

**CAMDEN-WYOMING SEWER & WATER AUTHORITY**  
P.O. BOX 405, CAMDEN-WYOMING, DELAWARE 19934

*Minutes of the Camden-Wyoming  
Sewer and Water Authority  
Workshop Session - Authority Meeting  
Held on February 25, 2014*

**Authority Members present:** Mr. Peter Couming  
Mr. Larry Daugherty, Sr.  
Mr. Michael Quinn  
Ms. Tracy Torres  
Mr. James Winchell

**Also in attendance representing  
the CWS&WA:** Mr. Soheil Gharebaghi, P.E., Authority Engineer  
Ms. Mary Sherlock, Esq., Authority Attorney  
Ms. Tracy Warga, Esq., Asst. Authority Attorney

**Public in Attendance:** Meeting Attendance/Sign-in Sheet;  
available at the CWS&WA Office

---

The Camden-Wyoming Sewer and Water Authority (CWS&WA) met at the CWS&WA Office on February 25, 2014. The meeting was called to order at 7:05 p.m. by the Chairperson, Mr. Winchell.

The purpose of the Workshop Session was fact-finding in relation to the proposed Winterberry Woods subdivision.

Mr. Winchell noted that with the exception of the Honorable Mayor Rife and Councilperson Ms. Williams of the Town of Wyoming, the Workshop Session attendees were not Authority customers. The Workshop Session was attended mostly by the residents of Rockland Hills, Milbourn Manor, and surrounding area as well as the Honorable Jody Sweeney, Kent County Levy Court Commissioner.

Mr. Winchell read into the records of the Meeting an introduction and background which had been presented at the Authority's December 10, 2013 Regular Meeting as follows:

In 2005, during the Authority's December 13, 2005, Regular Meeting, Mr. Rodney Mitchell, a local developer, accompanied by his engineer, Mr. Zachary Crouch of Davis, Bowen & Friedel, made a presentation before the then CWS&WA Board of Directors.

A 166-lot, single family, residential subdivision of Winterberry Woods was proposed along Almshouse Road, approximately 2 miles west of Wyoming.

Between 2006 and 2009, the developer:

- 1) Filed an Application with the Authority for sewer and water services,
- 2) Requested the filing of an Application with the Delaware Public Service Commission by the CWS&WA for a Certificate of Public Convenience and Necessity (CPCN) to enable the Authority to legally serve the proposed land development. [The Authority filed for and was granted the CPCN for the property],
- 3) submitted construction plans for the project.

Before the construction plans for the project were reviewed by the Authority, in 2009, Mr. Mitchell requested a refund of the Impact Fees he had paid, and, for certain considerations, requested an extension of time for 2 years to complete the project.

In 2009, during the Authority's April 14, 2009, Regular Meeting, Mr. Scott brought the matter of Mr. Mitchell's request to the Board and the Board conditionally approved the refund of Impact Fees to Mr. Mitchell.

On April 24, 2009, in a letter addressed to Mr. Mitchell, among other things, Mr. Scott indicated that "Additionally, the continuance of the service capacity commitment beyond two years, and the terms and conditions associated therewith, would be at the discretion of the CWS&WA Board of Directors." The 2-year extension period expired on April 24, 2011.

Since 2009/2011 time period, the ownership of the property, formerly known as the Thomas Farm, changed and Mr. Mitchell is no longer associated with the property or the proposed land development.

Through the new owner's engineers, Davis, Bowen & Friedel, represented by Randy Duplechain, the Authority was requested to consider a presentation of a project by the new owners of the land. Mr. Duplechain's request to be placed on the Agenda was made seven (7) days in advance of the Authority's December 10, 2013, Regular Meeting and the supporting documents, which were distributed to the Board Members, accompanied Mr. Duplechain's request.

Following the above, Mr. Winchell read into the Meeting records his views on the matter as follows:

From the perspective of the Authority, there are various dynamics incidental to Winterberry Woods including, without limitation, the following:

- 1) Whether Winterberry Woods should be permitted or not,
- 2) If the development was legally permitted, how would sewer and water utility services be provided to the approved subdivision?
- 3) Whether the Authority has the legal right to extend its services to Winterberry Woods or not,
- 4) Implications of the Authority's provision of sewer and water utility services, and the impacts on the Authority's current customers, if the Authority served the proposed development,
- 5) Covenants and conditions of a developer agreement related to the project's actual construction, including, among other provisions, the possibility of developer's failure to complete the proposed project, construction standards applicable to the project, construction inspection for confirmation of contractors' conformity with Authority's standards and approved construction plans, etc., if the Authority served the development.

The proposed land development of Winterberry Woods has been the cause of distress in the community. In fact, there have been members of the community who have repeatedly expressed their concerns at the Authority's Regular Public Meetings during the past eight years. The CWS&WA Board of Directors understands the worries of the community.

It is also understandable that the Honorable elected public officials, to whom these members of the community are constituents, would do everything within their powers to alleviate as much worry as could be eliminated in connection with the proposed land development. The constitutional rights of the owners of the subject property, with legal title and claim thereto, are also understandable. A local attorney representing the property owner, threatened to file suit against the Authority if the Authority refused to provide sewer and water utility services to the proposed subdivision arguing that the Authority was at once; granted a CPCN by the PSC to serve water utility services at Winterberry Woods, and, the Authority provided a letter addressed to Kent County planners indicating that the Authority had willingness and ability to provide its services, signed by the Authority's past Chairperson.

It must be understood that matters of zoning, land use, and land development, are outside of the Authority's purview and the development of land is controlled neither by, nor under the range of the Authority's powers, to dictate whether proposed subdivisions and land developments should be permitted or not. These are under the control of the agencies of local and State governments in Kent County.

Rightly or wrongly, Winterberry Woods has already been approved and its subdivision plans have already been recorded in the Office of Recorder of Deeds in and for Kent County. This is a fact, and unless evidence to the contrary is provided the Authority, this fact remains not subject to the approval of the Authority Board.

As such, because of the realities just mentioned, the Authority should neither consider, nor vote on, whether to permit Winterberry Woods. A vote by the Authority Board to allow the approved development would be at least meaningless and at worst irresponsible because, as mentioned earlier, as far as the Authority is concerned, this matter has already been legally decided.

The request before the Authority for consideration is not "to allow Thomas Farm to be subdivided into a 166-lot, single family, residential subdivision," it is rather the terms and conditions of the Authority with regard to the perpetual provision of sewer and water utility services to the already approved and subdivided Winterberry Woods. The Authority cannot be used as an obstruction to the implementation of Winterberry Woods' recorded plans, nor can it be allowed to be used to essentially veto a decision legally made by governmental entities with proper jurisdiction. The Authority does not have legal powers to order injunctions to stop the implementation of the legally recorded plans of Winterberry Woods that have already been approved by Kent County, regardless of the parameters which were considered by the County planners when approving Winterberry Woods.

With respect to the Authority's legal rights to provide its services to Winterberry Woods, it must be recognized that Delaware Law, under the statutory provisions of Title 16, Chapter 14, Delaware Code, provides for the Authority's rights, which include but are not limited to, ". . . ***provide for the public health and welfare and shall be for the purpose of acquiring, holding, constructing, reconstructing, repairing, improving, maintaining and operating, owning or leasing, either in the capacity of lessor or lessee, a project or projects within or partially within and partially without 1 or more of the municipality or municipalities by action of whose governing body or governing bodies the authority was created.***" Therefore, the Authority has the right to extend its services to Winterberry Woods.

With respect to the impact of the subject proposal on the Authority's current customers, it has been represented to the Authority that the developer proposes to pay for the construction of all of the necessary water and sewer system components, pipes, mains, force mains, pump stations, and appurtenances incidental to the provision of the Authority's services to Winterberry Woods. Additionally, the developer would have to pay about \$0.5M to the Authority for its fees.

It should also be noted that the developer's construction plans must be consistent with the Authority's construction standards, and for verification of this conformity, the developer would have to pay for the Authority's during-construction inspection fees during all phases of sewer and water related construction activities. In a nut shell, in addition to the payment of about \$0.5M in Authority's fees, the developer proposes to install an estimated \$5.8M in sewer and water infrastructure improvements, as briefly described, turn the ownership of the installed infrastructure to the Authority after the Authority's acceptance of the same, and provide the Authority with 166 new customers, all at no cost to the existing customers of the Authority. Therefore, there would be no negative impact on the Authority's current customers as a result of the implementation of this project.

The Authority's standard conditions for the provision of its services include, among other things, covenants and conditions of a developer agreement between the Authority and the developer related to the project's actual construction. For example, to protect the Authority and its current customers from the potential failure of the developer to complete the project for any reason, performance completion surety bonds, acceptable to the Authority, in the amount of 150% of the cost to construct water, sewer or both improvements would be required by the Authority prior to the commencement of any construction. Additionally, the developer would not be permitted to transfer or sell neither water, sewer nor both allocations to any other party without the written approval of the Authority.

In summary, it would be unfair to the Authority's current customers to have to foot the bill for, or against, others' causes. In fact, any of the Authority's customers could file suit against the Authority, if the Authority were to take sides on the land use and subdivision issue and spend their money to defend a cause over which the Authority had no control or jurisdiction. Therefore, for the reasons explained, the Authority Board could not consider, or vote on, whether to permit the subdivision of Thomas Farm into a 166-lot, single family, residential land development.

#### **Visitors' Comments:**

Mr. Shuba expressed his objection to the approval of the developer's proposal and urged the Board to deny the application of the new property owner. Mr. Shuba also discussed various options that were available to the developer including Transfer of Development Rights (TDR).

As was the case during the Authority's February 11, 2014, Regular Meeting, Ms. Holly Case and a number of other visitors also voiced their objection to Winterberry Woods and urged the Authority not to approve Winterberry Woods for the reasons identified by the State Planning Office.

The Honorable Levy Court Commissioner Sweeney indicated that Mr. Winchell was correct in his assessment in that the plans for Winterberry Woods had been approved by Kent County and recorded in the Office of Recorder of Deeds in and for Kent County. He also speculated that if the matter before the Board was not approved the developer would most likely file suit against the Authority and prevail. However, the Commissioner continued, the Authority should deny providing sewer and water services to Winterberry Woods and, in the interest of the community, suffer whatever consequences it entailed.

An overview was presented briefly outlining the Authority's processes for the consideration of Facilities Extension Proposals that included the submission of a formal application by the property owner and payment of applicable fees. If principally approved by the Board, in response to such an application, a Facilities Extension Feasibility Analysis - similar to Kent County's Technical Feasibility Analysis for similar applications for the extension of Kent County's sewer system - would be prepared to build on the framework, proposed by the developer and presented by the developer's engineer, to develop a mutually beneficial, logical, and sound from an engineering and operations stand point, project.

As was the case during the Authority's February 11, 2014, Regular Meeting, the notion that the Authority would be allowing urban development in the area if water and sewer services were provided to Winterberry Woods through the Authority was categorically rejected by Mr. Couming and other Board Members who noted that the Authority was a sewer and water utility purveyor and land development of any kind in Kent County could only be allowed by the County who approved plans for subdivisions and land development projects.

Other Board Members expressed their deliberate and cautious approach to their evaluation of the proposal before deciding whether to principally approve or reject the subject proposal.

**Adjournment:**

The Workshop Session adjourned at 9:00 p.m.

The Authority's next Regular Meeting will be held on March 11, 2014, at 7:00 p.m.