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July 26, 2022

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**RE: StoneyBank Development LLC v. The Walnut Hill Utility Company;
Docket No: C-2020-3022179**

Dear Secretary Chiavetta:

Pursuant to the Petition to Extend Deadline for Answer filed by the Walnut Hill Utility Company on July 1, 2022 and granted on July 8, 2022, please find attached Walnut Hill Utility Company's Answer to Petition of StoneyBank Development LLC to Rescind or Amend the Final Order Entered In This Matter on May 25, 2021 in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare
MCNEES WALLACE & NURICK LLC

Counsel to The Walnut Hill Utility Company

c: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL

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Adeolu A. Bakare

Counsel to The Walnut Hill Utility Company

Dated this 26th day of July, 2022, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

StoneyBank Development LLC	:	
	:	
v.	:	C-2020-3022179
	:	
The Walnut Hill Utility Company	:	

**WALNUT HILL UTILITY COMPANY'S ANSWER TO
PETITION OF STONEYBANK DEVELOPMENT LLC
TO RESCIND OR AMEND THE FINAL ORDER ENTERED
IN THIS MATTER ON MAY 25, 2021**

Pursuant to Section 5.61 *et seq.* of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Regulations, the Walnut Hill Utility Company ("Walnut Hill") submits this Answer to the Petition of StoneyBank Development LLC ("StoneyBank") to Rescind or Amend the Final Order Entered in this matter on May 25, 2021 ("Petition to Rescind"). Walnut Hill files this Answer requesting that the Commission deny StoneyBank's Petition to Rescind the Commission's May 25, 2021, Final Order ("Final Order"). In support thereof, Walnut Hill avers as follows:

I. INTRODUCTION

The Petition to Rescind seeks the Commission to rescind its final order allowing StoneyBank to withdraw a formal complaint against Walnut Hill. The Petition to Rescind should be denied. The Petition to Rescind does not meet the *Duick* standard¹ for amendment or rescission of PUC Orders because the Petition to Rescind fails to present new let alone compelling evidence or argument for the Commission's consideration. The facts presented in the Petition to Rescind were fully contemplated by the parties and entirely consistent with the

¹ *Duick v. Pa. Gas and Water Co.*, 56 Pa P.U.C. 553, 559 (1982).

Commission's Final Order. Additionally, the legal basis for the Petition to Rescind is clearly wrong under well-established, black letter law limiting a mutual mistake of fact to such facts in existence at the time of contract rather than events to occur in the future.² The Petition to Rescind should be denied as a matter of law.

II. BACKGROUND

On July 6, 2017, three parties: (1) StoneyBank, which is led by its President Stephen G. Mantakounis who is also the owner of Mantis Construction Company; (2) Nancy and Mark Beard; and (3) non-profit, User owned, *bona fide* cooperative Walnut Hill entered into a Sanitary Sewage Agreement. Under the Agreement, in exchange for consideration to benefit all Users, those to be connected under the Agreement and those currently connected, Walnut Hill would provide wastewater treatment service for the proposed 33 townhouses StoneyBank wishes to build, and for up to two (2) units on the Beard's property. Of course, the Agreement acknowledged that performance was contingent upon approval of a Planning Module by the Pennsylvania Department of Environmental Protection ("DEP").

As per paragraph 10 of the Agreement, StoneyBank and the Beards agreed "that upon the satisfactory completion and inspection of the StoneyBank Sewer Improvements, and the land upon which, or under which, the StoneyBank Sewer Improvements are located will be and remain subject to all of the provisions of that certain Declaration of Covenants, Easements, Conditions and Restrictions of Walnut Hill Utility Company" and would pay the same charges as Users in existing like units as per Article X of the Declaration.

As per paragraph 26 of StoneyBank's Petition to Rescind, certain wastewater facilities identified as "the Reserves Sewer System" would be owned and operated by StoneyBank (or its

² *McNeely v. Philadelphia Nat. Bank*, 314 Pa. 334, 338 (Pa. 1934).

successors or assigns). See also Paragraph 18 of the Sanitary Sewage Agreement which states: "Walnut Hill shall have no responsibility or obligation to pay for, or to perform, maintenance, repair or replacement of The Reserves Sewer System." The StoneyBank Sewer Improvements would become part of the Walnut Hill Sewer System as per Paragraph 18.

As per paragraph 27 of the Petition to Rescind, StoneyBank was responsible for obtaining Planning Module approval from DEP. See also paragraph 2 of the Agreement, "StoneyBank shall apply to the Pennsylvania Department of Environmental Protection (DEP) for Sewage Facilities Planning Module approval." As discussed in detail below, various paragraphs of the Sanitary Sewage Agreement establish that StoneyBank's receipt of DEP Planning Module Approval was always a contingency for performance of various provisions of this Agreement.

Paragraph C of the Background of the Agreement indicated Walnut Hill was not a public utility, and the plant was not intended to be operated as one. Seven months after execution of the Agreement, without any notice whatsoever to, let alone any consultation with, Walnut Hill, StoneyBank's former counsel sent a letter to the PUC which ultimately led to an investigation by the Commission's Bureau of Investigation & Enforcement ("I&E").

III. PROCEDURAL HISTORY

On September 24, 2020, StoneyBank filed a Formal Complaint with the Commission, alleging that non-profit, User owned Walnut Hill was illegally operating as a *de facto* utility in violation of the Public Utility Code. StoneyBank requested that Walnut Hill be ordered to apply for a certificate of public convenience ("CPC"), an investigation be instituted against Walnut Hill, and that Walnut Hill pay a civil penalty for each day it held itself out to the public as offering or providing public utility service for compensation.

On October 19, 2020, Walnut Hill filed an Answer providing background regarding the investigation by I&E, in which I&E determined that Walnut Hill operates as a bona fide

cooperative association exempt from the Commission's regulatory jurisdiction. Walnut Hill's Answer also clarified that I&E's conclusion was initially predicated on Walnut Hill terminating the Sanitary Sewage Agreement with the Beards and StoneyBank for service to the proposed thirty-three (33) unit townhouse development in Chester Heights Borough, Delaware County, Pennsylvania ("Sanitary Sewage Agreement").³ StoneyBank was not amenable to termination of the Sanitary Sewage Agreement and proceeded to file the above-referenced Complaint in an effort to lobby the PUC to exercise jurisdiction over Walnut Hill and force a connection to StoneyBank's proposed new development.

On November 25, 2020, a notice of hearing on the Complaint was issued establishing an initial call-in hearing for this matter for Tuesday, January 19, 2021, with Administrative Law Judge ("ALJ") Joel H. Cheskis as the presiding officer. The January 19, 2021, hearing was subsequently cancelled to allow additional time for the parties to attempt settlement negotiations.

On February 5, 2021, the parties indicated they reached a settlement agreement in principle and requested that the matter be held in abeyance, which the ALJ granted, through an Order issued on February 12, 2021. The parties agreed to have a User vote reaffirming that the Beards and the residents of the townhouses would become Users of Walnut Hill as per the terms of the Sanitary Sewage Agreement.

This User vote was conducted by Walnut Hill. The results were announced at its annual meeting on March 24, 2021, attended by Stephen G. Mantakounis, President of StoneyBank and Owner of Mantis Construction.

On April 1, 2021, StoneyBank filed its Petition for Leave to Withdraw the Complaint ("Petition to Withdraw") and no objections were filed in response to the Petition to Withdraw.

³ As detailed below, I&E subsequently removed this condition.

On April 21, 2021, ALJ Cheskis issued an Initial Decision accepting the Petition to Withdraw and returning the issue of whether Walnut Hill has been operating or continues to operate as a de facto public utility back to I&E for determination in view of the User vote.

On April 27, 2021, I&E issued an updated letter ("I&E Updated Letter") attached hereto as Exhibit A. In view of having had the User vote reaffirming that the residents (upon settlement) and the Beards (upon connection) would be subject to the Declaration, the I&E Updated Letter indicated I&E again affirmed that Walnut Hill was *not* acting as a *de facto* public utility, but this time *removing the condition* that the Agreement be terminated. Walnut Hill was no longer obligated to terminate the Sanitary Sewage Agreement and the Agreement remains in full force and effect between the three parties.

On June 28, 2022, StoneyBank filed the instant Petition to Rescind. In pertinent part, StoneyBank alleges that "[a] basic assumption of the [Sanitary Sewage] Agreement – and the Settlement – is that DEP would approve StoneyBank's ownership and operation of the Reserves Sewer System."⁴ StoneyBank thus claims that DEP's declining to approve a Planning Module required by DEP for StoneyBank to own and operate the sewer system indicates "that the Parties made a mutual mistake of fact when they entered into the Settlement."⁵ This claim, as demonstrated below, is entirely baseless and ignores the reality that the Sanitary Sewage Agreement fully contemplated that regulatory approvals necessary to move forward with the proposed service may be denied. As acknowledged by StoneyBank, the Settlement did not modify the Sanitary Sewage Agreement, meaning all risk accepted by parties via the Agreement were also accepted as part of the Settlement. Finally, the parties could not have made a mutual

⁴ Petition to Rescind at 8.

⁵ Petition to Rescind at 10.

mistake of fact regarding the DEP approval because it was not a fact at all at the time of contract, but an event to occur in the future.

In support of the Commission's Final Order with regard to the granting of StoneyBank's Petition to Withdraw, Walnut Hill hereby responds to StoneyBank's Petition to Rescind by filing this Answer.

IV. ANSWER

As discussed more fully below, StoneyBank fails to provide sufficient factual justification to support its request to rescind or amend the Commission's Final Order. The Commission, under Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g), is authorized to rescind or amend orders, but only under limited circumstances. As determined by the Supreme Court of Pennsylvania and further stated by the Commonwealth Court "although the PUC has the power to modify or rescind orders subject only to the requirements of due process, our Supreme Court has stated that power must be 'granted judiciously and only under appropriate circumstances' because such relief may result in the disturbance of final orders."⁶ Consistent with the Court's directive to exercise such power judiciously, the Commission applies a rigorous two-step analysis developed in its 1982 *Duick v. Pa. Gas and Water Co.* Order ("*Duick*") prior to rescinding or amending an order.⁷ The Commission requires: (1) new evidence; and (2) that evidence must be compelling in order for the Commission to rescind an order.⁸ The Commission also requires a petition to raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by the Commission.⁹ As

⁶ *City of Phila. v. Pa. PUC*, 720 A.2d 845, 852 (Pa. Cmwlth. 1998) citing *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980).

⁷ *Duick v. Pa. Gas and Water Co.*, 56 Pa P.U.C. 553, 559 (1982).

⁸ *Id.*; see also *Petition of Elite Energy Solutions, LLC*, Docket No. A-2019-3013327 (Order entered June 17, 2021) at 9.

⁹ *Id.*

discussed below, StoneyBank's Petition to Rescind satisfies neither of the *Duick* steps. Therefore, the Commission should deny the Petition to Rescind.

A. STONEYBANK'S PETITION TO RESCIND OFFERS NO NEW EVIDENCE

The new evidence from StoneyBank's Petition to Rescind does not provide information that would rise to the level of "new evidence" for the Commission to rescind or amend its Final Order. The PUC expects to "see ... new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission."¹⁰ The new evidence proffered by StoneyBank, that it cannot fulfill its obligation under the Sanitary Sewage Agreement to secure DEP approval of the Planning Module, is not new evidence at all and certainly was not evidence overlooked or not addressed by the Commission.

The Sanitary Sewage Agreement setting forth StoneyBank's obligation to obtain DEP's approval of the Planning Module was executed in 2017, far in advance of StoneyBank's Complaint, the Settlement, or the Petition to Withdraw. StoneyBank now asks the Commission to rescind or amend the Final Order because it cannot meet its obligation to secure approval of the Planning Module. Contrary to StoneyBank's representation that this was some omission or "mutual mistake," the Sanitary Sewage Agreement in this case clearly contemplated this result by establishing StoneyBank's receipt of the DEP Planning Module approval as a contingency for performance under various provisions of the agreement as follows:

Paragraph 2

StoneyBank shall apply to the Pennsylvania Department of Environmental Protection (DEP) for Sewage Facilities Planning Module approval.¹¹

¹⁰ *Duick v. Pa. Gas and Water Co.*, 56 Pa P.U.C. 553, 559 (1982).

¹¹ Sanitary Sewage Agreement, at 2.

Paragraph 3

*Contingent on StoneyBank's receipt of said Planning Module approval from DEP, StoneyBank shall, at its own cost and expense, construct a collection and conveyance system, including a New Pump Station and power generator system, a Proposed 8" Gravity line from the location of the existing Walnut Hill Pump Station, and a New 4" Forcemain from the New Pump Station to connect with the existing 4" forcemain which is part of the Walnut Hill Sanitary Sewer System on the Darlington Woods Property (the "StoneyBank Sewer Improvements").*¹²

Paragraph 11

Contingent upon full execution of this Agreement, including the consent of Darlington Woods, *the approval by DEP of the necessary planning module*, the construction of the StoneyBank Sewer Improvements, the connection of the Reserves Sewer System to the New Pump Station, providing access to the new Pump Station, and the acceptance by Walnut Hill of ownership and maintenance responsibility for the StoneyBank Sewer Improvements, StoneyBank shall allow Walnut Hill non-exclusive access to the New Pump Station and the Proposed Sanitary Sewer Easement...¹³

Paragraph 15

The grant of reservation of treatment plant capacity by Walnut Hill is made subject to all applicable requirements of the Borough of Chester Heights and DEP...¹⁴

By defining numerous rights and obligations of the parties as contingent on StoneyBank's securing DEP approval of the Planning Module, the Sanitary Sewage Agreement fully contemplated the possibility of DEP denying such approval.

To be clear, Walnut Hill does not dispute StoneyBank's assertion that it cannot secure DEP approval of the Planning Module at this time. On June 6, 2022, DEP issued a letter to Chester Heights Borough ("June 6 Letter"), attached hereto as Exhibit B.¹⁵ The June 6 Letter advises Chester Heights Borough, Walnut Hill and, via Mr. Stephen G. Mantakounis,

¹² *Id.* at 2 (Emphasis added).

¹³ *Id.* at 4 (Emphasis added).

¹⁴ *Id.* at 5.

¹⁵ Chester Heights Borough is the municipality within which StoneyBank intends to construct the proposed development.

StoneyBank and presumably the Beards, that DEP has suspended review of the proposed Planning Module due to not one, but multiple independent unresolved deficiencies.¹⁶

Walnut Hill challenges StoneyBank's assertion that its difficulties securing DEP approval have any bearing on the Commission's Final Order. Nothing in the Petition to Withdraw approved by the Final Order changed this contingency for DEP approval set forth in the Sanitary Sewage Agreement. In fact, the Petition to Withdraw recognized the continuing applicability of the Sanitary Sewage Agreement as a part of the Settlement, stating:

The March 24, 2021 vote of the Users allows the residents of the Reserves at StoneyBank to receive wastewater service from Walnut Hill *pursuant to the Sanitary Sewage Agreement*. As a result, StoneyBank can proceed with the construction of its development, which had been delayed due to uncertainty over whether the Sanitary Sewage Agreement would be terminated.¹⁷

The entire point of the Settlement was to preserve the effectiveness of the Sanitary Sewage Agreement. The only "new evidence" StoneyBank presents to the Commission is DEP's declining to approve the Planning Module, which was fully contemplated by the Sanitary Sewage Agreement and the Settlement. DEP's decision on the Planning Module is not new evidence because it is not evidence at all as relates to any Settlement obligations identified in the Petition to Withdraw approved by the Final Order. DEP's decision on the Planning Module was also not overlooked or not addressed by the Commission in its Final Order because this contingency originates from the Sanitary Sewage Agreement, which remains unchanged by the Petition to Withdraw, including the terms and conditions related to DEP approvals *or lack thereof*.

¹⁶ Both Walnut Hill and StoneyBank (through owner Mr. Mantakounis) were cc'd on the June 6 Letter.

¹⁷ Petition to Withdraw, at 6.

Accordingly, StoneyBank fails to satisfy the first step in the two-step *Duick* analysis. Although consideration of the second step is moot absent satisfaction of the first step, Walnut Hill will additionally address StoneyBank's claims for satisfaction of the second step.

B. STONEYBANK'S "NEW EVIDENCE" DOES NOT PRESENT ANY COMPELLING REASON TO RESCIND OR AMEND THE COMMISSION'S FINAL ORDER

StoneyBank's Petition to Rescind does not provide the Commission with a compelling reason to rescind or amend its Final Order under the *Duick* standard. The Commission is only permitted to rescind or amend an order when there is new evidence, *and* that evidence presents compelling reasons to override the directive to exercise its section 703(g) powers sparingly. StoneyBank's failure to meet the terms of a negotiated private agreement cannot meet this standard. The Petition to Withdraw did not modify StoneyBank's obligations under the Sanitary Sewage Agreement and the Commission's approval of the Petition to Withdraw was not predicated on parties' performance under the Sanitary Sewage Agreement. Further, any matters regarding performance under the Sanitary Sewage Agreement are not properly before the PUC and certainly fall well short of the "compelling" standard for rescinding or amending a Final PUC Order. Finally, there was no mutual mistake of fact between the parties because the failed DEP approval was not a fact in existence at the time of contract.

StoneyBank has mistakenly interpreted the May 25 Final Order as a Commission ruling that it is entitled or directed to connect to Walnut Hill's system. This strained interpretation of the Order arises from StoneyBank's emphasis on the finding that granting StoneyBank's Petition to Withdraw "will promote economic development...."¹⁸ StoneyBank is now arguing that its failure to satisfy a provision in the Sanitary Sewage Agreement amounts to a mutual mistake of fact in that economic development has not been promoted because it cannot secure the regulatory

¹⁸ Initial Decision at 7.

approvals for the anticipated service connection.¹⁹ However, the PUC did not make a finding that StoneyBank's connection to Walnut Hill's system promotes economic development. The PUC, adopting the Initial Decision as a Final Order, found only that withdrawing the Complaint promotes economic development and conserves the resources of the Commission and the parties.²⁰ This observation does not amount to a *fait accompli* that the proposed connection must proceed, but rather reflects the Commission's recognition that resolving the Complaint allows the parties to proceed according to the agreed upon terms of the Sanitary Sewage Agreement.

Moreover, the PUC does not "have the authority to interpret, enforce or adjudicate claims regarding a contract between private, non-jurisdictional entities or municipalities."²¹ If StoneyBank believes there was no meeting of the minds with regard to the terms of the Sanitary Sewage Agreement, the PUC is not the appropriate forum for such claims.

Even leaving aside the fact that performance under the Sanitary Sewage Agreement was not a basis for the PUC's Final Order and that the Commission lacks jurisdiction over the contract, the Petition to Rescind fails to (and cannot) show that a mutual mistake of fact occurred. The alleged mutual mistake here, arises from a term in the contract obligating StoneyBank to obtain a regulatory approval.²² That StoneyBank has failed to obtain such approval cannot as a matter of law be a mutual mistake because the fact of non-approval was not a fact at all, but an event to occur in the future – *i.e.* the "fact" did not exist at the time of execution of the contract. As the Pennsylvania Supreme Court has made clear since 1934, for mutual mistake of fact to apply, there must be a fact *in existence* at the time of contract execution

¹⁹ Petition to Rescind at 10-11.

²⁰ Initial Decision at 5 (stating "In addition, allowing StoneyBank to withdraw its complaint is in the public interest because it will promote economic development and conserve the resources of the Commission and the parties, as StoneyBank also stated in its petition").

²¹ *Application of The York Water Company.*, Docket Nos. U-2017-2610587 and C-2017-2616962 (Order entered January 17, 2019), at 4.

²² Initial Decision at 7.

to which a mistake was made. "There can be no mutual mistake as to a fact to come into being in the future."²³ Accordingly, the legal basis underlying StoneyBank's claim of compelling evidence is utterly unfounded.

V. CONCLUSION

WHEREFORE, Walnut Hill Utility Company respectfully requests that the Pennsylvania Public Utility Commission deny the Petition of StoneyBank for Rescission or Amendment of the May 25, 2021, Commission Final Order. As the clear and unambiguous terms of the Sanitary Sewage Agreement make clear, the DEP and Chester Heights Borough approvals were contingencies, which StoneyBank bore the risk of securing. It failed to do so and its failure to satisfy these contingencies cannot form a basis for a claim of mutual mistake by the parties.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Counsel to Walnut Hill Utility Company

Dated: July 26, 2022

²³ *McNeely v. Philadelphia Nat. Bank*, 314 Pa. 334, 338 (Pa. 1934).

VERIFICATION

I, Eileen Lehmann, President of Walnut Hill Utility Company's Board of Directors, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

7/26/22
Date

Eileen Lehmann
Signature



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

April 27, 2021

Via Electronic Mail

Adeolu A. Bakare, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17101

Re: Investigation of Walnut Hill Utility Company Relating to Possible
Violations of the Public Utility Code and Commission Regulations
Bp8CaseID# 3013669
(I&E Letter Terminating Investigation - Updated)

Dear Attorney Bakare,

By letter dated August 20, 2020, the Bureau of Investigation and Enforcement (“I&E”) advised Walnut Hill Utility Company (“Walnut Hill” or “Company”) that I&E elected to terminate the above-referenced investigation of the Company, without prejudice, as I&E determined that Walnut Hill was not acting as a *de facto* public utility. The closure of the investigation, however, was predicated upon Walnut Hill’s representation that it would terminate the Sanitary Sewage Agreement between Walnut Hill, StoneyBank Development LLC (“StoneyBank”) and Mark and Nancy Beard (“the Beards”), as StoneyBank and the Beards would not have become members of the *bona fide* cooperative association that renders Walnut Hill exempt from the definition of “public utility.”¹

Since I&E’s August 20, 2020 letter, I&E was advised that during a virtual meeting of the Walnut Hill membership on March 24, 2021, the majority of Walnut Hill members voted to admit the residents of StoneyBank and the Beards to the Walnut Hill cooperative association.² The residents of StoneyBank and the Beards are subject to, *inter alia*, the Declaration of Covenants, Easements, Conditions and Restrictions of Walnut Hill Utility Company.³

Given this recent development, I&E is providing this updated letter to remove the conditions requiring that the Sanitary Sewage Agreement be terminated and prohibiting Walnut Hill from serving the Beards and properties developed by StoneyBank from the closure of the above-referenced investigation of Walnut Hill. These conditions are being

¹ 66 Pa.C.S. § 102.

² *StoneyBank Development LLC v. The Walnut Hill Utility Company*, Docket No. C-2020-3022179 (Petition of StoneyBank Development LLC for Leave to Withdraw Complaint filed April 1, 2021).

³ *Id.* at 4.

Adeolu A. Bakare, Esquire
April 27, 2021
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removed as the residents of StoneyBank and the Beards have become members of the Walnut Hill cooperative association, subject to the rights associated therein.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
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(717) 772-8839
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SMW/jfm

cc: Michael L. Swindler, Deputy Chief Prosecutor
Jonathan P. Nase, Counsel for StoneyBank Development LLC



SENT VIA ELECTRONIC MAIL ONLY

June 6, 2022

Ms. Susan Timmins
Secretary-Treasurer
Chester Heights Borough
222 Llewellyn Road
P.O. Box 658
Chester Heights, PA 19017

Re: Planning Module for Land Development
Component 3 Planning Module
The Reserves at Stoneybank
DEP CODE NO. 1-23937-049-3J
APS ID 9555606, SITE ID 826478
Chester Heights Borough
Delaware County

Dear Ms. Timmins:

The Department of Environmental Protection (“DEP”) has suspended its review of the planning module application. After review of the applicant’s September 24, 2021, response to the DEP’s August 21, 2021, technical deficiency letter with regard to the above referenced application, DEP has determined that the application continues to be technically deficient. Additionally, DEP has not received a response to our November 10, 2021, deficiency letter.

The deficiencies noted in DEP’s technical deficiency letters are based on applicable laws and regulations, as set forth therein. The applicant’s response failed to adequately address some of the deficiencies noted in our letters of August 21, 2021, (“August Letter”) and November 10, 2021, (“November Letter”) deficiency letters (“Letters”). The deficiencies in the application that have not been adequately addressed are as follows:

Technical Deficiencies

1. We have not received a response to the following items as requested in our November Letter:
 - a. Clarification regarding the statement in the Project Narrative which indicates that this project will connect into the Concord Chase development instead of the Darlington Woods development.
 - b. Item 3 in our November Letter requested documentation from Thornbury Township regarding an adjacent lot located in Thornbury Township that would

Ms. Susan Timmins

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June 6, 2022

connect into the proposed Reserves at Stoneybank (“Stoneybank”) sewer system. This information was not submitted.

- c. DEP requested that you clarify information included in the Sanitary Sewage Agreement (“Agreement”) made by and between The Walnut Hill Utility Company (“WHU”) and Stoneybank Development, LLC. The Agreement indicates that the Stoneybank lot was subdivided from the lot referenced in Item 2 above and has 525 gallons of sewage per day (“gpd”) reserved in the proposed pump station, which will be owned by WHU, and in the WHU’s wastewater treatment facility. Additionally, the following information was requested:
 - i. Clarification regarding why 2 Equivalent Dwelling Units (“EDUs”) are being reserved for the property in Thornbury Township.
 - ii. An explanation regarding why the Agreement allocated 525 gpd and the proposed annual average flow for the pump station was calculated using 262.5 gpd.
 - iii. Documentation showing when the property proposed for development was subdivided from the adjacent property and a copy of the DEP approval for the subdivision.

The requested information was not submitted.

2. In both Letters, DEP requested an analysis of municipal ownership of the proposed sewer system in the Stoneybank development. This analysis was not submitted. Consistent with 25 Pa. Code § 91.37, DEP will not approve applications for sewerage permits for private sewerage projects to be located within the built-up parts of cities, boroughs, and first- and second-class townships unless the applicant can demonstrate a compelling public need for the project.
3. In both Letters, we requested documentation of an operation and maintenance agreement between the municipality and the Walnut Hill Utility. Chester Heights Borough responded by providing a copy of the Sanitary Sewage Agreement between WHU and Stoneybank Development, LLC. The requested information from our August 2, 2021, letter was not included in the resubmission. The Sanitary Sewage Agreement does not provide for any kind of municipal oversight of the proposed sewer system nor has documentation of municipal oversight of the WHU facilities been provided.

In addition to the foregoing deficiencies, DEP has concerns regarding the feasibility of connecting the Stoneybank development to the Walnut Hill Utility system. Information received by DEP indicates that Stoneybank and Walnut Hill Utility have not come to an agreement.

Ms. Susan Timmins

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June 6, 2022

In order for DEP to recommence its review, any resubmission of this project will require a complete submission, including information that addresses the noted deficiencies, and an updated resolution of adoption.

If you have any questions or concerns, please contact me at 484-250-5186 or at SteRittenh@pa.gov and refer to project name and DEP Code No. referenced above.

Sincerely,

Stefanie Rittenhouse-Loughery
Sewage Planning Specialist 2
Clean Water

cc: Delaware County Planning Department
Delaware County Health Department
Delaware County Conservation Department
Mr. Mantakounis
Catania Engineering Associates, Inc.
Walnut Hill Utility Company
Planning Section
Re 30