

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|----------------------------------|---|----------------|
| LONGSWAMP TOWNSHIP, | : | |
| <i>Appellant</i> | : | |
| v. | : | C-2017-2587742 |
| | : | |
| TOPTON BOROUGH, <i>et. al.</i> , | : | |
| <i>Respondents</i> | : | |

ORDER

AND NOW, this _____ day of _____, 2017, upon
Consideration of Longswamp Township's Motion to Compel Topton Borough's
Discovery Responses, it is hereby ORDERED and DECREED that Longswamp
Township's Motion is GRANTED. Topton Borough is hereby directed to provide
complete responses to Longswamp Township's requests for production of documents
within five (5) days from the date of this Order, or risk further sanctions upon further
application to this Court, including monetary sanctions.

BY THE COURT:

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| LONGSWAMP TOWNSHIP, | : | |
| <i>Appellant</i> | : | |
| v. | : | C-2017-2587742 |
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| TOPTON BOROUGH, <i>et. al.</i> , | : | |
| <i>Respondents</i> | : | |

**MOTION TO COMPEL DEFENDANT, TOPTON
BOROUGH'S DISCOVERY RESPONSES**

AND NOW, this 12th day of June, 2017, comes Longswamp Township through its counsel Jill E. Nagy and Summers Nagy Law Offices and files the Motion to Topton Borough's Discovery Responses:

1. By this Court's May 24, 2017 Prehearing Order, the parties in the instant case are to "try to initiate discovery as early in the proceeding as possible." See, a true and correct copy of this Court's May 24, 2017 Order, attached hereto as Exhibit "A".
2. Typically, in a matter before the PUC, a prehearing conference will be held pursuant to §333(a) of the Public Utility Code where the parties and the judge, *inter alia*, establish a discovery timetable.
3. In the instant matter because of the unique procedural history of this case, the language in the May 24, 2017 Order and the scheduling of the hearing to take place less than a month after the May 24, 2017 Order, there is little time for the parties to exchange discovery.
4. Upon receipt of the May 24, 2017 Order, counsel for Longswamp

Township immediately began preparing discovery requests directed to Tipton Borough.

5. On June 2, 2017, Longswamp Township, though its counsel served discovery requests on Tipton Borough, through its counsel Joan London, Esq. in the form of a Request for the Production of Documents.¹ A true and correct copy of the June 2, 2017 enclosure letter is attached hereto as Exhibit "B".

6. On June 9, 2017, Longswamp Township, again though its counsel served Supplemental Request for Production of Documents on counsel for Tipton Borough. A true and correct copy of the June 9, 2017 enclosure letter is attached hereto as Exhibit "C".

7. All of the documents requested in the June 2 and June 9, 2017 requests are public information.

8. On June 9, 2017, after having not received discovery responses from Tipton Borough, counsel for Longswamp Township filed a Right to Know Request to Tipton Borough requesting the identical documents as requested in the June 2 and June 9, 2017 discovery requests. A true and correct copy of the June 9, 2017 Right to Know Request is attached hereto as Exhibit "D".

9. As per the applicable Right to Know law, Tipton Borough has five (5) days to respond to the June 9, 2017 Right to Know Request.

¹ On or about June 5, 2017 Tipton Borough by and through its counsel objected to Longswamp Township's discovery requests as unduly burdensome and not calculated to lead to relevant information. This objections is without merit as the same are very relevant to the instant matter and are public information.

10. On June 12, 2017, counsel for Longswamp Township received a response to the aforementioned Right to Know Request indicating that Topton Borough needs more time to respond to the request. A true and correct copy of the June 12, 2017 letter is attached hereto as Exhibit "E".

11. To date, Longswamp Township has not received responses to its discovery requests from Topton Borough.

12. Particularly with the June 22, 2017 hearing looming, Longswamp Township is prejudiced by Topton Borough's failure to respond to discovery requests.

13. Longswamp is also prejudiced because it could not anticipate when an Answer was filed that no pretrial scheduling conference would be held.

14. All parties will be served by the conclusion of discovery and neither party will be prejudiced by delay.

WHEREFORE, Longswamp Township requests that the Court enter an Order directing Topton Borough within five (5) days of this Honorable Court's Order, a deadline which is consistent with the aforementioned Right to Know Request and the corresponding law related to Right to Know request responses.

Respectfully Submitted,

SUMMERS NAGY LAW OFFICES

s/Jill E. Nagy

By: _____

Jill E. Nagy, PA I.D. 85858
200 Spring Ridge Drive, Ste. 202
Wyomissing, PA 19610
(610) 939-9866
Fax: (610) 939-9836
Email: jnagy@summersnagy.com
Attorney Longswamp Township

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| | : | |
| TOPTON BOROUGH, <i>et. al.</i> , | : | |
| <i>Respondents</i> | : | |

CERTIFICATE OF SERVICE

I, Jill E. Nagy, Esquire, hereby certify that on this 12th day of June, 2017, I served a true and correct copy of the foregoing Longswamp Township's Motion to Compel Topton Borough's Discovery Requests, mailing the same via first class mail upon the following:

Joan E. London, Esquire
Kozloff Stoudt Professional Corporation
2640 Westview Drive
Wyomissing, PA 19610

SUMMERS NAGY LAW OFFICES

s/Jill E. Nagy

By: _____
Jill E. Nagy, PA I.D. 85858
200 Spring Ridge Drive, Ste. 202
Wyomissing, PA 19610
(610) 939-9866
Fax: (610) 939-9836
Email: jnagy@summersnagy.com
Attorney for Longswamp Township

EXHIBIT A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Longswamp Township

v.

Topton Borough et. al.

:
:
:
:
:

C-2017-2587742

PREHEARING ORDER

An Initial In-Person Hearing was scheduled in the above case for June 7, 2017. By letter dated May 3, 2017, the parties advised this office that a continuance was necessary. That request was approved for cause shown, and the rescheduled hearing has been set for June 22, 2017. In anticipation of that hearing, the parties are directed to comply with the following requirements:

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Initial In-Person Hearing originally scheduled for June 7, 2017 is continued for cause shown, pursuant to 52 Pa.Code § 1.15(b), due to the unavailability of counsel and the concurrence of opposing counsel to the continuance request.

2. That an Initial In-Person Hearing is rescheduled for **Thursday, June 22, 2017 at 10:00 a.m.** in Hearing Room 1, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, Pennsylvania. If a party fails to participate in the hearing, the hearing may

proceed without that party and a decision may be entered against that party.

3. That, pursuant to 52 Pa.Code § 1.55, each party shall be limited to one entry on the service list. Parties shall provide the name, address, telephone number and e-mail address of the person they wish to have listed on the service list.

4. That all parties must serve my office and all other parties with any document filed by that party, both electronically and by hard copy. My address is:

Andrew M. Calvelli
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pa. 17105-3265
Telephone: (717) 787-1399
Email: acalvelli@pa.gov

4. That on or before **Thursday, June 15, 2017**, the parties intending to participate in the hearing shall file and serve a Prehearing Memorandum which shall include:

(a) Names of witnesses the party expects to call and the subject matter of each witness' testimony.

(b) A list of the issues in this proceeding which the party intends to address and a statement of the party's position on each of the issues listed.

(c) A brief statement describing the evidence the party proposes to present at the hearing, including a list of proposed exhibits.

5. That the hearing is a formal proceeding and will be conducted in accordance with the Commission's Rules of Practice and Procedure.

6. That, pursuant to 52 Pa. Code §§1.21 & 1.22, you may represent yourself if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. However, **if you are a partnership,**

corporation, trust, association, or governmental agency or subdivision, an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, must represent you in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall enter their appearance in accordance with the provisions of 52 Pa. Code §1.24(b).

7. That, pursuant to 52 Pa. Code § 1.24, the parties must promptly report to the Commission and the other parties a change in address that occurs during the course of the proceeding.

8. That a request for a change of the scheduled hearing date should be submitted in writing no later than five (5) days prior to the hearing. 52 Pa. Code § 1.15(b). The requesting party must contact the other party to determine whether there is agreement to the change prior to contacting the Presiding Officer. Requests for changes of initial hearings must be sent to me with copies to all parties of record. Changes are granted only where sufficient cause exists.

9. That the parties are encouraged to review the regulations relating to discovery, specifically at 52 Pa. Code § 5.331(b), which provides, inter alia, that participants try to initiate discovery as early in the proceeding as possible, and 52 Pa. Code § 5.322, which encourages parties to exchange information on an informal basis. The parties are expected to pursue resolution of discovery issues among themselves. Motions to compel should be filed only after such efforts have failed.

10. That the parties are encouraged to explore settlement, pursuant to Commission policy that encourages settlements. 52 Pa. Code §5.231(a). If the parties are unable to settle this case, they may still resolve as many questions or issues as possible during settlement discussions.

11. That if you, or anyone you plan to call as a witness on your behalf, has a limited ability to speak or understand English or are deaf or hearing-impaired, a qualified

C-2017-2587742 - LONGSWAMP TOWNSHIP v. TOPTON BOROUGH & TOPTON
BOROUGH MUNICIPAL AUTHORITY

JILL E NAGY ESQUIRE
SUMMERS NAGY LAW OFFICES
PO BOX 200
SPRING RIDGE DRIVE SUITE 202
WYOMISSING PA 19610
610.939.9866
Accepts Eservice

JOAN E LONDON ESQUIRE
KOZLOFF STOUTD PROFESSIONAL CORPORATION
2640 WESTVIEW DRIVE
WYOMISSING PA 19610
610.670.2552

EXHIBIT B



June 2, 2017

Via Electronic Mail Only to jlondon@kozloffstoudt.com

Joan E. London, Esq.
Kozloff Stoudt Professional Corporation
2640 Westview Drive
Wyomissing, PA 19610

**Re: Longswamp Township v. Topton Borough, et al.
No. C-2017-2587742**

Dear Ms. London:

Please find enclosed a Request for Production of Documents in the above referenced matter.

If you should have any questions, please do not hesitate to contact me to discuss.

Very truly yours,

Jill E. Nagy

JEN:rmq

EXHIBIT C



June 9, 2017

Via Electronic Mail Only to jlondon@kozloffstoudt.com

Joan E. London, Esq.
Kozloff Stoudt Professional Corporation
2640 Westview Drive
Wyomissing, PA 19610

**Re: Longswamp Township v. Topton Borough, et al.
No. C-2017-2587742**

Dear Ms. London:

Please find enclosed a Supplemental Request for Production of Documents in the above referenced matter.

If you should have any questions, please do not hesitate to contact me to discuss.

Very truly yours,

Jill E. Nagy

JEN:rmq

EXHIBIT D

*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO. 1369
DESTINATION ADDRESS 16106821636
SUBADDRESS
DESTINATION ID
ST. TIME 06/09 16:02
TX/RX TIME 00' 22
PGS. 2
RESULT OK



BOROUGH OF TOPTON

REQUEST TO REVIEW OR DUPLICATE PUBLIC RECORDS

| | | | |
|-----------------------------------|--|-----------------------------------|---------------|
| Requestor Name: Brian Sterbine | | Contact Number: (717) 812-8100 | |
| Address: 35 S. Duke St. | | | |
| City: York | | State: PA | Zip: 17401 |
| Request Date: June 9, 2017 | | Date Information Needed: ASAP | |

Describe the requested information. Important: You must identify or describe the records with sufficient specificity to enable the Borough Secretary to determine which records are being requested. Use additional sheets if necessary.

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|---------------------|
| SEE ATTACHED SHEET. |
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| Action Taken | Date Completed | Authorized By | Received Date |
|---|----------------|---------------|---------------|
| Approved <input type="radio"/> | | | |
| Denied <input type="radio"/> | | | |
| Additional Review <input type="radio"/> | | | |

A charge of \$0.25 per sheet will be applied
Total Amount Due:

Signature and payment is required before any material is released. I certify that I am a resident of the Commonwealth of Pennsylvania.

Signature of Requestor



BOROUGH OF TOPTON

REQUEST TO REVIEW OR DUPLICATE PUBLIC RECORDS

| | | | |
|-----------------------------------|--------------|-----------------------------------|--|
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| |
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| SEE ATTACHED SHEET. |
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| Action Taken | Date Completed | Authorized By | Received Date |
|---|----------------|---------------|---------------|
| Approved <input type="radio"/> | | | |
| Denied <input type="radio"/> | | | |
| Additional Review <input type="radio"/> | | | |

| |
|--|
| A charge of \$0.25 per sheet will be applied |
| Total Amount Due: |
| |

Signature and payment is required before any material is released.
I certify that I am a resident of the Commonwealth of Pennsylvania.

B. M. J.

Signature of Requestor

Faxed to : (610) 682-1636

Information Received By

Requested Records:

This request is made separate and apart from any previous or future requests made by requestor.

1. Any and all executed intergovernmental agreements for sewer service for Topton Lutheran Home located in Longswamp Township between the Township of Longswamp and the Borough of Topton and/ or Topton Borough Municipal Authority.
2. Any and all executed intergovernmental agreements for sewer service to Brandywine Heights School District between Longswamp Township and Topton Borough and/or Topton Borough Authority.
3. Executed and approved act 537 plan amendment (i.e., sewer module) for Brandywine Heights School District.
4. Topton Borough Sewer Authority sewer rate resolution and attendant Act 57 rate study.
5. Any and all agreements to provide water or sewer service within Longswamp Township to any person or entity between Topton Borough, Topton Borough Authority and Longswamp Township.
6. All communications for any reason between Topton Borough consultants and staff and Council Members and Grande Land, LP's agents, consultants and/ or employees from 2004- present.
7. All management agreements between Topton Borough and Topton Borough Municipal Authority with regard to staffing, billing, sewage treatment plant operations.
8. The Bylaws and Articles of Incorporation for the Topton Borough Municipal Authority.
9. Any and all agreements between Topton Borough, Topton Borough Municipal Authority, and the Lutheran Home at Topton from the year 2013 to the present.

EXHIBIT E

Kozloff Stoudt
Attorneys
June 12, 2017

Email Address:
jlondon@kozloffstoudt.com

VIA E-MAIL bsherbine@summersnagy.com
Brian M. Sherbine, Esquire
Summers Nagy
35 South Duke Street
York, PA 17401

Re: Request for Documents
Our File No. 204797-23

Dear Brian:

Your request to the Borough of Tipton for documents relating to sewer service and the operations of its sewer treatment plant have been referred to me for response. Your request for Borough documents is quite extensive. As the Borough has a limited number of staff available to respond to your request, and will likely require additional professional services to respond to your request, the Borough requires additional time to respond to these requests as set forth in Section 902(2) of the Pennsylvania Right to Know Law and will provide a response no later than July 10, 2017. Additionally, we will need to review for the purpose of advising whether redaction will be needed under Section 706 of the Right-to-Know Law. The request may be subject to other exemptions as well.

Because of the extensiveness of your request, the Borough reasonably expects that the cost of response will exceed One Hundred Dollars and 00/100 (\$100.00). The Borough will be providing you with an estimate of costs, under separate cover, which you will need to pay before the documents requested will be forwarded to you, as set forth in Section 1307(h) of the Right-to-Know Law. To the degree that this response constitutes a denial, partial denial, or deemed denial (although we make no judgment of this at this time), you may appeal this in writing to Erik Arneson, Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120. If you choose to file an appeal you must do so within 15 business days of the mailing date of this extension. If you have further questions, please call Marcus V. Dolny, Borough of Tipton Right-to-Know Official, 205 South Callowhill Street, Tipton, PA 19562, (610) 682-2541/FAX (610) 682-1636.

Thank you for your patience and cooperation.

Very truly yours,

KOZLOFF STOUDT
Professional Corporation



Joan E. London

/JEL

cc: Marcus V. Dolny, Borough Manager (via e-mail TiptonManager@ptd.net)

Kozloff Stoudt, Professional Corporation

2640 Westview Drive | Wyomissing, PA 19610 | Tel 610.670.2552 | Fax 610.670.2591 | Web kozloffstoudt.com