq ft. office building approved by the Planning Board as Phase II.

13. As part of its deliberations, the Sewer Advisory Committee finds it must consider that, in its decision for remand, the N.J. Supreme Court stated “if there is no realistic prospect that the approvals previously acquired will result in a project coming to fruition, that factor must be given significant weight in deciding whether or not to recall capacity”. In this case, the Sewer Advisory Committee cannot ignore the fact that neither Merck nor its contract purchaser has any intention to proceed with the 900,000 sq. ft. Phase II office building for which the 90,000 gpd sewer capacity was allocated per the sewer agreements made with the Township and utilizing N.J.D.E.P’s design flow criteria and that it must give this fact significant weight in making its recommendation to the Township Committee.

14. While the Sewer Advisory Committee appreciates that Merck’s contract purchaser is sincere in its desire to building affordable housing on the property and has demonstrated its commitment by intervening in the Township’s current affordable housing litigation, the Sewer Advisory Committee is aware that the contract purchaser is one of several interveners in the Township’s affordable housing litigation. The Sewer Advisory Committee notes that none of the parcels which are part of the contract between Merck and its purchaser are currently zoned for residential use. The Sewer Advisory Committee finds that one of the major reasons the Supreme Court found the Township’s sewer ordinance to be valid was because it contains a mechanism for the Township to recall and maintain control over unused capacity for the benefit, health, safety and welfare of the entire community, as opposed to allowing it to be controlled by private developers. To allow a transfer of this capacity to Merck’s contract purchaser without it having a Township-approved development plan or any imminent plans for use of the existing buildings would be to deprive the Township of its ability to control sewer capacity in contravention of its ordinances.

15. The Sewer Advisory Committee accepts the testimony given by Merck’s engineering and planning expert with respect to the changing trends in office building usage and, given that there are existing buildings on the Merck property which could be re-purposed with more intensive office uses or other more intensive uses permitted under the Township’s land use ordinance, does not believe it is prudent or reasonable to reduce the future capacity to the flows actually used by Merck, especially in view of NJDEP’s requirements for office use.

***Recommendation #1 cont'd:***

The Sewer Advisory Committee finds that since Merck was given treatment works approvals by NJDEP for 134,000 gpd for two offices which have already been built and the remaining facilities on site, that this amount should be subtracted from the total 211,900 gpd allocation held by Merck, for a total recall of 77,900 gpd.

16. The Sewer Advisory Committee accepts the testimony given by Merck with respect to payments made to the Township in connection with its sewer agreements and recommends that Merck be made whole with respect to the gallonage to be recalled.

***BASED ON ALL THE REASONS EXPRESSED IN THE PREAMBLE AND FINDINGS OF FACT ABOVE, WHICH ARE MADE A PART HEREOF, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE WITH RESPECT TO THE SEWERAGE ALLOCATION HELD BY MERCK, SHARP & DOHME CORP. AND/OR ITS SUCCESSORS AND OR ASSIGNS AS THEIR INTERESTS MAY APPEAR:***

1. It is recommended that 77,900 gpd sewerage capacity be recalled and that the Township Committee make a pro-rata reimbursement to Merck for payments made in connection with the gallonage to be recalled, subject to the Township's confirmation that the payments have been made as represented by Merck.

2. The Sewer Advisory Committee recommends that the recalled gallonage be held by the Township and not be transferred to the contract purchaser. If the contract purchaser applies for and/or obtains approval for a development project from the appropriate Township board having jurisdiction over same or produces a tenant who will utilize the buildings on site in the same or similar manner as Merck, then the Township can reconsider a request for transfer of the recalled gallonage at that time.

3. The Secretary is directed to forward this Recommendation to the governing body for further consideration and action.

***A MOTION*** was made by Mr. Olsen to adopt this recommendation, seconded by Mr. Meglaughlin and on Roll Call vote the following was recorded:

Mr. Monaco	- Aye
Mr. Meglaughlin	- Aye
Mr. Olsen	- Aye

2. ***Sewer Advisory Committee Recommendation RE Block 14, Lots 29.02 and 29.03 (Ryland Developers, LLC)***

The following recommendation is offered for consideration:

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

***WHEREAS***, the Township of Readington was mandated to initiate the recapture of sewer capacity held by Ryland Developers, LLC (hereinafter “Ryland”), subject to review by a court appointed Special Master, as a result of a Case Management Order issued on March 9, 2016 by the Hon. Peter A. Buchsbaum J.S.C., in connection with remand proceedings directed by the N.J. Supreme Court in 388 Rt. 22 Readington Realty Holdings, LLC v. Readington (Docket No. A. 63-13) and

***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, held a public hearing on May 25, 2016, for the purpose of making a recommendation to the Township with respect to the issue of recapturing sewer capacity held by Ryland; and

***WHEREAS***, at the meeting before the Sewer Advisory Committee, Ryland was represented by Alexander Fisher of the law firm of Mauro, Savo, Camerino, Grant and Schalk ; and

***WHEREAS***, Mr. Fisher presented the following witnesses who were sworn in and gave testimony in connection with the presentation on behalf of Ryland Developers, LLC, which testimony is made a part hereof:

1. Andrew Nowack, executive vice-president of Premiere Development, an affiliate of Ryland Developers; and

2. Tom Decker, a licensed professional engineer and planner in the State of New Jersey, of Van Cleef Engineering Associates, who was qualified as an expert in both engineering and planning; and

***WHEREAS***, during the hearing the Sewer Advisory Committee the following exhibits were presented by and on behalf of Ryland, which are made a part hereof:

1. Ryland- 1 Ryland Developers’ June 29, 2015 submission in response to the sewer questionnaire sent by the Township with Exhibits A through F, attached;

***Recommendation #2 cont'd:***

2. Ryland-2 Ryland Developers' May 24, 2016 submission with Exhibit A attached
3. Ryland-3 Signed Settlement Agreement with Readington Township dated November 16, 2015
4. Ryland -4 Ryland Developers Residential Concept for Lots 29.02 and 29.03 in Block 14 (attached to the Settlement Agreement and the zoning ordinance).
5. Ryland - 5 Ryland Developers Maple Glen Proposal (Bl. 36, Lot 4)

***WHEREAS*** the Sewer Advisory Committee based its review of the presentation and its findings on the submissions and exhibits identified above and the testimony provided, as well as on its own knowledge of and expertise in the subject matter, and information received and discussed during its previous consideration of Rylands' sewer capacity at a meeting held on July 21, 2015, and memorialized in its recommendation to the Township Committee dated September 30, 2015; and

***WHEREAS***, after due discussion and review of the testimony and records in this matter, the Sewer Advisory Committee makes the following findings of fact:

1. The findings set forth in the above preamble in this Resolution are incorporated herein as if set forth at length.
2. The sewer capacity held by Ryland Developers, LLC is for use on property it owns known as Block 14, Lots 29.02 and 29.03 in the Township of Readington. The property, which is a horse-shoe shaped parcel consisting of approximately 39 acres, is located behind the Ryland Inn, adjacent to Old Hwy 28, Clarke Lane and Lamington Road in the Township. It is currently vacant. It was previously zoned Research Office and Ryland's predecessors in interest had received approvals for office buildings totaling 301,250 sq. feet dating back to 1989 which were never constructed.
3. In conjunction with the approvals obtained for the office site, Rylands' predecessors in interest obtained sewer capacity from the Township as a result of sewer agreements made prior to the expansion of the Readington Lebanon Sewerage Authority's (RLSA's) sewerage plant; accordingly, they did not participate in the sewer plant expansion and contribution agreement and did not pay the contribution costs associated therewith.

***Recommendation #2 cont'd:***

The earliest sewer agreements concerned a total possible allocation of 56,450 gpd for properties known as Block 14, Lots 29.02 and 29.03, as well as other properties which were being developed and owned by Rylands's predecessors in interest "Ryland Office Park, LLC, successor in interest to Ferber Properties II" (hereinafter "Office Park"). On April 23, 2001, Office Park assigned 35,251 gpd of sewerage capacity to Ryland Developer's immediate predecessors Sandra B. Maxwell, William H. Black, Jr. and Phyllis R. Black (hereinafter "Maxwell and Black"), then owners of Block 14, Lots 29.02 and 29.03, for the two office buildings approved for use on Block 14, Lots 29.02 and 29.03. However, on October 2, 2011, the Readington Township Committee reviewed, approved and endorsed the assignment of a lesser amount, specifically, 30,125 gpd, to coincide with the total square footage approved for office development on Block 14, Lots 29.02 and 29.03 and the Treatment Works Approvals which had been obtained by Ferber Properties II in or about 1993 for the proposed office buildings. Thereafter, in February of 2003, the Township Committee adopted a resolution amending the use of the 30,125 gpd to include not only the approved office complex, but also for any purpose that complied with zoning. On November 21, 2005, Readington Township approved an assignment of the 30,125 gpd sewer allocation from Maxwell and Black to Ryland Developers for use on Block 14, Lots 29.02 and 29.03 under the same terms and conditions stated in the 2003 resolution, as well as Ryland's consent to be bound by the terms of the developer's agreement and the sewer allocation agreement.

4. Ryland's witness, Andrew Nowack, read a letter into the record dated May 24, 2016, and labeled as "Ryland-2" which the Sewer Advisory Committee accepts for the purposes of documenting Ryland's attempts to develop the property. Specifically, Ryland represented that it purchased Block 14, Lots 29.02 and 29.03 in reliance on the Township's reaffirmation of the continued validity of the existing approvals for the 301,250 sq. foot office complex and that it subsequently unsuccessfully presented several alternative development proposals for the site. In July 2009, the Township rezoned the property from RO to a split between VH (Village Hospitality) on Lot 29.03 and AR (Agricultural Residential) for Lot 29.02 and also petitioned NJDEP to remove Lot 29.02 from the sewer service area. The actions taken by the Township in re-zoning the property and removing Lot 29.02 from the sewer service area prompted a lawsuit filed by Ryland Developers in October 25, 2009, entitled Ryland Developers v. Township of Readington et al. Docket No. HNT-L0496-09. The litigation continued for six years and was only recently settled as evidenced by agreement signed on November 16, 2015. If fulfilled, the settlement will result in a total of 39 single-family homes being built on Block 14, Lots 29.02 and 29.03. During the six-year litigation period, Ryland made several proposals to the Township to construct housing on the site, including a proposal for 160 apartment units with a 20% affordable housing set-aside.

***Recommendation #2 cont'd:***

It also made an application to the Board of Adjustment in 2014 for a senior development for 144 senior congregate care units and 101 assisted living units. The Township did not respond to the affordable housing offer and the congregate care/assisted living application is on hold (although Ryland stated that it remains “ready, willing and able” to pursue either of these alternatives), pending Rylands’ application for preliminary and final subdivision approval for the 39 single-family home development set forth in the settlement agreement.

5. Upon testimony presented by Ryland and its experts, the Sewer Advisory Committee finds that the sewer capacity allocation required to construct the 39 single family homes contemplated by the settlement agreement is 11,700 gpd. Rylands’ engineer/planner testified that all the homes will have at least three bedrooms and according to N.J.A.C. 7:14-23.3, the NJDEP projected flow requirement is 300 gpd per home, which forms the basis for the total sewerage allocation. Accordingly, this Committee finds that there is a remainder of 18, 425 gpd that is subject to recall.

6. With respect to whether or not the settlement agreement will be implemented and the 11,700 gpd allocation has a reasonable prospect of being used soon, Mr. Nowack testified that since the November 16, 2015 settlement date, the Township has amended its Master Plan and adopted a new zone (PND-2) in accordance with the terms of the settlement agreement; these events occurred on March 14, 2016 and March 21, 2016, respectively. Ryland’s attorney pointed out that (as of May 25, 2016), only 15 days had passed since the expiration of the 45-day appeal period with respect to adoption of the ordinance. In addition, the NJDEP adopted a site-specific amendment placing the necessary portion of Block 14, Lot 29.02 back into the sewer service area in December, 2015. Since that time, Mr. Nowack testified that Ryland has been diligently working towards filing an application for preliminary and final major subdivision approval in accordance with the settlement agreement and anticipates doing so within the next few months; he expects that the capacity will be used within the next two years.

7. To specifically demonstrate the status of the preliminary and final major subdivision application, Ryland offered testimony by Thomas Decker, P.E., P.P. of Van Cleef Engineering who is preparing the plans. He presented an exhibit entitled “Ryland Developers Residential Concept for Block 14, Lots 29.02 and 29.03 which was marked “Ryland-4” showing 39 single-family homes on lot sizes of 12,000 sq. feet, with a floor area ratio (“FAR”) of .3 or .35 (depending on the location of the garages) and as permitted by the PND-2 zone. The clustering of the lots will result in the preservation of an open space parcel as required by the settlement agreement and requirements of the Township’s land use ordinance.

***Recommendation #2 cont'd:***

8. Based on the testimony proffered by Ryland's witnesses, the Sewer Advisory Committee finds that Ryland has been diligently pursuing its development approvals since the litigation was settled in November of 2015 and that use of the 11,700 sewerage capacity will be used in a reasonably short period of time.

9. In addition to the testimony presented by Ryland with respect to its efforts to use the 11,700 gpd sewerage capacity on Block 29, Lots 29.02 and 29.03, Ryland presented a request for the transfer of its remaining 18,425 gpd sewerage allocation to an undeveloped property it owns in the Township known as Block 36, Lot 4. The property is an approximately 25.9 +/- acre parcel located at the end of Maple Lane off of Route 22 east bound and is located within the V-R (Village Residential) zone which permits a density of two units per acre. Ryland presented a concept plan, marked as Ryland-5, depicting a proposed residential development consisting of 300 apartments of which 20% (60 units) would be set aside for affordable housing. The VR zone does not permit the development density shown on the plans. However, according to Mr. Decker, the project is a viable one from an engineering standpoint, given the layout and general lack of constraints on the property, together with the fact that there is a sanitary sewer line running through it. Mr. Decker testified that the 18,425 gpd sewerage allocation would only be enough to serve about one-third or 100 of the units; therefore, should the project proceed, additional sewerage capacity would need to be secured.

10. In addition to the other testimony provided by Ryland, Mr. Nowack stated that Ryland has paid the Township over \$300,000 in reservation fees; the Sewer Advisory Committee acknowledges same, but finds that payment and reimbursement is subject to review and confirmation by the Township's administrative and finance offices.

11. Ryland's attorney Alex Fisher stated that Ryland is an intervener in the Township's affordable housing litigation and offered that, in his opinion, the proposed development on Block 36, Lot 4 would be an "excellent" way to recapture and reallocate the 18,425 gpd without having to reimburse Ryland.

12. While the Sewer Advisory Committee appreciates that Ryland is serious in its desire to use the remaining 18,425 gpd sewer allocation to build an affordable housing project on Block 36, and has demonstrated its commitment by intervening in the Township's current affordable housing litigation, the Sewer Advisory Committee is aware that Ryland is one of several interveners in the Township's affordable housing litigation. The property is not currently zoned for the density of use that Ryland is proposing and this would require a variance or a zone change; the project would also require that additional sewerage capacity be allocated to it.

***Recommendation #2 cont'd:***

The Sewer Advisory Committee finds that one of the major reasons the Supreme Court found the Township's sewer ordinance to be valid was because it contains a mechanism for the Township to recall and maintain control over unused capacity for the benefit, health, safety and welfare of the entire community, as opposed to allowing it to be controlled by private developers. The Township still does not know the extent of its affordable housing obligation and is in the process of developing its affordable housing plan which may or may not include the proposals it has received from interveners. To allow a transfer of the remaining capacity directly to Ryland at this point, without having it come back to the Township, would be to deprive the Township of its ability to control sewer capacity in contravention of its ordinances.

***BASED ON ALL THE REASONS EXPRESSED ABOVE AND MADE A PART HEREOF, THE SEWER ADVISORY COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS TO THE READINGTON TOWNSHIP COMMITTEE WITH RESPECT TO THE SEWERAGE ALLOCATION HELD BY RYLAND DEVELOPERS, LLC. AND/OR ITS SUCCESSORS AND OR ASSIGNS AS THEIR INTERESTS MAY APPEAR:***

1. It is recommended that 18,425 gpd sewerage capacity be recalled to the Township for and that the Township Committee make a pro-rata reimbursement to Ryland for payments made in connection with the gallonage to be recalled, subject to confirmation of payments made, review and approval by the Township

2. The Sewer Advisory Committee recommends that the recalled gallonage be held by the Township and not be transferred to Ryland for use on Block 36, Lot 4. If Ryland applies for and/or obtains approval for an affordable housing and/or other development project from the appropriate Township board having jurisdiction over same then the Township can reconsider a request for transfer of the recalled gallonage at that time.

3. The Secretary is directed to forward this Recommendation to the governing body for further consideration and action.

A ***MOTION*** was made by Mr. Meglaughlin to adopt this recommendation, seconded by Mr. Olsen and on Roll Call vote the following was recorded:

Mr. Monaco	- Aye
Mr. Meglaughlin	- Aye
Mr. Olsen	- Aye

3. ***Mobile Station (160 Main Street / Block 30, Lot 1)*** – email dated June 13, 2016 from Rob O’Brien, Township Engineer, for discussion

Engineer O’Brien stated that the Mobile Station on Main Street is looking to convert the service bays into a convenience store. Engineer O’Brien continued that the calculation of flow with the existing conditions is 1100 gpd based on DEP calculations, and the change to the convenience store would be 1170 gpd. Engineer O’Brien advised that the site currently has two units of sewer capacity allocated equating to 700 gallons. Engineer O’Brien maintained that the applicant’s engineer provided water bills for similar stations with convenience stores, indicating that the flows have been below 700 gallons. Christopher Erd, Esq., Williams Caliri Miller & Otley, on behalf of Gil Petroleum, Inc., stated that the difficulty is that the station is on a well and not currently metered to show actual water usage. Mr. Erd reiterated that comparable stations with convenience stores are well below the 700 gallons per day, ranging realistically from 66 gpd to 166 gpd and maintained that the actual use should be well below the 700 units that are already allocated.

Mr. Monaco stated that pursuant to the litigation that the Township is currently dealing with, the Township is in the mode of recapturing capacity and not in a position at this time to give capacity out. Mr. Monaco added that normally the Township follows the DEP requirements and this would appear as an increase from 700 gpd, what the applicant is currently paying for, to 1170 gpd.

Mr. Erd stated that although the applicant has been before the Historic Preservation Commission, they still have a process to go through the Zoning Board; however, without confirmation of sewer capacity as required on the checklist, the applicant cannot move forward with the Zoning Board application. Mr. Erd requested consideration of receiving conditional approval or possibly waiving the required checklist item. The Sewer Advisory Committee concurred that Attorney Dragan would consult with the attorney from the Board of Adjustment to further discuss this matter.

***ADJOURNMENT:***

As there was no further business, ***A MOTION*** was made by Mr. Olsen to adjourn at 7:16 p.m., seconded by Mr. Meglaughlin with a vote of ayes all, nays none recorded.

Respectfully Submitted:

Karin M. Parker, *RMC*  
Sewer Advisory Committee Secretary