



October 27, 2023

VIA E-FILING

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

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

Motion of StoneyBank Development LLC to Hold this Matter in Abeyance

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Motion of StoneyBank Development LLC to Hold this Matter in Abeyance. StoneyBank Development LLC is authorized to represent that the Walnut Hill Utility Company neither supports nor opposes the enclosed Motion. Copies are being served as shown on the attached certificate of service.

Please contact me if you have any questions regarding this filing. Thank you.

Sincerely,

COZEN O'CONNOR

By: Jonathan P. Nase
Counsel for *StoneyBank Development LLC*

JPN:kmg
Enclosure

cc: Honorable Steven K. Haas
Per Certificate of Service
Stephen G. Mantakounis

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

StoneyBank Development LLC

v.

The Walnut Hill Utility Company

:
:
:
:
:

Docket No. C-2020-3022179

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of October, 2023 served a true copy of the foregoing **Motion of StoneyBank Development LLC to Hold this Matter in Abeyance** upon the following, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Via E-mail and First Class Mail

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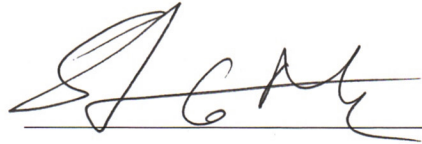


Jonathan P. Nase, Esquire
Counsel for *StoneyBank Development LLC*

VERIFICATION

I, STEPHEN G. MANTAKOONIS, 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).

Date: 10/27/23



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103, you are hereby notified that, if you wish to contest the enclosed Motion to Hold this Matter in Abeyance, an answer to the enclosed Motion must be filed within twenty (20) days from service of the enclosed Motion. Any such answer or other responsive pleading must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served on counsel for StoneyBank Development LLC and, where applicable, the Administrative Law Judge presiding over the case.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

David P. Zambito, Esq. (PA ID #80017)
Jonathan P. Nase, Esq. (PA ID #44003)
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101

Dated: October 27, 2023



Jonathan P. Nase, Esquire
Counsel for *StoneyBank Development LLC*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION OF STONEYBANK DEVELOPMENT LLC
TO HOLD THIS MATTER IN ABEYANCE**

AND NOW COMES StoneyBank Development LLC (“StoneyBank”), pursuant to 52 Pa. Code § 5.103 (“Motions”), to request that the Honorable Administrative Law Judge Steven K. Haas (the “ALJ” or “ALJ Haas”) hold this matter in abeyance, based on an agreement in principle between StoneyBank and The Walnut Hill Utility Company (“Walnut Hill”) (collectively, the “Parties”). In support whereof, StoneyBank avers as follows:

PROCEDURAL HISTORY

1. On September 24, 2020, StoneyBank filed its Complaint with the Pennsylvania Public Utility Commission (“Commission”), alleging that Walnut Hill was offering, and/or was furnishing, wastewater service to the public for compensation without a certificate of public convenience (“Certificate”) in violation of the Pennsylvania Public Utility Code (“Code”).

2. On October 19, 2020, Walnut Hill filed its Answer to the Complaint. Also on October 19, 2020, Walnut Hill filed Preliminary Objections. Among other things, the Preliminary Objections alleged that the Commission lacks jurisdiction over Walnut Hill because it is a *bona fide* cooperative association.

3. On November 24, 2020, Deputy Chief Administrative Law Judge Joel H. Cheskis (“Judge Cheskis”) issued an Order Denying Preliminary Objections.

4. On February 5, 2021, StoneyBank and Walnut Hill filed a Joint Status Report stating that they had reached a settlement in principle to resolve this matter, subject to the result of a vote to be held at an upcoming meeting of the Users of Walnut Hill.

5. On February 12, 2021, Judge Cheskis issued an Order Granting Request for Abeyance, which held this matter in abeyance, but directed StoneyBank and Walnut Hill to submit a status report by April 5, 2021.

6. On April 1, 2021, StoneyBank filed a Petition for Leave to Withdraw Complaint (“Petition to Withdraw”), based on the agreement reached by StoneyBank and Walnut Hill. The Petition to Withdraw was unopposed.

7. On April 21, 2021, Judge Cheskis issued an Initial Decision granting StoneyBank’s Petition to Withdraw. A Final Order was entered by the Commission on May 25, 2021.

8. On June 28, 2022, StoneyBank filed a Petition to Rescind or Amend the Final Order Entered on May 25, 2021 (“Petition to Rescind”).

9. On July 26, 2022, Walnut Hill filed its Answer to StoneyBank’s Petition to Rescind.

10. On October 27, 2022, the Commission entered an Opinion and Order granting StoneyBank’s Petition to Rescind and remanding the case to the Office of Administrative Law Judge for further proceedings.

11. On November 16, 2022, the Commission issued a Judge Change Notice, notifying the Parties that ALJ Haas would now preside over this matter.

12. On March 29, 2023, the Commission issued a notice scheduling another Prehearing Conference for April 26, 2023. The ALJ issued a Prehearing Conference Order that same day.

13. At the Prehearing Conference of April 26, 2023, StoneyBank and Walnut Hill jointly requested that this matter be held in abeyance to give them additional time to negotiate a settlement. The ALJ granted that request and scheduled a telephonic status conference approximately thirty days later. Additional status conferences were held approximately every thirty (30) days thereafter.

THE AGREEMENT IN PRINCIPLE

14. On or about June 6, 2017, the Parties entered into the Sanitary Sewage Agreement (the “Sewage Agreement”), which was attached to the Complaint as Exhibit 1.

15. Pursuant to the Sewage Agreement, StoneyBank was to construct certain wastewater facilities to connect a development it is constructing (the “Development”), together with a neighboring property, to Walnut Hill’s wastewater collection and treatment system. Some of the facilities to be constructed by StoneyBank (the “StoneyBank Sewer Improvements”) were to be turned over to Walnut Hill and become part of Walnut Hill’s wastewater system. Other facilities to be constructed by StoneyBank (the “Reserves Sewer System”) were to be retained and operated by StoneyBank.

16. The Pennsylvania Department of Environmental Protection (“DEP”) subsequently advised the Parties that it will not approve the planning modules that StoneyBank submitted pursuant to the Sewage Agreement. DEP requires that one entity own and operate both the StoneyBank Sewer Improvements and the Reserves Sewer System.

17. In addition, if the entity that owns and operates the StoneyBank Sewer Improvements and the Reserves Sewer System is not a public utility regulated by the Pennsylvania Public Utility Commission (“Commission”), DEP requires the municipality in which the system is located to execute an oversight agreement with the system owner.

18. The Parties have reached an agreement in principle to amend the Sewage Agreement (the “Amended Agreement”). Pursuant to the Amended Agreement, Walnut Hill will own and operate both the StoneyBank Sewer Improvements and the Reserves Sewer System. StoneyBank’s Development will become subject to the Declaration for Walnut Hill’s property, such that purchasers of lots in StoneyBank’s Development will become Users of Walnut Hill.

19. The Parties expect the Amended Agreement will be executed in the near future. However, the Amended Agreement will not take effect until certain preconditions are met. Those preconditions are:

- a. The execution of a municipal oversight agreement with Chester Heights Borough, which is satisfactory to DEP;
- b. DEP approval of a planning module for the Development;
- c. The receipt of all other governmental approvals necessary to construct and operate the sewer facilities to be constructed by StoneyBank;
- d. A neighboring condominium association grants an easement for sewer facilities to be constructed and maintained on its property;
- e. The existing Users of Walnut Hill adopt a motion making the owners of lots in the Development Users of Walnut Hill, in accordance with the Declaration that created Walnut Hill.
- f. StoneyBank files a Petition for Leave to Withdraw its Complaint, pursuant to 52 Pa. Code § 5.94, within thirty (30) days after satisfaction of the preconditions set forth in subparagraphs a-e of this paragraph.

20. Upon the entry of a Commission Order approving the Withdrawal of the Complaint, with prejudice, the Amended Agreement will take effect.

21. The Amended Agreement requires StoneyBank to ask the Commission to stay the instant proceedings while the Parties seek to satisfy the preconditions described in Paragraph 19a-e.

22. If any of the preconditions described in Paragraph 19a-e above fails, or if all preconditions have not been satisfied within three years of the date the Amended Agreement is executed, either Party may terminate the Amended Agreement upon thirty (30) days' written notice to the other Party.

REQUEST TO HOLD THIS MATTER IN ABEYANCE

23. Considering the agreement in principle discussed above, StoneyBank respectfully requests that this matter be held in abeyance while the Parties work on satisfying the preconditions described in Paragraph 19a-e. Litigation at this time would waste the Parties' resources and would be a waste of administrative resources.

24. After consultation with Walnut Hill, StoneyBank will submit a status report every three months, beginning on February 1, 2024, to inform the ALJ and the Commission of the Parties' progress in satisfying the preconditions described in Paragraph 19a-e.

25. StoneyBank has consulted with counsel for Walnut Hill about this Motion. StoneyBank is authorized to represent to the ALJ that Walnut Hill neither supports the Motion nor opposes it.

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, for all of the foregoing reasons, StoneyBank Development LLC respectfully requests that Administrative Law Judge Steven K. Haas:

- (1) GRANT this Motion to Hold the Matter in Abeyance; and
- (2) Direct StoneyBank to file a status report every three months, beginning on February 1, 2024, on the Parties' progress in satisfying the preconditions stated in Paragraph 19a-e of this Motion, until such time as either StoneyBank files a Petition for Leave to Withdraw its Complaint or the Amended Agreement is terminated.

Respectfully submitted,



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Counsel for *StoneyBank Development LLC*

Dated: October 27, 2023