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Agenda Date: 01/23/03  
Agenda Item:5A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

IN THE MATTER OF THE PETITION OF SHORELANDS )  
WATER COMPANY, INC. PURSUANT TO N.J.S.A. )  
40:55D-19 APPEALING A DECISION BY THE )  
PLANNING BOARD OF THE TOWNSHIP OF HOLMDEL )  
AND FOR APPROVAL OF THE SITING AND )  
ERECTION OF A WELL HOUSE STRUCTURE IN THE )  
TOWNSHIP OF HOLMDEL AND EXEMPTING SUCH )  
STRUCTURE FROM ANY LOCAL REGULATIONS AND )  
FOR INTERIM RELIEF TO PROTECT WELL NO. 7 )  
PENDING RESOLUTION )

WATER & WASTEWATER

ORDER

DOCKET NO. WE02070431

(SERVICE LIST ATTACHED)

BY THE BOARD:

On July 19, 2002, Shorelands Water Company, Inc. (Petitioner or Shorelands), a public utility providing water service to 10,697 customers in the Townships of Hazlet and Holmdel, Monmouth County, New Jersey, filed a petition with New Jersey Board of Public Utilities (Board) pursuant to N.J.S.A. 40:55D-19 appealing a June 18, 2002, resolution of the Holmdel Township Planning Board (Planning Board). The Planning Board resolution approved the preliminary and final site plan for the construction of a well house on property owned by Petitioner in the Township of Holmdel (Holmdel).

However, the Planning Board resolution included several conditions (including the granting of several easements by Shorelands to Holmdel), which had to be met prior to the issuance of a construction permit to Shorelands. Holmdel rejected Shorelands' request for a construction permit stating that the conditions of the Planning Board's resolution were not met. Shorelands appealed for (1) approval to construct a well house and appurtenant facilities on Lot 29.04, Block 50.19 in Holmdel in accordance with the plans of Maser Consulting, P.A., dated October 29, 2001, (Plans) without the need for any further action by the Township of Holmdel, its agencies or authorities; and (2) a finding that an existing security fence, erected immediately after September 11, 2001, and the proposed well house (specifically, Well House No. 7) were necessary for the service, convenience and welfare of the public.

Holmdel and the Planning Board each independently filed answers to Shorelands' petition on August 8, 2002.

The Staff of the Board of Public Utilities (Staff) subsequently engaged in numerous discussions with Shorelands, Holmdel, and the Planning Board (collectively, the Parties) in an effort to resolve the issues raised in the Petition. A formal Settlement Conference was held September 19, 2002, and the Parties subsequently executed a Settlement, which resolved the issues raised by the Petition. Staff is not a party to the Settlement.

## SETTLEMENT

As more fully set forth in the attached Settlement<sup>1</sup>, the Parties agreed that:

1. Holmdel will issue a building permit to Shorelands for the construction of Well House No. 7 as per the Plans within twenty (20) days assuming the papers submitted by Shorelands comply with the applicable Building Officials and Code Administrators International, Inc. (BOCA) Code. If any amendments are required to meet BOCA requirements, Shorelands will expeditiously submit revised plans and Holmdel will expeditiously review any revised plans. (Settlement Paragraph 8)
2. Shorelands will install foundation plantings near Well House No. 7 to help screen the Well House from view particularly when the deciduous trees lose their leaves in the winter. (Settlement Paragraph 10)
3. Holmdel's Engineers have provided an estimated list of required site work, along with unit prices, and estimates excluding the pump house. (Exhibit E to the Settlement.) Shorelands agrees that it will perform the site work, and Holmdel agrees that no bond will be required to be posted. Holmdel may apply to the Board to force the performance of said work if same is not completed on or before May 15, 2003. (Settlement Paragraph 19)
4. Shorelands erected a temporary security fence shortly after September 11, 2001, across its entire frontage along Windswept Road in Holmdel, including crossing the public street known as Hunters Lane in Holmdel. Although the temporary security fence was installed pursuant to a building permit, a fence across a public road would not be permitted under normal circumstances. All Parties have agreed that re-routing the temporary security fence around Hunters Lane would reduce the security from potential terrorists provided by the current fence and, therefore, vacating Hunters Lane and conveying it to Shorelands would provide a security benefit to Shorelands and its customers. Therefore, Holmdel has agreed that it will vacate Hunters Lane and convey same to Shorelands subject to all utilities without cost to Shorelands Water Company. (Settlement Paragraph 12)

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<sup>1</sup> The Settlement sets forth the full text; this is intended as a summary.

5. Shorelands will install Norway Spruces, Scotch Pines, Douglas Firs and American Hollies along the perimeter of the temporary security fence and adjacent to the residential properties located on Windswept Road. (Settlement Paragraph 9)
6. Shorelands will immediately paint the temporary security fence and posts black in order to reduce the security fence's visibility excluding the gate, which cannot be painted black for safety reasons. Said temporary security fence will remain in place until it can be replaced by a more attractive permanent fence with a design similar to that set forth on Exhibit D to the Settlement. The permanent fence will be erected when Shorelands receives authorization from the Board and the State of New Jersey to replace the temporary fence. (Settlement Paragraph 15)
7. Shorelands will work with the Director of Reliability and Security of the Board in an effort to ensure that the permanent fence is authorized and installed at the earliest possible date. The Planning Board Engineer is specifically authorized to review the proposed fence and recommend its installation as an administrative change not requiring further review by the Planning Board if the permanent fence has the look of the sketch attached to the Settlement as Exhibit D. (Settlement Paragraph 16)
8. Shorelands will contribute the standard calculated funds to the Holmdel Sidewalk Fund in lieu of installing sidewalk on Lot 29.04 along Windswept Road (approximately 185 lineal feet). (Settlement Paragraph 11)
9. Holmdel currently owns and operates a sewerage line on both Block 50.19, Lots 29.02 and 29.04 on Windswept Road both of which are owned by Shorelands. Holmdel does not currently possess an easement for said sewerage lines. The Parties have agreed that Shorelands will grant an easement to Holmdel. The form of said easement is set forth in Exhibit B to the Settlement. (Settlement Paragraph 13)
10. Shorelands will grant Holmdel a conservation easement for East Brook. The form of the conservation easement is set forth in Exhibit C to the Settlement. (Settlement Paragraph 14) Shorelands will place monuments to define the conservation area at the rear of the property along the Conrail – Central Railroad Company of New Jersey right-of-way. (Settlement Paragraph 18)
11. The Parties have agreed that the granting of an easement by Shorelands is subject to the provisions of N.J.A.C. 14:1-5.6 and the ultimate approval of the Board. The Parties have agreed that the security advantages together with the value of Hunters Lane to be received by Shorelands without charge, as set forth above, is adequate compensation for the granting of the easements, as set forth in Exhibits B and C to the Settlement, to be given to Holmdel without charge. (Settlement Paragraph 17)

12. The Parties have agreed that the Settlement is intended to resolve accounting issues but it does not limit the Board for ratemaking purposes. (Settlement Paragraph 27)

## DISCUSSION AND FINDINGS

The Board, having reviewed the Petition and Exhibits, the responses thereto, and the entire record in this matter, HEREBY FINDS that the Parties voluntarily agreed to the Settlement and that the Settlement disposes of all issues in this proceeding and is consistent with law. The Board ALSO FINDS that the Settlement is reasonable and in the public interest. The Board HEREBY ADOPTS the Settlement as its own incorporating by reference all the terms and conditions as if fully set forth at length herein.

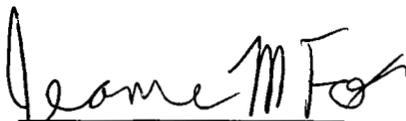
This Order is subject to the following terms and conditions:

1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever the value of any tangible or intangible assets now owned or hereafter to be owned by Petitioner.
2. This Order shall not affect nor in any way limit the exercise of the authority of this Board or of this State in any future petition or in any proceedings with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any other matters affecting Petitioner.
3. Shorelands will expeditiously advise the Board and the Parties if any amendments to the Plans for Well House No. 7 are required to meet BOCA requirements. Shorelands will submit any revised plans that may be necessary to the Parties and the Board as expeditiously as possible.
4. The transfer of the following for accounting purposes only:
  1. An easement from Shorelands to Holmdel for the sewerage line that Holmdel owns and operates on Block 50.19, Lots 29.02 and 29.04, Windswept Road in Holmdel;
  2. A conservation easement from Shorelands to Holmdel for East Brook;  
and

3. The vacating and conveyance of the street known as Hunters Lane, subject to all utilities, from Holmdel to Shorelands.

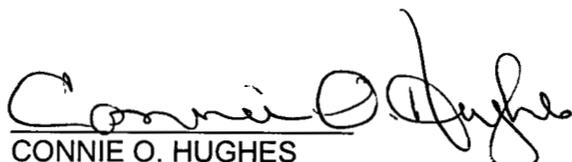
DATED: 1/23/03

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
CAROL J. MURPHY  
COMMISSIONER

  
CONNIE O. HUGHES  
COMMISSIONER

  
JACK ALTER  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

Service List  
Shorelands Water Company  
Appeal of a Decision by the Planning Board of Holmdel Township  
Docket No. WE02070431

<p>Bruce S. Edington, Esq. St. John &amp; Wayne, L.L.C. Two Penn Plaza East Newark, NJ 07105</p> <p>Michael P. Walsh, President Shorelands Water Company 1709 Union Avenue P.O. Box 158 Hazlet, NJ 07730</p> <p>Michael A. Pane, Esq. 307 North Main Street Hightstown, NJ 08520</p> <p>Duane O. Davison, Esq. Lomurro, Davison, Eastman, &amp; Munoz, P.A. Monmouth Executive Center 100 Willowbrook Road Building 1 Freehold, NJ 07728</p> <p>Diane Schulze, Esq. Division of the Ratepayer Advocate 31 Clinton Street, 11<sup>th</sup> Floor P.O. Box 46005 Newark, NJ 07101</p> <p>Michael P. Gallagher, Director Mike Kammer Board of Public Utilities Division of Water and Wastewater Two Gateway Center Newark, NJ 07102</p> <p>Walter W. Cota New Jersey Division of Taxation Public Utilities Tax Section 50 Barrack Street P.O. Box 24 Trenton, NJ 08625-0246</p>	<p>Alex Moreau, Esq. Deputy Attorney General Department of Law and Public Safety Division of Law 124 Halsey Street P.O. Box 5029 Newark, NJ 07101</p> <p>Carla V. Bello, Esq. Senior Deputy Attorney General Department of Law and Public Safety Division of Law 124 Halsey Street P.O. Box 5029 Newark, NJ 07101</p> <p>Joi Taylor, Esq. Legal Specialist Board of Public Utilities Division of Water and Wastewater Two Gateway Center Newark, NJ 07102</p>
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**ST. JOHN & WAYNE, L.L.C.**

Two Penn Plaza East  
Newark, New Jersey 07105  
(Bruce S. Edington, Esq.)  
(973) 491-3600  
Attorneys for Petitioner,  
Shorelands Water Company, Inc.

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PUBLIC UTILITIES  
NEWARK, N.J.

IN THE MATTER OF THE PETITION  
OF SHORELANDS WATER  
COMPANY, INC. PURSUANT TO  
N.J.S.A. 40:55D-19 APPEALING FROM  
A DECISION BY THE PLANNING  
BOARD OF THE TOWNSHIP OF  
HOLMDEL AND FOR APPROVAL OF  
THE SITING AND ERECTION OF A  
WELL HOUSE STRUCTURE IN THE  
TOWNSHIP OF HOLMDEL AND  
EXEMPTING SUCH STRUCTURE  
FROM ANY LOCAL REGULATIONS  
AND FOR INTERIM RELIEF TO  
PROTECT WELL NO. 7 PENDING  
RESOLUTION

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

BPU DOCKET NO. WE02070431

**STIPULATION OF SETTLEMENT**

**APPEARANCES:**

Bruce S. Edington, Esq. (St. John & Wayne, L.L.C.) on behalf of Shorelands  
Water Company, Inc.

Dwayne Davidson, Esq. (Lomurro, Davison, Eastman & Munoz, P.A.) on behalf  
of the Township of Holmdel

Michael A. Pane, Esq. (Michael A. Pane, P.C.) on behalf of the Planning Board  
of the Township of Holmdel

**TO THE HONORABLE COMMISSIONERS OF  
THE NEW JERSEY BOARD OF PUBLIC UTILITIES:**

## INTRODUCTION

1. Petitioner, Shorelands Water Company, Inc. ("Petitioner" or "Shorelands"), by way of a Petition ("Petition") filed with the Board of Public Utilities ("Board") on July 19, 2002 with accompanying verification by Michael P. Walsh, P.E., pursuant to N.J.S.A. 40:55D-19 and such other statutes and regulations as may be deemed relevant, appealed from the Holmdel Township Planning Board ("Planning Board") decision set forth in its resolution (Exhibit A) issued on June 18, 2002 ("Planning Board Resolution"). Shorelands' appealed for: approval to construct a well house and appurtenant facilities on Lot 29.04, Block 50.19 in the Township of Holmdel in accordance with the plans of Maser Consulting, P.A. dated October 29, 2001 ("Plans") without the need for any further action by the Township of Holmdel, its agencies or authorities located in the Township of Holmdel; and finding that both the existing security fence, erected immediately after September 11, 2001, and the proposed Well House No. 7 were necessary for the service, convenience and welfare of the public.

2. Respondent, Township of Holmdel ("Holmdel"), filed its answer dated August 6, 2002 and the Respondent, Holmdel Township Planning Board, filed its answer dated August 6, 2002.

3. The Staff of the Board of Public Utilities ("Staff") subsequently engaged in numerous discussions with all of the parties in an effort to resolve the issues raised in the Petition.

4. A formal Settlement Conference was convened by the Staff on September 19, 2002 which resulted in the parties agreeing to the contents set forth in this Stipulation.

5. Based upon the settlement discussions, the parties (Shorelands, Holmdel and Planning Board) have agreed that the record provides adequate information and documentation

for the Board to make a decision and provides ample support for this Stipulation. The parties further agree that the Stipulation represents a fair and reasonable disposition of this proceeding.

6. The undersigned parties hereby stipulate as follows for the purposes of providing the Board with a detailed basis for its decision.

7. The parties hereby request that the Board act to accept and approve this Stipulation in its entirety, and issue an appropriate Decision and Order adopting the Stipulation and granting the relief sought in the Petition subject to the conditions set forth herein. If the Board does not approve the Stipulation as it is presented or in substantially the form that the parties signed, then the parties can return to their litigated position in this proceeding.

NOW, THEREFORE, it is AGREED on this \_\_\_\_ day of \_\_\_\_\_, 2002 as follows:

8. Upon the signing of the Stipulation by all parties, Holmdel will issue a building permit to Shorelands for the construction of Well House No. 7 as per the Plans within twenty (20) days assuming the papers submitted by Shorelands comply with the applicable BOCA Code. If any amendments are required to meet BOCA requirements, Shorelands will expeditiously submit revised plans and Holmdel will expeditiously review.

9. Shorelands will install Norway Spruces, Scotch Pines, Douglas Firs and American Hollies along the perimeter of the fence and adjacent to the residential properties located on Windswept Road. This buffer will replace the vegetation that has been removed.

10. Shorelands will install foundation plantings near Well House No. 7 to help screen the Well House from view particularly when the deciduous trees lose their leaves in the winter.

11. Shorelands will contribute the standard calculated funds to the Holmdel Sidewalk Fund in lieu of installing sidewalk on Lot 29.04 along Windswept Road (approximately 185 lineal feet).

12. Shorelands erected a security fence shortly after September 11, 2001 across its entire frontage along Windswept Road including crossing the public street known as Hunters Lane. Although the security fence was installed pursuant to a building permit, a fence across a public road would not be permitted under normal circumstances. All parties agree that re-routing of the security fence around Hunters Lane would reduce the security from potential terrorists provided by the current fence and, therefore, vacating Hunters Lane and conveying it to Shorelands would provide a security benefit to Shorelands and all of its customers. Holmdel will vacate Hunters Lane and convey same to Shorelands subject to all utilities without cost to Shorelands Water Company.

13. Holmdel presently owns and operates a sewerage line on both Lots 29.04 and 29.02 which are both owned by Shorelands. However, Holmdel does not possess an easement for said sewerage lines. All parties recognize that a proper sewerage easement from Shorelands to Holmdel containing proper maintenance provisions is in the best interests of the citizens of Holmdel and the customers of Shorelands. Therefore, Shorelands will grant an easement in the form attached hereto as Exhibit B to Holmdel.

14. Shorelands will grant Holmdel a conservation easement for East Brook in the form attached hereto as Exhibit C.

15. Shorelands will immediately paint the security fence and posts black in order to reduce the security fence's visibility excluding the gate which cannot be painted black for safety reasons. Said temporary security fence will remain in place to be replaced by a more attractive permanent fence with a design similar to that set forth on Exhibit D when Shorelands receives authorization from the Board and the State of New Jersey to replace the temporary fence.

16. Shorelands will work with the Director of Reliability and Security of the Board in an effort to ensure that the permanent fence is authorized and installed at the earliest possible

date. The Planning Board Engineer is specifically authorized to review the proposed fence and recommend its installation as only an administrative change not requiring further review by the Planning Board if the permanent fence has the look of the attached sketch.

17. All parties recognize that granting of an easement by Shorelands is subject to the provisions of N.J.A.C. 14:1-5.6 and the ultimate approval of the Board. All parties agree that the security advantages together with the value of Hunters Lane to be received by Shorelands without charge is adequate compensation for the granting of the easements set forth in Exhibits B and C to be given to Holmdel without charge.

18. Shorelands will place monuments to define the conservation area at the rear of the property along the railroad right-of-way.

19. Attached as Exhibit E is Holmdel's Engineers' Estimate list of site work along with unit prices and estimates excluding the pump house. Shorelands agrees that it will perform the site work, and Holmdel agrees that no bond will be required to be posted. Holmdel may apply to the Board to force the performance of said work if same is not completed on or before May 15, 2003.

20. The parties specifically find the Board's authority to enforce the provisions of this Stipulation and the Board's Order adopting this Stipulation are based upon the foregoing and subject to the conditions set forth in this Stipulation. The parties and Staff agree that the statutory criteria set forth in N.J.S.A. 40:55D-19 and N.J.A.C. 14:1-5.6 are satisfied and the Stipulation is necessary for the service, convenience and welfare of the public, and that the Board should approve the Stipulation as necessary to continue to provide safe, adequate and proper service to the customers of Shorelands and that the Board should approve the transaction as proposed .

21. The Stipulation shall bind and inure to the benefit of the parties and their respective successors and assigns.

22. The Parties agree to use their best efforts to have this Stipulation approved by the Planning Board and Township of Holmdel.

23. This Stipulation is the product of extensive negotiations by the signatories and it is an express condition of the settlement embodied by this Stipulation that it be presented to the Board in its entirety without modification or condition. It is also the intent of the signatories to this Stipulation that this Settlement, once accepted and approved by the Board, shall govern all issues specified and agreed to herein.

24. The parties to this Stipulation specifically agree that if adopted in its entirety by the Board, no appeal shall be taken by them from or the adopting of same as to those issues upon which the parties have stipulated.

25. The parties further agree that the purpose of this Stipulation is to reach a fair and reasonable settlement.

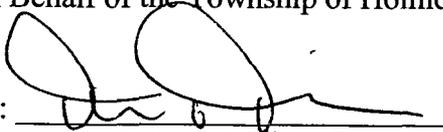
26. This Stipulation may be executed in as many counterparts as needed.

27. This Stipulation is intended to resolve accounting issues but it does not limit the Board for ratemaking purposes.

ST. JOHN & WAYNE, L.L.C.  
On Behalf of Shorelands Water Company, Inc.

By:   
Bruce S. Edington, Esq.

LOMURRO, DAVISON, EASTMAN & MUNOZ, P.A.  
On Behalf of the Township of Holmdel

By:   
Duane O. Davidson, Esq.

MICHAEL A. PANE, P.C.  
On Behalf of the Planning Board of the  
Township of Holmdel

By: \_\_\_\_\_  
Michael A. Pane, Esq.

N.J. BOARD OF PUBLIC UTILITIES  
On Behalf of the Staff of the Board of  
Public Utilities

By: \_\_\_\_\_  
Alex Moreau, Esq., DAG

DIVISION OF THE RATEPAYER ADVOCATE  
On behalf of the Division of the Ratepayer Advocate

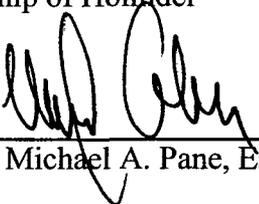
By: \_\_\_\_\_  
Andrew Dembia, Esq.

By: \_\_\_\_\_  
Diane Schulze, Esq.

LOMURRO, DAVISON, EASTMAN & MUNOZ, P.A.  
On Behalf of the Township of Holmdel

By: \_\_\_\_\_  
Duane O. Davidson, Esq.

MICHAEL A. PANE, P.C.  
On Behalf of the Planning Board of the  
Township of Holmdel

By:  \_\_\_\_\_  
Michael A. Pane, Esq.

N.J. BOARD OF PUBLIC UTILITIES  
On Behalf of the Staff of the Board of  
Public Utilities

By: \_\_\_\_\_  
Alex Moreau, Esq., DAG

DIVISION OF THE RATEPAYER ADVOCATE  
On behalf of the Division of the Ratepayer Advocate

By: \_\_\_\_\_  
Andrew Dembia, Esq.

By: \_\_\_\_\_  
Diane Schulze, Esq.