

COUNTY OF SUFFOLK



STEVE LEVY
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PUBLIC WORKS

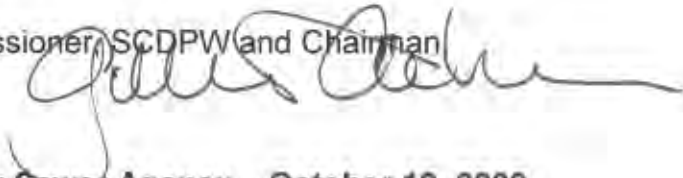
THOMAS LAGUARDIA, P.E.
CHIEF DEPUTY COMMISSIONER

GILBERT ANDERSON, P.E.
COMMISSIONER

LOUIS CALDERONE
DEPUTY COMMISSIONER

MEMORANDUM

TO: Hon. William J. Lindsay, Presiding Officer of the SC Legislature
Hon. Legislators: Beedenbender, Romaine, Schneiderman,
Browning, Vioria-Fisher, Losquadro, Eddington, Montano, Alden,
Barraga, Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, and
Cooper, Ed Dumas, Chief Deputy County Executive for Policy and
Communications, Vito Minei, P.E., Director, Environmental Quality,
S.C. Health Services, Thomas Isles, Director, Suffolk County
Planning Department, Michael Cavanagh, representing Presiding
Officer Lindsay

FROM: Gilbert Anderson, P.E., Commissioner, SCDPW and Chairman
Suffolk County Sewer Agency 

DATE: October 23, 2009

SUBJECT: Minutes of the Suffolk County Sewer Agency – October 19, 2009

Attached for your information please find a copy of the minutes for the above
referenced meeting.

GA/BW/cp – Attachments

cc: Thomas LaGuardia, P.E., Chief Deputy Commissioner, SCDPW
Louis Calderone, Deputy Commissioner, SCDPW
Ben Wright, P.E., Chief Engineer, Division of Sanitation, SCDPW
John Donovan, P.E., Principal Civil Engineer, SCDPW
Laura Conway, C.P.A., Administrative Services, SCDPW
Linda Spahr, Esq., SC Department of Law
Robert Braun, Esq., SC Department of Law
Walter Hilbert, P.E., SC Dept. of Health
Walter Dawydiak, P.E., SC Dept. of Health
Tim Laube, Clerk of the Legislature
William Spitz, NYSDEC
Patrick Heaney, Commissioner Economic Dev. and Workforce Housing
Adam Santiago, Aide to Legislator Brian Beedenbender
Justin Littell, Aide to Legislator Louis D'Amaro
Karen Klafter, Aide to Legislator Louis D'Amaro
Lisa Broughton, Office Economic Development
Craig A Platt, Secretary, SC Sewer Agency

SUFFOLK COUNTY IS AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

Suffolk County Sewer Agency Meeting Minutes

October 19, 2009

The meeting was called to order at 11:09 am by Gilbert Anderson, P.E., Commissioner, SCDPW & Chairman, Suffolk County Sewer Agency. In attendance were Adam Santiago, representing Legislator Brian Beedenbender, Chairman of the Public Works and Transportation Committee, Karen Klafter, representing Legislator Louis D'Amato, the Sewer Agency Legislator-At-Large, Michael Cavanagh, representing Presiding Officer Lindsay, Tom Isles, the Suffolk County Director of Planning, Vito Minei P.E., representing the Commissioner of the Department of Health Services, and Lisa Broughton, representing County Executive Steve Levy.

Also present were Ben Wright, P.E., Chief Engineer of the Suffolk County DPW Sanitation Division, John Donovan, P.E., Suffolk County DPW Sanitation Division, Linda Spahr, Esq. of the Suffolk County Department of Law, Robert Braun, Esq. of the Suffolk County Department of Law, and Craig A Platt, Secretary, Suffolk County Sewer Agency.

See the attached sign-in sheet for others in attendance.

Welcome by Commissioner Anderson, to the October 19, 2009, meeting of the Suffolk County Sewer Agency, and introduction by Roll Call.

I. **Roll Call** - (see above)

II **Minutes of Previous Meeting**

Minutes from SCSA for the September 21, 2009 meeting were discussed. A motion to accept the minutes was made by Commissioner Anderson and seconded by Mr. Minei. The motion was approved unanimously.

III. **Public Portion** – There was one requests to address the Agency, Mr. Herb Balin, Esq. Mr. Balin stated that he wanted to make sure he had the opportunity to address the Agency, and would do so during the meeting.

IV. Old Business - A. Formal Approval

SPRINGHILL SUITES @ BELLPORT

BR-1608

Ben mentioned that at the September 21, 2009, Agency meeting, approval was granted for a direct connection to SCSD #7 – Twelve Pines. The interim approved capacity became final approved capacity. It was agreed to approve resolution pending review of the written resolution drafted by staff. Ben mentioned that the project was a 128 room hotel, requiring 19,330 GPD of capacity, and currently under construction.

Commissioner Anderson asked if a project representative was present and Kathleen Deegan Dickson stated she was and that she had nothing to add to Ben's narrative. Mr. Herbert Balin Esq. mentioned that he represented Medford 7 Associates (M7A). Mr. Balin stated that his client had been backed into a corner, on June 24, 2009; he sent correspondence to the Agency and had not received a response. Mr. Balin mentioned:

- Any capacity available in the plant belonged to M7A
- The 1989 agreement stipulated that M7A could expand the plant and was required to give the capacity to Regency Oaks without charge.
- The 1989 agreement was to expand the plant to 170,000 GPD and the expansion resulted in expanding the plant by only 150,000 GPD.
- The 1989 agreement mistakenly did not assign the gallonage.
- That M7A had been actively in negotiations with Springhill Suites to sell the capacity in Stage III of the expansion to finance the expansion.
- Any capacity available in the plant belonged to M7A and that the reserve capacity required by the NYS DEC mentioned had been allocated to Silveri years ago.
- If the Agency approved the resolution as it was, his client was prepared to go to court.
- The issue would be resolved by the amending the resolution to include "interim" capacity and the language that if within three years the construction had not been complete the interim would become final. The connection fee (\$30.00) would be placed in escrow and when the expansion was complete the funds would be turned over to M7A and the additional fee (\$20.00 GPD) would be paid by Springhill Suites.

At this point, Mr. Balin produced and distributed correspondence from Ms. Dickson, whereby Ms. Dickson stated that Briad reiterated its willingness to enter into an agreement to pay Medford 7 Associates the sum of \$50.00 per gallon per day... (see attached).

Commissioner Anderson mentioned that at the last Agency meeting the capacity was discussed and did not belong to M7A but was a result of the NYS DEC requiring a 5% safety factor. Since the plant was in expansion mode, the 5% could be available for use, and the DEC approved the connection of Springhill Suites. Commissioner Anderson continued, that M7A did not have the authority to enter into negotiations with Springhill Suites since M7A did not have an executed agreement with Suffolk County for the third phase of the overall expansion project. Mr. Balin mentioned that he thought his client had the ability to enter into an agreement with Springhill Suites and that the 5% had been

allocated to Sound Avenue (Silveri) in the amount of 22,000 GPD. Ben mentioned that at the meeting with Mr. Balin and his clients on June 22, 2009, Ben informed Mr. Balin and Mr. Weinstein that the original plant design was 1,000,000 GPD and was downgraded to 475,000 GPD. The 5% was based on that 475,000 GPD and not a result of the expansion.

Ben continued, that he thought the wastewater from the Silveri project was treated at the Woodside plant and not Twelve Pines as Mr. Balin stated, and that Silveri had a number of locations and wasn't sure. Ben added, that the original agreement had a time limit for the three phases of the expansion. Ben continued, that a notice had sent out allotting additional time and subsequently, another notice was sent directing M7A to continue with Stage III of the expansion in a timely fashion. Ben added that the Stage III plans were approved by the department in January of 2009, and that a preconstruction meeting had been scheduled by M7A and cancelled.

Commissioner Anderson mentioned that the department was waiting for the figures from the prior expansions to determine the fee M7A could charge to recoup the expansion costs. Mr. Balin mentioned that the language in the 1989 agreement did not discuss the connection fee but stated that M7A could recover the construction costs plus 9% per annum. Ms. Spahr mentioned that that language was not in the agreement and that the draft agreement had been sent to Mr. Balin for review in May 2009. Ms. Spahr added that she had not received a response from Mr. Balin and that DPW was waiting for the financial records to determine the amount M7A could recoup. Ms. Spahr continued, that expanding the county plant should not be a profit making venture, and documentation outlining the cost should be provided, and that since M7A did not have an agreement with the county; M7A did not have the authority to enter into an agreement with Springhill Suites or assign capacity.

Mr. Balin mentioned that after the completion of stages I & II, M7A entered into 27 agreements for gallonage. Mr. Balin continued, that M7A did not have any available capacity from the two prior stages, that M7A was willing to negotiate with Springhill Suites, and this should resolve the issue. Discussion ensued as to M7A's ability to recoup expenses at the rate of \$50.00 per gallon per day, Mr. Balin stated that the rate would be subject to the Agency's review of the expansion costs. Ms. Spahr asked Mr. Balin, which section of the agreement Mr. Balin was referring to, to which Mr. Balin replied, Schedule E, and the statutory rate of 9%. Ms. Spahr mentioned that Schedule E refers to a completed Stage III and the assignment of available capacity. Ms. Spahr mentioned that the assignment could be made once the construction was complete, then M7A had five years to recoup expenses, when and if the construction was complete. Mr. Balin stated that the contracts would contain the same provisions as the previous thirty contracts had and that he would provide DPW with the construction cost information. Mr. Balin stated that it would cost between \$3,000,000.00 to \$3,500,000.00 for Stage III of the expansion. Ms. Spahr asked Mr. Balin if M7A had any property that would be connected after the expansion to which Mr. Balin replied that M7A did not have any property requiring the capacity. Mr. Balin corrected himself and stated that M7A had a fifty acre tract of land that may require capacity.

At 11:42, Commissioner Anderson made a motion to go into executive session to consult with counsel. At 11:58, the Agency members returned to the conference room and Commissioner Anderson announced that the Agency was back in session after consultation with counsel on the item currently on the Agency agenda.

Commissioner Anderson mentioned that the issue at hand was whether or not to ratify the written resolution as drafted by Agency staff, and suggested that the Agency move forward with the ratification, mentioning that the capacity is county owned, the DEC has approved the connection, and that the Agency would respond to the correspondence sent by Mr. Balin on June 24, 2009. Commissioner Anderson made a motion to approve the resolution, the motion was seconded by Mr. Minei and approved unanimously.

FORCHELLI, CURTO, DEEGAN, SCHWARTZ, MINEO, COHN & TERRANA, LLP
COUNSELORS AT LAW

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KATHLEEN DEEGAN DICKSON
PARTNER
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MELVILLE, NEW YORK
BY APPOINTMENT ONLY

October 7, 2009

Via Fax and First Class Mail

Herbert Balin, Esq.
Certilman Balin Adler & Hyman, LLP
90 Merrick Avenue
East Meadow, New York 11554

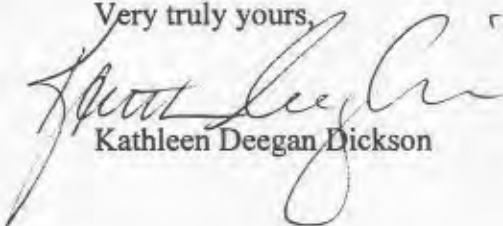
**RE: Briad Development East, LLC with Medford 7 Associates -
Marriott Springhill Suites – Yaphank, New York
Purchase of Gallonage from Twelve Pines Sewage Treatment Plant
Phase III Expansion**

Dear Mr. Balin:

In furtherance of our telephone conversation, please be advised that Briad Development East, LLC is entering into a Sewer Connection Agreement with the County of Suffolk (the "Sewer Agreement") pursuant to Suffolk County Sewer Agency Resolution No. 38-2009 dated September 21, 2009, and, in accordance with said Agreement, will be paying the connection fee in the amount of \$30.00 per gallon per day directly to the County of Suffolk.

As previously agreed, Briad reiterates its willingness to enter into an agreement to pay Medford 7 Associates the sum of \$50.00 per gallon per day, subject to a credit for any amounts paid to the County of Suffolk pursuant to the Sewer Agreement, in exchange for the allocation of 19,330 gallons per day of capacity from Medford 7 Associates' expansion of the Twelve Pines Sewage Treatment Plant within three (3) years of the date hereof.

Very truly yours,



Kathleen Deegan Dickson

KDD/ms

cc: Marlene Laveman, General Counsel,
Briad Development East LLC

SUFFOLK COUNTY SEWER AGENCY

RESOLUTION NO. 38 -2009

AUTHORIZING THE CONNECTION OF SPRINGHILL SUITES @ BELLPORT (BR 1608) TO SUFFOLK COUNTY SEWER DISTRICT NO. 7 – MEDFORD

WHEREAS, Springhill Suites @ Bellport is a proposed 128 room hotel, in Bellport, New York, situated on property identified on the Suffolk County Tax Map as District 0200, Section 813.00, Block 01.00, Lot 008.031 (the “Premises”), and

WHEREAS, Agency Resolution 23B-2008 authorized the sewage flow from Springhill Suites @ Bellport to Suffolk County Sewer District No. 7- Medford (“District”) of nineteen thousand two hundred gallons per day (19,200 GPD), and

WHEREAS, Agency Resolution 28-2009 authorized the additional flow of one hundred thirty gallons per day, (130 GPD) totaling nineteen thousand three hundred thirty gallons per day, (19,330 GPD), and

WHEREAS, Springhill Suites @ Bellport has been willing to participate in Medford 7 Associates (M7A), a consortium of developers who had been expected to construct a proposed Stage 3 expansion of SCSD#7- Twelve Pines, at no cost to the District, and

WHEREAS, in consideration of the expansion of the District’s sewage treatment plant by M7A, Springhill Suites @ Bellport was to have received a credit against the connection fee payable to the District for the connection of Springhill Suites @ Bellport’s property to the sanitary sewerage facilities of the District, and

WHEREAS, it had been expected that M7A would continue its construction of the expansion of the District during 2009, but in fact M7A has not reached agreement with the District nor the Agency with respect to the continuation of that construction, nor has it completed construction under its agreement originally made in 1989, nor has M7A come to a written agreement with Springhill Suites @ Bellport for its participation in the costs of that construction, and

WHEREAS, Springhill Suites @ Bellport has requested that it be permitted to connect to the District directly, and not as a participant in the expansion which may or may not be completed by M7A, and

WHEREAS, the connection of Springhill Suites @ Bellport to the District will be financially beneficial to the District and environmentally beneficial to Suffolk County,

NOW, THEREFORE, IT IS

1ST **RESOLVED**, that Springhill Suites @ Bellport be permitted to connect to the sanitary sewerage facilities of the District, upon such terms and conditions as the Administrative Head of the District may impose, subject to the terms and conditions hereof, and it is further

2nd **RESOLVED**, that nineteen thousand three hundred thirty gallons per day (19,330 GPD) of interim capacity in the District's sewage treatment plant be directly allocated to Springhill Suites @ Bellport, and it is further

3rd **RESOLVED**, that the connection authorized herein is subject to the approval of the Suffolk County Legislature and New York State Department of Environmental Conservation, and it is further

4th **RESOLVED**, that the connection authorized herein is subject to the execution of an agreement (the "Connection Agreement") between the owner of Springhill Suites @ Bellport, the District, the Suffolk County Department of Public Works ("SCDPW"), the Suffolk County Department of Health Services ("SCDHS"), the County of Suffolk and this Agency, which agreement shall contain such terms and conditions as the Administrative Head of the District shall determine, and it is further

5th **RESOLVED**, that Springhill Suites @ Bellport shall, at its sole cost, expense and effort, construct a sewage collection facility for Springhill Suites @ Bellport, and shall offer to dedicate the said facility to this Agency, or to this Agency's nominee, at no charge, and it is further

6th **RESOLVED**, that no Certificate of Occupancy shall be issued for any portion of Springhill Suites @ Bellport until the sewage collection facility for Springhill Suites @ Bellport has been completed and Springhill Suites @ Bellport has been connected to the sanitary sewerage facilities of the District, all to the satisfaction of DPW, and it is further

7th **RESOLVED**, that the developer of Springhill Suites @ Bellport shall furnish a Letter of Credit, in form, wording and amount, and on such terms and conditions, as determined by this Agency's staff, as security for the construction of the sewage collection facility for Springhill Suites @ Bellport, as well as for all of the developer's obligations under the Connection Agreement, and it is further

8th **RESOLVED**, that Springhill Suites @ Bellport shall defend and indemnify this Agency, SCDPW, SCDHS, the District, and the County of Suffolk from any and all costs, expenses, awards, damages, and reasonable attorney's fees incurred by any of them in connection with any litigation or threatened litigation concerning this Resolution, the predecessors of this Resolution or any action taken or agreement made pursuant thereto, and it is further

9th **RESOLVED**, that this resolution shall become null and void, and of no further force or effect, without any further action by this Agency or notice to the developer of Springhill Suites @ Bellport if, within one (1) year from the date of the adoption hereof, an agreement in furtherance of the authorization granted herein (the Connection Agreement), in form and content satisfactory to the Chairman of this Agency, has not been negotiated and fully executed by all parties thereto, and it is further

10th **RESOLVED**, that the connection fee of Thirty dollars (\$30.00) per gallon per day (\$579,900.00) be paid directly to the District by Springhill Suites @ Bellport. The interim capacity and approval heretofore granted in Resolution No. 23B-2008 and Resolution No. 28-2009 is hereby deemed to be final available capacity and not interim capacity.

(Suffolk County Sewer Agency meeting September 21, 2009)

V. New Business

A. Formal Approval

LEXINGTON VILLAGE CONDOMINIUMS

IS-1263

Ben mentioned that this project is an existing 170 unit condominium situated on less than 10 acres located north of the Southern State Parkway, on the corner of Manatuck Blvd and Hemlock Drive in Brentwood, NY. The development plans to construct a pump station and force main (under Southern State Parkway) to connect to Suffolk County Sewer District #03, Southwest. Currently the STP servicing the condominium community is under a SCDHS order of consent. The estimated flow from this project is 45,000 GPD, for which the developer is seeking a time extension to complete the connection agreement.

Staff recommended granting the time extension to complete the Connection Agreement.

Commissioner Anderson asked if a project representative was present and Linda Donato, representing Long Island Management, stated that she was and introduced Michael P Chiarelli, P.E., as the project engineer. Ms. Donato mentioned that she had been in contact with the Town of Islip for financing the project and had been working on the project for eight years. Mr. Chiarelli mentioned that the plans had been submitted to SCDPW and the first round of comments had been received. Mr. Chiarelli continued, that the Town of Islip has scrutinized the plans and wanted the community to bring the site up to 1968 standards. Another issue was a building on the property line and that an application had been submitted to the Town Zoning Board. Mr. Isles asked for a time frame to completion, to which Ben replied that it may take a month or so to get the plans approved by the department, then twelve to eighteen months for the construction. Mr. Chiarelli mentioned that a Town of Islip building permit was also necessary, and they would only get the permit when the site plan issues were resolved. Mr. Isles asked if the application had been submitted, to which Mr. Chiarelli replied, yes. Mr. Minei mentioned that another issue was abandoning the existing plant.

Commissioner Anderson asked if there were any questions or comments, seeing none, Commissioner Anderson made a motion to approve the time extension, the motion was seconded by Mr. Isles. The motion was approved unanimously.

SUFFOLK COUNTY SEWER AGENCY

RESOLUTION NO: 39 - 2009 AUTHORIZING THE EXTENSION OF TIME FOR THE CONNECTION OF LEXINGTON VILLAGE CONDOMINIUMS (IS-1263) TO SUFFOLK COUNTY SEWER DISTRICT NO. 3 - SOUTHWEST

WHEREAS, on June 16, 2008, this Agency adopted Resolution No. 6-2008, authorizing connection of Lexington Village Condominiums to Suffolk County Sewer District No. 3 - Southwest, and

WHEREAS, Resolution No. 6-2008, granted one year for completion of the Agreement, expired on June 16, 2009, without the completion of the Agreement, and

WHEREAS, negotiations concerning such an agreement are incomplete, and

WHEREAS, the Board of Lexington Village Condominiums has requested an extension of the authorization granted in Resolution No. 6-2008,

NOW, THEREFORE, IT IS

1st RESOLVED, that Resolution No. 6-2008, adopted by this Agency on June 16, 2008 is hereby renewed, and it is further

2nd RESOLVED, that this resolution shall become null and void, and of no further force or effect, without any further action by this Agency or notice to the Board of Lexington Village Condominiums, if, within one (1) year from the date of the adoption hereof, an agreement in furtherance of the authorization granted herein, in form and content satisfactory to the Chairman of this Agency, has not been negotiated and fully executed by all parties thereto.

(Suffolk County Sewer Agency Meeting October 19, 2009)

Commissioner Anderson closed the discussion and seeing no further business, made a motion to adjourn. The motion was seconded by Ms. Broughton and approved unanimously at 12:05.

Respectfully submitted,

Craig A Platt
Secretary, SC Sewer Agency

Sign-in Sheet

Suffolk County Sewer Agency
SCDPW - Sanitation -Engineering

October 19, 2009

	NAME	FIRM	PROJECT REPRESENTING
1	Herbert N. Belin	Centech Belin	MA 7
2	Mike Umuklu	Chimelli Eng	Lexington Village Land
3	LINDA DONATO	LONG ISLAND MGMT	LEXINGTON VILLAGE COND
4	Kathleen Dickson	Forchelli Curto	Springhill Suites
5	Steve Schart	Briad	Briad
6	JAMES PALERIO	BRIAD	BRIAD
7	MARLENE LAHEMAN	BRIAD	BRIAD
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