



NORTHWEST BERGEN COUNTY UTILITIES AUTHORITY
OPEN PUBLIC RECORDS ACT REQUEST FORM
30 Wyckoff Ave. @ Authority Drive, PO Box 255, Waldwick, NJ 07463
Tel. No. 201.447.2660 Fax No. 201.447.0247
info@nbcua.com
Howard Hurwitz, Executive Director – Custodian of Records

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NOV 01 2017



Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name Joseph MI A. Last Name Rizzi, Esq.
E-mail Address jrizz@beatlie-law.com
Mailing Address 50 Chestnut Ridge Road
City Montvale State N.J. Zip 07645
Telephone 201-573-1510 FAX 201-573-9736
Preferred Delivery: Pick Up ☒ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☐
If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I HAVE / HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.
Signature Joseph A Rizzi Date October 30, 2017

Payment Information

Maximum Authorization Cost \$ 200.00
Select Payment Method
Cash ☐ Check ☐ Money Order ☐
Fees: Letter size pages - \$0.05 per page
Legal size pages - \$0.07 per page
Other materials (CD, DVD, etc) – actual cost of material
Delivery: Delivery / postage fees additional depending upon delivery type.
Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See Exhibit "A" attached hereto and made a part hereof.

AGENCY USE ONLY

Est. Document Cost _____
Est. Delivery Cost _____
Est. Extras Cost _____
Total Est. Cost _____
Deposit Amount _____
Estimated Balance _____
Deposit Date _____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____
Denied - Closed _____
Filled - Closed _____
Partial - Closed _____

AGENCY USE ONLY

Tracking Information		Final Cost	
Tracking #	_____	Total	_____
Rec'd Date	_____	Deposit	_____
Ready Date	_____	Balance Due	_____
Total Pages	_____	Balance Paid	_____
Records Provided			
Custodian Signature		Date	

1. All government records are subject to public access under the Open Public Records Act ("OPRA"), unless specifically exempt.
2. A request for access to a government record under OPRA must be in writing, hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. N.J.S.A. 47:1A-5.g. The seven (7) business day response time does not commence until the records custodian receives the request form. If you submit the request form to any other officer or employee of the NBCUA, that officer or employee must either forward the request to the appropriate custodian, or direct you to the appropriate custodian. N.J.S.A. 47:1A-5.h.
3. Requestors may submit requests anonymously. If you elect not to provide a name, address, or telephone number, or other means of contact, the custodian is not required to respond until you reappear before the custodian seeking a response to the original request.
4. The fees for duplication of a government record in printed form are listed on the front of this form. We will notify you of any special service charges or other additional charges authorized by State law or regulation before processing your request. Payment shall be made by cash, check or money order payable to the NBCUA.
5. ***You may be charged a 50% or other deposit when a request for copies exceeds \$25.*** The NBCUA custodian will contact you and advise you of any deposit requirements. You agree to pay the balance due upon delivery of the records. Anonymous requests in excess of \$5.00 require a deposit of 100% of estimated fees.
6. Under OPRA, a custodian must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, ***and*** who is seeking government records containing personal information pertaining to the person's victim or the victim's family. This includes anonymous requests for said information.
7. By law, the NBCUA must notify you that it grants or denies a request for access to government records within seven (7) business days after the agency custodian of records receives the request. If the record requested is not currently available or is in storage, the custodian will advise you within seven (7) business days after receipt of the request when the record can be made available and the estimated cost for reproduction.
8. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you.
9. If the NBCUA is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request form or other written correspondence and send you a signed and dated copy.
10. Except as otherwise provided by law or by agreement with the requester, if the agency custodian of records fails to respond to you within seven (7) business days of receiving a request, the failure to respond is a deemed denial of your request.
11. If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the NBCUA to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.
12. Information provided on this form may be subject to disclosure under the Open Public Records Act.

EXHIBIT "A"
TO
OPRA REQUEST DATED OCTOBER 30, 2017 TO NWBCUA

A. BACKGROUND TO OPRA REQUEST

This Background is being provided in order to cause the Northwest Bergen County Utilities Authority to better be able to understand what "government records" are being requested and the reasons for the Requests set forth below.

1. Mahwah Sewer Assessment Commission

The Report of the Mahwah Sewer Assessment Commission dated October 2011 to the Mahwah Township Mayor and Council related to the special sewer assessments to be levied by the Mayor and Council in order to assess the cost of Local Improvements (the Mahwah Phase V Sanitary Sewer Project) to be charged against the benefitted properties for the Local Improvements (the "Report"). The Report, on Page 2 thereof, (a) demonstrates that Item 88 thereof, namely, all of Lot 20 in Block 149, is located within Mahwah's Phase V Sanitary Sewer Project, that is, within a "sewer service area" and (b) sets forth the following as the basis for the Commission's recommendation that Lot 20 in Block 149 be specially assessed a sewer assessment in the amount of \$12,100:

Est. Value w/Sewer	\$738,000
Est. Value No Sewer	\$627,000
Base Enhance	\$111,000
Sewer Factors	Pump
Balance Adjust	- 25%
Net Enhance	\$83,000
Cost Ratio	0.1465
ASSMT	\$12,100

2. **Mahwah Sewer Assessment Commission:**

The Commission's Property Data Sheet for Lot 20 in Block 149 lists Lot 20 as an 8.810 acre parcel of property within the Mahwah Stage V Sanitary Sewer Project which was to be specially assessed on account of a net value enhancement in the amount of \$83,000, resulting from its being located within a "sewer service area".

3. **Mahwah Mayor and Council:**

By Letter dated February 15, 2012 addressed to the Owners of Lot 20 in Block 149, the Mahwah Mayor and Council notified them as follows:

"The Township Council of the Township of Mahwah has received the report from the Township of Mahwah Sewer Assessment Commission regarding the proposed special assessments for **[all of] the properties** within the Phase V Sanitary Sewer Special Assessment Project in the municipality. The report lists your assessment [for Lot 20 in Block 149] as *** \$12,100.

"The Township Council will consider the Sewer Assessment Commission's Report at a Special Meeting on Thursday, March 1, 2012". (Emphasis added.)

4. **Mahwah Mayor and Council:**

By Resolution No. 101-12, which was adopted on March 1, 2012, **the Mahwah Mayor and Council confirmed the inclusion of all of Lot 20 in Block 149 in the Mahwah Phase V Sanitary Sewer Project and the levy of a special sewer assessment of \$12,100.00** against Lot 20 in Block 149, **an assessment as to which the first 6 of 10 installments have already been paid by its Owners for the period 2012 through 2017.**

5. **Mahwah Planning Board:**

By Resolutions adopted on February 23, 2015 and March 9, 2015, **the Mahwah Planning Board approved the Owners' Application for Preliminary Major Subdivision Approval** and granted Soil Movement Permit Approval with respect to Lot 20 in Block 149 (Docket No. 544 PM-SD). Such approval was granted in the context of (a) the Owners' having

received a Highlands exemption for Lot 20 and (b) the fact that no variances or waivers were required in connection with such approval.

6. **Bergen County Planning Board approval**

Received by Owners.

7. **Bergen County Soil Conservation District approval.**

Received by Owners.

8. **Mahwah Mayor and Council:**

By Resolution No. 142-17, which was adopted by it the Mahwah Mayor and Council on March 23, 2017, the Mahwah Mayor and Council authorized the Mahwah Business Administrator to execute, on the recommendation of the Utility Engineer, the Township's Application to the Department of Environmental Protection (the "Department") to secure a permit from the Department for the construction of a sewer extension related to the preliminarily approved subdivided Lot 20 in Block 149 as a lot located within a "sewer service area", the approval of which subdivision by the Mahwah Planning Board was conditioned on the subsequent grant by the New Jersey Department of Environmental Protection (the "Department") of such permit (the "Sewer Extension Permit").

9. **Northwest Bergen County Utilities Authority:**

As of April 18, 2017, that is, at a time when all of Lot 20 in Block 149 was deemed by the Northwest Bergen County Utilities Authority (the "NWBCUA") to be a lot located within a "sewer service area", the NWBCUA, by Resolution No. 40-2017 adopted by it on April 18, 2017, approved the application made by the Owners of Lot 20 in Block 149, on behalf of the Township of Mahwah (as the Applicant), for approval of a proposed sanitary sewer extension to be located at Monroe Drive, Lot 20, Block 149, subject to the fulfillment

of certain conditions, including the need on the part of the Applicant (Mahwah) to comply with the rules and regulations of not only the NWBCUA, **but also the Department and the need on the part of Mahwah to obtain from the Department the required Sewer Extension Permit.**

10. **New Jersey Department of Environmental Protection.**

Having received from Schwanawede/Hals Engineering the fully executed Sewer Extension Permit Application on June 1, 2017, the Department informally advised Schwanawede/Hals Engineering, the Owners' engineering firm, prior to June 30, 2017, that said Application was **not** being approved because of the Department's **assumption and contention (which Mahwah has formally contended by its letter dated September 29, 2017, and which the NWBCUA has informally contended, are mistaken)**, that only a small sliver of Lot 20 in Block 149 **(instead of all of Lot 20)** is located in an area "eligible for sewer service" under N.J.A.C. 7:15, as mistakenly shown on **a non-updated NJ-GeoWeb map**, a copy of which is attached hereto as **Exhibit "1"**.

11. **New Jersey Department of Environmental Protection.**

By the Department's formal letter of denial dated June 20, 2017, the Department stated that **"the project is located in a non-sewer service area"** and **"is inconsistent with the Mahwah Township Wastewater Management Plan"**, a plan which **(according to the NWBCUA)** does not exist inasmuch as the project is legally covered by the Northeast Water Quality Management Plan for NWBCUA dated January 2012 (the "Northeast WQM Plan for the NWBCUA"). We have been informed by the Department, but have not yet been able to verify, that, on June 15, 2012, an Amendment to the Northeast WQM Plan for the NWBCUA **may have removed Lot 20 in Block 149 as being within a "sewer service area"**.

12. **Owners' and Mahwah's contentions.**

In the context of all of the facts set forth in items 1 through 11 above, the Owners of Lot 20 in Block 149 and Mahwah have formally contended (in writing to the Department), and the NWBCUA has informally contended, that the Department's formal letter of denial dated June 20, 2017 is based upon the mistaken assumption and contention that only a small sliver of Lot 20 in Block 149 (instead of all of Lot 20) is located in an area "eligible for sewer service" under N.J.A.C. 7:15, as mistakenly shown on **Exhibit "1"** hereto, **a non-updated NJ-GeoWeb map.**

13. **Owners' and Mahwah's contentions.**

In the context of all of the facts set forth in items 1 through 11 above, the Owners of Lot 20 in Block 149 and Mahwah have contended (a) **that said map mistakenly shows only a very small sliver of Lot 20 in Block 149 (instead of all of Lot 20 in Block 149) as abutting Monroe Drive and being in a "sewer service area";** (b) that this is a mistake which no other governmental bodies (whose prior approvals were needed and were granted) relied upon; and (c) that this is especially so with respect to the NWBCUA on whose Water Quality Plan, which is the governing plan, **all of Lot 20 in Block 149 is supposed to be** (according to informal discussions with the NWBCUA) **in fact and in law within a "sewer service area".**

B. OPRA REQUEST FOR:

Copies of all "government records" as defined in N.J.S.A. 47:1A-1.1, including (but not limited to) any paper, document (including any adopted resolution or any other document by which action was formally or informally taken), or drawing, or any map or plan of any nature, maintained by the NWBCUA, or any officer thereof, or any subordinate board or committee thereof, which in any way:

1. Deals, directly or indirectly, with any action taken by the NWBCUA, prior to the adoption by the Mahwah Township Mayor and Council on March 1, 2017 of the following Resolution, with respect to either the inclusion or the non-inclusion (on the Northeast WQM Plan for the NWBCUA) of all of Lot 20 in Block 149 on the Tap Assessment Map of Mahwah, New Jersey (“Lot 20 in Block 149”) as within or not within said Plan as a “sewer service area” (as defined in N.J.A.C. 7:15:1.5 to mean “the land area identified in a areawide WQM plan from which wastewater generated is conveyed to *** a domestic treatment works”, that is, a publicly owned treatment works:

(a) Resolution No. 101-12 adopted on March 1, 2012 by the Mahwah Township Mayor and Council, confirming the inclusion of all of Lot 20 in Block 149 in the Mahwah Phase V Sanitary Sewer Project (that is, as a property within a “sewer service area”) and the levy of a special sewer assessment of \$12,100 against Lot 20 in Block 149.

2. Deals, directly or indirectly, with any action taken by the NWBCUA, after the adoption by the Mahwah Township Mayor and Council on March 1, 2012 of Resolution No. 101-12 referred in Request No. 1 to above, with respect to the inclusion (on the Northeast WQM Plan for the NWBCUA) of all of Lot 20 in Block 149 as within said Plan as a “sewer service area”.

3. Deals, directly or indirectly, with any action taken by the NWBCUA, prior to the adoption by the NWBCUA on April 18, 2017 of the following Resolution, with respect to either the inclusion or the non-inclusion (on the Northeast WQM Plan for the NWBCUA) of all of Lot 20 in Block 149 as within or not within said Plan as a “sewer service area”:

(a) Resolution No. 40-2017, by which the NWBCUA on April 18, 2017, apparently based upon its belief that all of Lot 20 in Block 149 was (as a part of Mahwah's Phase V Sanitary Sewer Project) located within a "sewer service area", approved Mahwah's application for approval of a proposed sanitary sewer extension to be located at Monroe Drive and to be servicing all of Lot 20 in Block 149, as preliminarily subdivided into Lots 20.01 and 20.02.

4. Deals, directly or indirectly, with any action taken by the NWBCUA, after the adoption by the NWBCUA on April 18, 2012 of Resolution No. 40-2017 referred to in Request No. 3 above, with respect to the inclusion (on the Northeast WQM Plan for the NWBCUA) of all of Lot 20 in Block 149 as within said Plan as a "sewer service area".

5. Deals, directly or indirectly, with the reasoning and factual and legal bases upon which the NWBCUA on April 18, 2017 adopted Resolution No. 40-2017, a Resolution necessarily predicated upon the fact that Lot 20 in Block 149 was (as a part of Mahwah's Phase V Sanitary Sewer Project) located within a "sewer service area".

6. Constitutes any communication between the NWBCUA and any other governmental entity or agent thereof, including, but not limited to:

(a) the Commissioner or any Division, Department or Office (including the Office of Water Resource Management Coordination or its successor) of the New Jersey Department of Environmental Department, or

(b) the Mahwah Mayor and Council or any Board or any professional or any officer or representative representing Mahwah Township, or

(c) any Designated Planning Agency (“DPA”) designated by the Governor of New Jersey to conduct areawide WQM planning pursuant to “the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.”, with respect to the question as to whether Lot 20 in Block 149 (Mahwah) was (or is) or was not (or is not) **expressly or impliedly included (for what periods of time) either:**

(i) in a “wastewater management plan area” (“WMP area” as defined in N.J.A.C. 7:15-1.5 to be a “geographic area for which a “wastewater management planning agency” and “WMP agency” as defined in N.J.A.C. 7:15-1.5 as being an agency having “wastewater management planning responsibility”) **or**

(ii) in a “Wastewater service area” (as defined in N.J.A.C. 7:15-1.5 to be “a sewer service area *** as designated in a WQM plan **adopted by the Department**”). (Emphasis added.)

7. Constitutes any communication of any kind either (a) by the NWBCUA or (b) by any other governmental agency described in Request No. 4 above, **by which “[t]he text of proposed WQM plan revisions and amendments” to the Northeast WQM Plan for the NWBCUA** (more particularly, **“revisions and amendments” relating only to the inclusion or non-inclusion of Lot 20 in Block 149 (Mahwah) within a “sewer service area” on such Plan** **was**, in accordance with N.J.A.C. 7:15-1.7, entitled “Water quality management plan data and mapping format”, **submitted [by the NWBCUA or any other governmental entity or agent described in subsections (a), (b) and (c) of Request No. 6 above to the Department] in an electronic format that is compatible with the Department’s software capabilities.”**

8. Constitutes any communication of any kind or nature either (1) received (during the period June 1, 2011 through the present) by the NWBCUA or any representative thereof from any third party, including but not limited to, any other governmental entity or any department, division, office or officer thereof (“Third Party”), or (b) sent (during the period June 1, 2011 through the present) by the NWBCUA or any representative thereof to any such Third Party, with respect to the following:

(a) the inclusion of Lot 20 in Block 149 on the Mahwah Tax Assessment Map as within a “sewer service area”, as defined in N.J.A.C. 7:15-1,5, as shown on:

(i) the 2009 Northeast Water Quality Management Plan for the NWBCUA, or any amendment thereof; or

(ii) the January 2012 Northeast Water Quality Management Plan for the NWBCUA, or any amendment thereof;

(iii) if applicable, the presently operational successor WQM Plan to the Northeast Water Quality Management Plan for the NWBCUA; or

(b) the non-inclusion of Lot 20 in Block 149 as within a “sewer service area”, as shown on any of Water Quality Management Plans for the NWBCUA referred to in subsections (i) through (iii) of subsection (a) of this Request No. 8.

9. Copies of only those portions of the Water Quality Management Plans for the NWBCUA which are referred to in subsections (i) through (iii) of subsection (a) of Request No. 8 above and which relate solely to Lot 20 in Block 149 on the Tax Assessment Map of Mahwah Township.

10. Copies of all maps of any kind, including but not limited to any NJ-Geo Map or any other kind or form of map, showing the inclusion or non-inclusion, during the period beginning on March 1, 2012 (the day on which the Mahwah Mayor and Council confirmed, by Resolution No.

101-12, the inclusion of all of Lot 20 in Block 149 in the Mahwah Phase II Sanitary Sewer Project) through the present, of Lot 20 in Block 149 as within or not within a “sewer service area”.

11. Copies of all maps:

(a) resulting from searches by the NWBCUA (which searches are capable of being conducted by the NWBCUA and “its member communities”) of the Geographical Information System (“GIS”), and

(b) showing whether and how much **(all or a portion)** of Lot 20 in Block 149 (Mahwah) was and/or is included within a “sewer service area” as defined in N.J.A.C. 7:15-1.5 **either** during each of the following time periods or as of the present:

(i) **Any time period “prior to” the adoption on March 1, 2012 by the Mahwah Mayor and Council of Resolution No. 101-12,** confirming the inclusion of all of Lot 20 in Block 149 in the Mahwah Phase IV Sanitary Sewer Project (as a property within a “sewer service area”).

(ii) **Any time period “after” the adoption on March 1, 2012 by the Mahwah Mayor and Council of Resolution No. 101-12,** which is referred to in subsection (i) above.

(iii) **Any time period “prior to” the adoption on April 18, 2017 by the NWBCUA of Resolution No. 40-2017,** by which the NWBCUA (apparently based upon its belief that all of Lot 20 in Block 149 was, as a part of Mahwah’s Phase V Sanitary Sewer Project, located within a “sewer service area”), approved Mahwah’s application for approval of a proposed

sanitary sewer extension to be located at Monroe Drive and to be servicing all of Lot 20 in Block 149, as preliminarily subdivided into Lots 20.01 and 20.02.

(iv) Any time period “after” the adoption on April 18, 2017 by the NWBCUA of Resolution No. 40-2017, which is referred to in subsection (iii) above.

(v) As of the present date.



Joseph A. Rizzi, Esq.
10/30/17

