

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :  
Company under Section 1102(a) of the Pennsylvania :  
Public Utility Code, 66 Pa.C.S. § 1102(a), for approval :  
of (1) the transfer, by sale, of substantially all of Upper :  
Pottsgrove Township’s assets, properties and rights :  
related to its wastewater collection and conveyance :  
system to Pennsylvania-American Water Company, : Docket No. A-2020-3021460  
and (2) the rights of Pennsylvania-American Water :  
Company to begin to offer or furnish wastewater :  
service to the public in Upper Pottsgrove Township, :  
Montgomery County and a portion of Douglass :  
Township, Berks County, Pennsylvania :

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**ANSWER OF SHADELAND DEVELOPMENT CORPORATION TO THE JOINT  
PRELIMINARY OBJECTIONS OF PENNSYLVANIA-AMERICAN WATER  
COMPANY AND UPPER POTTS GROVE TOWNSHIP**

Shadeland Development Corporation (“**Shadeland**”), through its undersigned counsel, hereby submits this answer to the Joint Preliminary Objections filed on May 18, 2021 by Pennsylvania-American Water Company (“**PAWC**”) and Upper Pottsgrove Township. In support, Shadeland avers as follows:

**I. Background**

1. Admitted.
2. Admitted in part, denied in part. It is admitted that Shadeland constructed the Sewer Line to provide sanitary sewer service to the Development. A plan depicting the Sewer Line is attached as **Exhibit “A”**. It is denied that the Sewer Line only provides sanitary sewer service to the Development. By way of further response, the Sewer Line currently provides or will provide sanitary sewer service to 164 residential units, 73 of which are related to Shadeland’s developments. By way of a further response, Shadeland attaches a Certification of Sewer

Construction Costs as **Exhibit “B”** that provides a summary of the sewer service area of the Sewer Line.

3. Admitted. By way of a further response, Shadeland still owns the Sewer Line which was never dedicated to the Township.

## **II. Legal Standard**

4. Denied. The averment purports to characterize a statutory code provision which is a writing that speaks for itself, and therefore, is denied.

5. Denied. The averment is a conclusion of law to which no response is required.

## **III. Preliminary Objection No. 1: The Commission Lacks Jurisdiction to Determine the Ownership of the Sewer Line.**

6. Admitted.

7. Denied. The averment seeks to characterize Shadeland’s Petition to Intervene which is a writing that speaks for itself. By way of a further response, Shadeland is the owner of the Sewer Line because it has not been formally offered for dedication yet. For the Township to become the owner of the Sewer Line, Shadeland has to offer the Sewer Line for dedication and the Township must accept dedication of the Sewer Line. *See Millcreek Twp. v. A Piece of Land Fronting on Montpelier Ave.*, 124 A.2d 448, 452 (Pa. Super. 1956) (“[d]edication is the joint effect of the offer of the owner to dedicate land and acceptance of such land by the public.”). With respect to the Township’s reimbursement obligation, the Commonwealth Court has held that a written agreement between a municipality and developer need not include a specific provision providing for reimbursement because the obligation is established by the Municipality Authorities Act (“**MAA**”). *Southersby Dev. Corp. v. Borough of Jefferson Hills*, 2011 WL 10846169, at \*4 (Pa. Cmwlth. 2011). By way of a further response, the Township has a statutory duty to provide Shadeland with reimbursement under the Municipalities Planning Code (“**MPC**”), 53 P.S. §

10507-A(c), and the Municipality Authorities Act (“MAA”), 53 Pa.C.S. § 5607(d)(24)(i)(C)(IV), independent of the Construction Agreement. In accordance with attached Exhibit “B”, there are 164 equivalent dwelling units (“EDUs”) that have connected or will connect to the Sewer Line and Shadeland is entitled to reimbursement from 91 of those connections. Per the MPC and MAA, the reimbursement is to come from sewer tapping fees paid by those 91 connections. The Township has refused to provide Shadeland with reimbursement after repeated requests. PAWC has no legal obligation to provide Shadeland with reimbursement since PAWC is not subject to the MPC or MAA.

8. Denied. It is denied that the Township owns the Sewer Line. The Construction Agreement requires Shadeland to dedicate the Sewer Line to the Township. *See*, Section 11 of the Construction Agreement. Shadeland has not dedicated the Sewer Line to the Township, and therefore, the Township cannot claim ownership of the Sewer Line. By way of a further response, it is denied that the location of the Sewer Line is relevant as to ownership. In Pennsylvania, construction of public improvements for use by the public “who pay for the service is not a dedication of the facilities to a public use.” *Versailles Twp. Auth. of Allegheny Cty. v. City of McKeesport*, 90 A.2d 581, 586 (Pa. Super. 1952).

9. Denied. The Petition to Intervene speaks for itself and any characterization of it by the PAWC and the Township is denied. By way of a further response, PAWC cannot acquire the Sewer Line from the Township if the Township does not own the Sewer Line.

10. Denied. The averment is a conclusion of law to which no response is required. By way of a further response, the Commission can only approve PAWC’s acquisition of the Township-owned public sewer system which cannot include the Sewer Line that is owned by Shadeland. Since the Sewer Line provides or will provide sewer service to 164 of PAWC’s

proposed customers, the Commission has jurisdiction to determine whether PAWC's acquisition of the Township's public sewer system is in the public's best interest while the dispute of the Sewer Line remains unresolved.

11. Denied as stated. It is acknowledged that the Commission is not vested with power to decide private contractual disputes. However, intervention in this matter is necessary for Shadeland to ensure that PAWC's Application for approval to acquire the wastewater system and assets of the Township does not include the Sewer Line. By way of a further response, Shadeland incorporates its response in paragraph 10 above.

12. Admitted. By way of further answer, Shadeland does not aver that the contract will be assigned to PAWC. Shadeland seeks intervention to ensure that the Sewer Line is not part of the PAWC's acquisition of the Township's wastewater system. By way of a further response, Shadeland incorporates its response in paragraph 11 above.

13. Denied. The averment is a conclusion of law to which no response is required. By way of a further response, the Commission has authority to determine whether the Sewer Line should be included in PAWC's acquisition of the Township's wastewater system and whether it is in the public interest for PAWC to service 164 residential units through the Sewer Line owned by Shadeland.

14. Denied. The averment is a conclusion of law to which no response is required. By way of a further response, Shadeland incorporates its responses in paragraphs 11 and 13 above.

15. Denied. The averment is legal argument to which no response is required. By way of a further response, Shadeland incorporates its responses in paragraphs 11 and 13 above.

**IV. Preliminary Objection No. 2: Shadeland Does Not Have Standing to Intervene Because it Does Not Meet the Standards for Intervention Set Forth in 52 Pa. Code § 5.72.**

16. Admitted. By way of further answer, Shadeland satisfies the regulatory standards for intervention. Further, it is noted that “standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency.” *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598, 603 (1991).

17. Admitted. By way of further answer, Shadeland has a private ownership interest in the Sewer Line that may be impacted by this proceeding and that interest is not adequately represented. Further, the interest of the Sewer Line is of such a nature that Shadeland’s participation is in the public interest. 164 residential properties are or will be connected to the Sewer Line that Shadeland currently owns.

18. Admitted. Shadeland is not seeking intervention under 52 Pa. Code §5.72(a)(1).

19. Denied. The averment is a conclusion of law to which no response is required. By way of a further response, Shadeland incorporates its responses in paragraphs 1, 11 and 13 above which demonstrate Shadeland has an interest that may be directly affected pursuant to 52 Pa. Code § 5.72(a)(2). Further, per attached Exhibit “B”, the total costs for construction of the Sewer Line is \$1,059,700. There are 164 EDUs that are or will be connected to the Sewer Line.

20. Denied. The averment is a conclusion of law to which no response is required. By way of a further response, Shadeland incorporates its responses in paragraphs 1, 11, 13 and 19 above.

**V. The Intervention of Shadeland Should be Dismissed with Prejudice**

21. Denied. The allegation that Shadeland is using this proceeding to obtain a monetary concession is denied. Shadeland currently owns a Sewer Line which PAWC should not be

permitted to acquire from the Township which does not own the Sewer Line. The Sewer Line services or will service 164 residential units, which raises public interest concerns in PAWC's efforts to acquire the Township's wastewater system. Accordingly, Shadeland is an interested party in PAWC's acquisition of the Township's wastewater system.

**VI. Conclusion and Request for Relief**

WHEREFORE, Shadeland respectfully requests that the Joint Preliminary Objections be overruled and Shadeland be allowed to intervene in this matter.

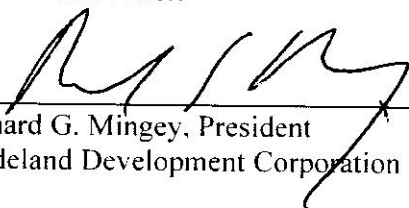
**KAPLIN STEWART MELOFF REITER & STEIN, P.C.**

Dated: May 21, 2021

By: /s/ Gregg I. Adelman  
Gregg I. Adelman, Esquire  
Robert M. Tucker, Esquire  
Attorneys for Petitioner  
Shadeland Development Corporation

**VERIFICATION**

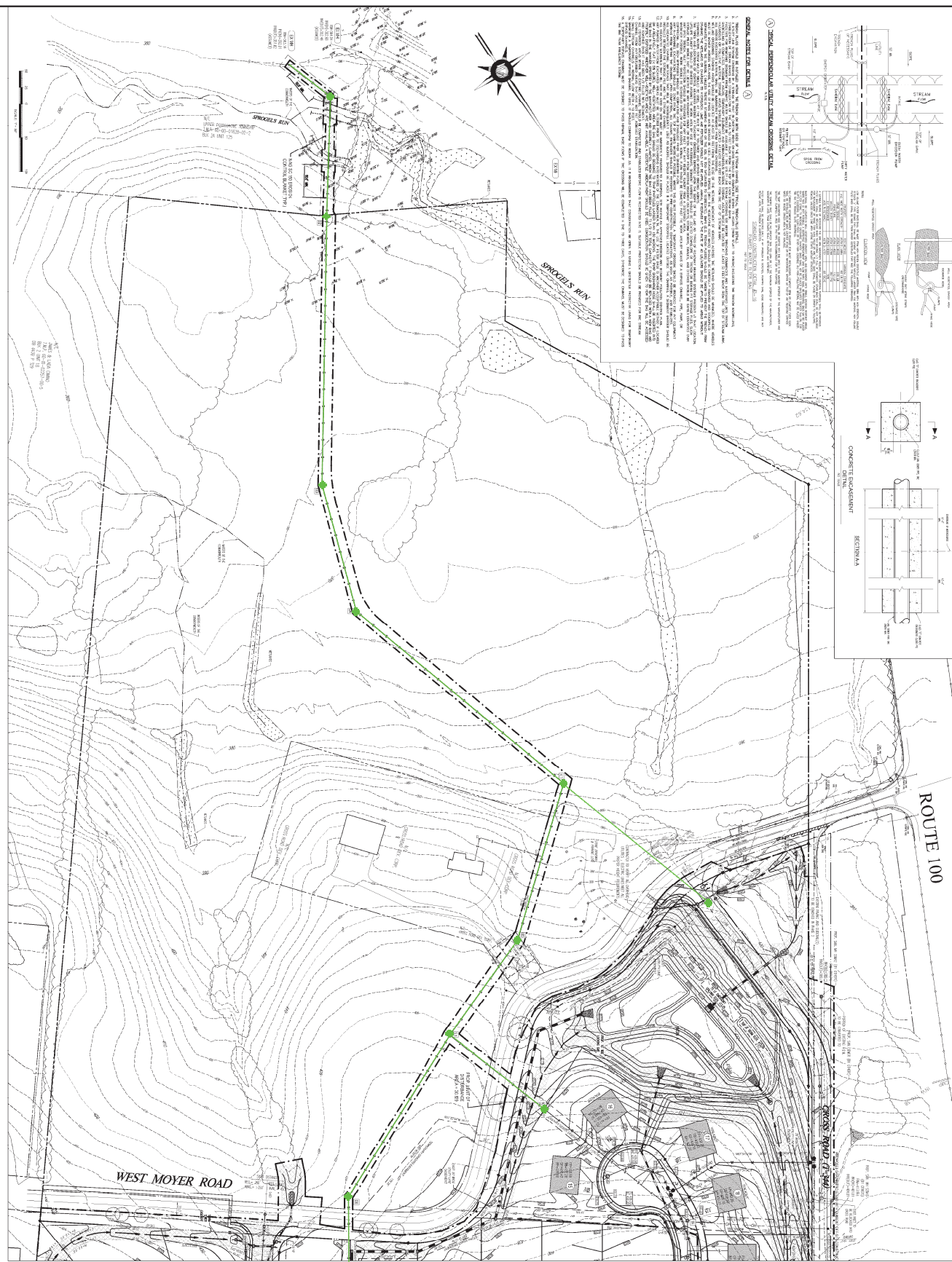
I, Richard G. Mingey, subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities, aver that I am the President of Shadeland Development Corporation, that I am authorized to make this Verification on behalf of Shadeland Development Corporation, and that the information contained in the foregoing Answer to the Preliminary Objections is true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Richard G. Mingey, President  
Shadeland Development Corporation

Dated: May 21, 2021

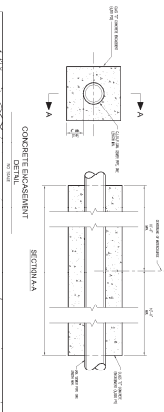
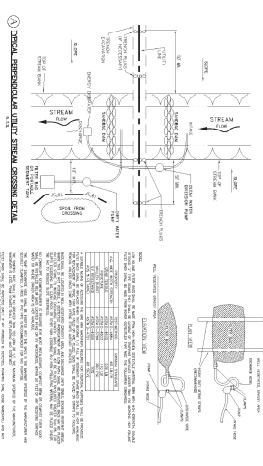
**EXHIBIT A**

**PLAN DEPICTING THE SEWER LINE**



**GENERAL NOTES:**

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION (PA DEP) REGULATIONS, TITLE 25, CHAPTER 100, AND THE FEDERAL REGISTER.
2. THE DESIGNER HAS CONDUCTED VISUAL INSPECTIONS OF THE PROPOSED CONSTRUCTION AREA AND HAS FOUND NO OBVIOUS OBSTRUCTIONS TO THE PROPOSED CONSTRUCTION.
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10. THE DESIGNER HAS CONDUCTED VISUAL INSPECTIONS OF THE PROPOSED CONSTRUCTION AREA AND HAS FOUND NO OBVIOUS OBSTRUCTIONS TO THE PROPOSED CONSTRUCTION.



PROJECT NUMBER 141	DATE 06/06/2013	PROJECT NO. 141	DESIGNED BY C.A.K.
SCALE AS SHOWN	DATE 06/06/2013	PROJECT NO. 141	DESIGNED BY C.A.K.
PROJECT NO. 141	DATE 06/06/2013	PROJECT NO. 141	DESIGNED BY C.A.K.
PROJECT NO. 141	DATE 06/06/2013	PROJECT NO. 141	DESIGNED BY C.A.K.

**FINAL LAND DEVELOPMENT PLAN - PHASE I**

**OFFSITE SANITARY SEWER PLAN**

**CONSTRUCTION & DEVELOPMENT SERVICES, INC.**

PROPOSED RESIDENTIAL DEVELOPMENT

CROSSROAD RETIREMENT PARCEL

UNINCORPORATED TOWNSHIP

WIGHTSBORO COUNTY

COMMONWEALTH OF PENNSYLVANIA

**WILKINSON & ASSOCIATES, INC.**

1150 GLENHET CR.

SUITE 111

ALLENTOWN, PA 18106

PHONE 610.251.7946

FAX 610.251.7959

NO. 1	DATE	DESCRIPTION
1	06/06/2013	ISSUED FOR PERMIT
2	06/06/2013	ISSUED FOR PERMIT
3	06/06/2013	ISSUED FOR PERMIT
4	06/06/2013	ISSUED FOR PERMIT
5	06/06/2013	ISSUED FOR PERMIT
6	06/06/2013	ISSUED FOR PERMIT
7	06/06/2013	ISSUED FOR PERMIT
8	06/06/2013	ISSUED FOR PERMIT
9	06/06/2013	ISSUED FOR PERMIT
10	06/06/2013	ISSUED FOR PERMIT

**CALL BEFORE YOU DIG!**

800-4-A-DIG

PA 1

PA 1

**EXHIBIT B**

**CERTIFICATION OF SEWER CONSTRUCTION COSTS**

UPPER POTTS GROVE TWP

SHADELAND DEVELOPMENT CORPORATION SEWER CERTIFICATION COSTS  
MOYER ROAD SEWER MAIN EXTENSION

SEWER MAIN INSTALLATION	645,000.00
SEWER DESIGN COSTS AND PERMITTING	195,000.00
EROSION AND CONTROL / STREAM CROSSING	72,800.00
TOWNSHIP REVIEW AND INSPECTIONS	100,000.00
OWNER / DEVELOPER COSTS	46,900.00

TOTAL SEWER COSTS

1,059,700

Sewer Service Areas via Sprogels Run main sewer line

Sprogels Run	58 edu's* (DEVELOPER)
Cross Road Estates	51 edus (TOWNSHIP)
West Moyer Road/Ming Drive	40 edu's (TOWNSHIP)
NW corner Moyer Road	15 Edu's* (DEVELOPER)

Total Sewer Service Area

164 edus

1,059,700/ 164 edu's = \$ 6,461 REIMBURSEMENT per edu

Developer is entitled for a reimbursement component for the Cross Road and West Moyer Road/  
Ming Drive Projects not owned by Developer.  
91 edu's x \$6,461 = \$587,951

\* Properties are owned by Developer and not subject to a reimbursement component.

**CERTIFICATE OF SERVICE**

I, Gregg Adelman, hereby certify that on May 21, 2021, I caused a true and correct copy of the foregoing Answer of Shadeland Development Corporation to the Joint Preliminary Objections of Pennsylvania-American Water Company and Upper Pottsgrove Township, to be sent by e-mail to the addresses stated below:

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Nick Miskanic ([nmiskanic@pa.gov](mailto:nmiskanic@pa.gov))  
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By: /s/ Gregg I. Adelman

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Robert M. Tucker, Esquire

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Shadeland Development Corporation