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March 1, 2023

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Mayor & Commissioners
Borough of Allenhurst
125 Corlies Avenue
Allenhurst, NJ 07711

Re: Construction Review & Utilities in the Borough

Gentlemen:

The plethora of questions and concerns being raised by the residents of the Borough regarding the potential development of the former JCP&L sites indicates that assumptions are being made by the residents which reflect a misunderstanding of what services the Borough actually provides. As such, we have been asked to provide a description of the functions to clear up the misconceptions and differences from how other communities or states might handle such matters.

Construction Permitting and Enforcement

Approximately 23 years ago, the Board of Commissioners at that time, in an effort to save costs associated with the administration of construction activities in the Borough, adopted an Ordinance shifting responsibility for construction monitoring to the State of New Jersey, Department of Community Affairs (“DCA”). See §9-1.1. The Ordinance states in pertinent part, as follows:

“The Borough of Allenhurst, pursuant to N.J.S.A. 52:27D-119 et seq., and N.J.A.C. 5:23-4.3 et seq., hereby **relinquished its jurisdiction for the administration and enforcement of the Uniform Construction Code** and hereby **transfers jurisdiction** for the administration and enforcement of the Uniform Construction Code **to the Department of Community Affairs of the State of New Jersey.**”

Thus, for the last 23 years, the Borough has had no jurisdiction over construction activities or the application of the Uniform Construction Code. In other words, once a project has received zoning / planing approval from the Borough’s combined Planning Board, permitting and enforcement of the Construction Code is turned over to the DCA. The Borough’s only “enforcement” activity is “Zoning Compliance,” which amounts to having the Borough Zoning Officer assure that what was approved by the combined Planning Board, is actually what gets built. The Borough already has a licensed professional who performs that function.

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As such, the suggestion from the residents and ATA's counsel that the Borough hire an "Engineer" to oversee the construction of the Power Station at Allenhurst project will not achieve the desired results, as the Borough has no jurisdiction over those construction activities. If the Borough retained such an engineer, he or she would have no Ordinance authority to conduct inspections, as the same rests with the DCA. Further, were the engineer to identify departures from the Construction Code, he or she has no jurisdiction to compel compliance. They could do no more than to bring such a departure to the attention of the DCA's inspectors, who would be under no obligation to agree with, or act upon, such information. The Borough's experience with a former zealous zoning officer it once employed, is that the DCA's inspectors do not take kindly to other persons telling them how to do their job.

Thus, while the Borough appreciates the concerns of the residents, it has no jurisdiction over the construction activities and hence, no authority to compel compliance with the Uniform Construction Code.

In light of the Borough's lack of jurisdiction over the administration and enforcement of the Uniform Construction Code, the Board of Commissioners thinks it is unnecessary to hire an engineer to look over the shoulder of the DCA's inspection personnel. The Borough already employs a licenced professional to monitor Zoning Compliance. That said, the Board of Commissioners is open to other suggestions as to how to monitor and enforce compliance with the Construction Code.

Public Utilities

Another concern raised was the impact on the utilities available to Borough residents. The Borough of Allenhurst does not control the supply of electric or potable water in the Borough. Electricity is supplied individually to Borough property owners by Jersey Central Power & Light, a First Energy Company ("JCP&L"), a publically traded company listed on the NYSE. Every property owner who seeks electric service contracts directly with JCP&L. The Borough has nothing to do with those contracts, in fact, the Borough itself has to contract with JCP&L for service to its buildings. The Borough is simply not part of the electric supply equation.

If a property owner experiences service problems, it is JCP&L that must be contacted, as the Borough has nothing to do with the company, whatsoever. Moreover, in New Jersey, local municipalities such as Allenhurst do not have regulatory jurisdiction over large public utilities like JCP&L. That function has been delegated to the Board of Public Utilities ("BPU") by the State Legislature. The BPU's own website states, in pertinent part:

"The New Jersey Board of Public Utilities ("Board") is the **state** agency **with authority to oversee** the regulated utilities, which provide critical services such as natural gas, electricity, water, telecommunications, and cable television. The law **requires the Board to ensure safe, adequate, and proper utility services at reasonable rates** for customers in New Jersey." See <https://www.nj.gov/bpu/about/index.html>. *Emphasis Added.*

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The point of this discussion is that residents' fears about the Power Station development having an effect upon their electric service are not factually supported. Should JCP&L fail to supply any property with electric, despite their having a contractual obligation to do so, their failure would violate the first tenet of the BPU's published "Customer Bill of Rights" which states "**You have the right to utility service if you are a qualified applicant.**" You can see the entire Customer Bill of Rights by visiting the BPU website at <https://www.state.nj.us/bpu/assistance/rights/>. The bottom line is, when JCP&L contracts with a property owner to supply electric, that property owner has a "Right" to that service, so long as the bill is paid.

The same is true for property owner's potable water supply. The Borough of Allenhurst stopped supplying water to its property owners a long time ago. Today, any property owner seeking potable water service (amount and pressure) must contract for that service directly from the New Jersey American Water ("NJAW") company. They are the largest publicly traded water utility in the State of New Jersey, providing water to approximately 2.5 million people in 17 counties. See <https://www.amwater.com/corp/>. They too fall under the jurisdiction of the BPU and as such, the Borough has no regulatory authority over them or the water supply in town, whatsoever. As with the electric service, NJAW has published a list of Rights & Responsibilities relating to water service, which can be found at <https://www.amwater.com/njaw/Customer-Service-Billing/rights-responsibilities>.

If a property owner has a potable water supply problem, such as low pressure, they must call NJAW to report the problem and seek a solution. The Borough is not involved in the business of supplying fresh water to local property owners. Everyone pays for water by "usage," i.e. an owner pays for the gallons used. When NJAW offers to supply a new property, it is incumbent upon them to be sure the demand will not affect existing customers. If there was an impact on existing customers, the only recourse for a property owner is to report the insufficient service to the BPU.

Separately, none of the water residents get when they open a tap comes from under the Borough. NJAW sources its supply of potable water outside of Allenhurst and pipes that water into the Borough. This goes directly to the concerns about pollution at the former JCP&L site. Yes, there were three (3) NJDEP monitored clean up actions that arose from the East side lot. JCP&L was a good neighbor and spent more than 18 years effecting the clean up of those spills, including operating monitoring wells for those 18 years. The NJDEP has closed all three matters as having been cleaned up to their satisfaction. But, even if they had not done so, none of the spills had ANY effect upon the Borough's water supply, because the same simply does not come from ground water beneath the Borough.

The only utility service actually provided to property owners by the Borough is sewer collection service. The Borough of Allenhurst owns the gravity sewer lines in the Borough. Wastewater is collected via that system and then delivered into the system operated by Township of Ocean Sewer Authority ("TOSA"), whom the Borough pays to process the wastewater. As respects the Power Station development, TOSA has already issued what is known as a "will serve" letter, indicating its ability to take the flow of wastewater expected to be created by the development.

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The question that remains is whether the Borough’s sewer main in Main Street can support the volume expected to be generated. While that has yet to be determined (it will be calculated later in the process) in the event a larger line is needed, that cost will fall to the developer under the Settlement Agreement authorized by the Board of Commissioners at its February 14, 2023 meeting.

Conclusion

The Board of Commissioners has been extremely diligent in its handling of the Builder’s Remedy lawsuit brought by Power Station at Allenhurst, LLC. According to the Borough’s due diligence, there is no factual basis for any fears of service interruptions for electric (JCP&L) or potable water (NJAW) that could be caused by the development of the Power Station sites. Connection costs for getting electric, water and natural gas service (NJNG) to the property will be borne by the Developer, as the same are private contracts between the Developer and the non-governmental service providers. Should any new sewer infrastructure be needed, those costs will be borne by the Developer.

We hope the information in this letter helps to allay concerns expressed by residents about the impact the Power Station development may have on their own utilities. Again, no impact is expected, as the companies supplying those services are contractually bound to meet their responsibilities, and the BPU is statutorily authorized to assure they meet those obligations.

Once this settlement agreement has been executed by all parties, the Court must review it in a “Fairness Hearing,” where the Judge decides if the agreement fairly addresses the unmet affordable housing need in the Borough. We believe it will be approved and will result in an enforceable Judgment creating binding obligations for all concerned.

Very Truly Yours,

BIRDSALL & LAUGHLIN, LLC

/s/David A. Laughlin

David A. Laughlin, Esq.

DAL/cs