



RESOLUTION
of the
BOARD OF TRUSTEES OF THE VILLAGE OF BRIARCLIFF MANOR
for its determination under
MATTER OF COUNTY OF MONROE
on the Village's
WATER SUPPLY PROJECT

WHEREAS, the Village of Briarcliff Manor ("Briarcliff Manor") is a municipal corporation duly organized under the laws of the State of New York, and having those powers set forth in New York Village Law Article 11 to provide water and lay mains for the supply of water to its inhabitants and those outside its borders; and

WHEREAS, the Village of Tarrytown ("Tarrytown") is a municipal corporation duly organized under the laws of the State of New York, having those powers of zoning and land use regulation specified in New York Village Law Article 7; and

WHEREAS, the Town of Greenburgh ("Greenburgh") is a municipal corporation duly organized under the laws of the State of New York, having those powers of zoning and land use regulation specified in New York Town Law Article 16; and

WHEREAS, Briarcliff Manor supplies water to Briarcliff Manor residents and to some residents in parts of the Town of Mount Pleasant ("Mount Pleasant") and the Village of Ossining ("Ossining"); and

WHEREAS, Briarcliff Manor's primary source of water is the Croton Aqueduct which supplies unfiltered water. However, in order to comply with the requirements of the United States Environmental Protection Agency Surface Water Treatment Rule so as to continue to use the Croton Aqueduct water supply, Briarcliff Manor would have to construct a water filtration facility; and

WHEREAS, the New York City Department of Environmental Protection ("DEP") also has mandated that the Croton Aqueduct be eliminated as a primary water source for residents of Briarcliff Manor and its water customers unless it is filtered; and

WHEREAS, pursuant to an Agreement for Temporary and Emergency Water Supply Between the Villages of Briarcliff Manor and the Village of Sleepy Hollow, dated August 10, 2005, Briarcliff Manor is currently using Sleepy Hollow (“Sleepy Hollow”) and its draw from the Catskill Aqueduct as its primary source on a temporary basis, but that connection is inadequate to meet Briarcliff Manor’s full time demand; and

WHEREAS, as a permanent alternative to filtration and to comply with the DEP mandate, Briarcliff Manor has entered into a Stipulation with the New York State Department of Health to replace Briarcliff Manor’s existing Croton Aqueduct water supply with a water supply from the New York City Catskill Aqueduct system to bring Briarcliff Manor into compliance with the Surface Water Treatment Rule; and

WHEREAS, to further the goals of (i) establishing an alternative to filtration of Croton Aqueduct water, (ii) complying with the DEP’s mandate and (iii) obtaining a sustainable, long term supply of potable water from the Catskill Aqueduct system for residents of Briarcliff Manor, the residents of Mount Pleasant and Ossining that Briarcliff Manor serves, and the residents of Tarrytown and Sleepy Hollow, Briarcliff Manor entered into agreements with Tarrytown and Sleepy Hollow to (i) jointly utilize a shared water connection with Tarrytown and Sleepy Hollow to the Catskill Aqueduct, (ii) construct a pump station in Tarrytown and (iii) construct new water facilities for the benefit of Tarrytown and Sleepy Hollow as well as Briarcliff Manor (the “Water Supply Project”); and

WHEREAS, those agreements are as follows: (1) agreement with Tarrytown entitled “First Agreement Between the Villages of Briarcliff Manor and Tarrytown Concerning Water Supply” dated July 16, 2004 (known as the “Tarrytown/Briarcliff Manor Water Agreement”) and (2) agreement with Sleepy Hollow entitled “Amended and Restated Agreement Between The Village of Briarcliff Manor and Sleepy Hollow Concerning Water Supply” dated January 5, 2005, as amended (both agreements collectively known as the “Water Agreements”); and

WHEREAS, construction of the portion of the Water Supply Project in Tarrytown and Greenburgh is proposed as follows:

Village of Tarrytown Proposed Construction and Operation Activities:

- An extension of an existing 30-inch main is proposed along Neperan Road to feed the proposed pump station.
- Construction of pump station (footprint of approximately 3,970 square feet.)
- Installation of emergency generator (approximately 2,000 gallons diesel fuel storage) adjacent to the proposed pump station.

Town of Greenburgh Proposed Construction and Operation Activities:

- Construction of a Catskill Aqueduct tap, approximately 45 feet north of the existing Catskill Aqueduct tap on the south end of the Eastview site.
- Construction of a new vacuum priming chamber adjacent and immediately south west of the proposed tap.
- Excavation and construction of a below-grade 170 square feet addition to the existing Meter Building.
- Installation of a 24-inch transmission main (~150 feet) between the proposed tap and the Meter Building.
- Installation of a 24-inch pipeline which will exit the proposed meter building addition and run parallel to the existing 24-inch main for 360 feet and connect to an existing transmission main at Executive Boulevard; and

WHEREAS, pursuant to the decision of the New York Court of Appeals in *Matter of County of Monroe*, 72 N.Y. 2d 338 (1988), a “balancing of public interests” is required to determine whether and to what extent Briarcliff Manor is exempt from the zoning and land use regulatory jurisdiction of Tarrytown and Greenburgh and their agencies (“*Monroe Inquiry*”); and

WHEREAS, by Resolution dated August 7, 2008, the Briarcliff Manor Board of Trustees, in the exercise of its legislative and executive functions, determined to commence “an inquiry and balancing of the factors to be weighed under *Matter of County of Monroe*, 72 N.Y. 2d 338 (1988), on whether the Village [of Briarcliff Manor] is subject to zoning and land use approval authority by the Village of Tarrytown and the Town of Greenburgh in the matter of the Village of Briarcliff Manor’s proposed water supply project,” and scheduled a special meeting for August 19, 2008, at which all persons interested in the matter would be allowed to present oral or written statements, and directed that notice of the special meeting be given; and

WHEREAS, the Briarcliff Manor Board of Trustees held a special meeting in furtherance of the *Monroe Inquiry* as noticed on August 19, 2008, and a copy of a draft transcript of that meeting prepared by Melissa Shelton of Carbone and Associates, Ltd. and a copy of a videotape of that meeting made by Briarcliff Manor are annexed to this Resolution as Exhibit A¹; and

WHEREAS, among other things, the Board of Trustees at that meeting:

- Heard an oral statement from former Mayor Keith Austin;

¹ The Briarcliff Manor Board of Trustees has not approved the transcript as minutes of the meeting.

- Received and entered the following documents into its record: (i) letter from Michael S. Blau, Tarrytown Village Administrator dated August 14, 2008, (ii) letter from Timothy W. Lewis, Greenburgh Town Attorney dated August 15, 2008, and (iii) letter from Paul Kutzy, P.E., Assistant Commissioner Bureau of Environmental Quality Westchester County Department of Health dated August 18, 2008, copies of which are annexed to this Resolution as Exhibit B; and
- Received an oral report and Power Point presentation from Wendy Sperduto from Hazen and Sawyer with an engineering analysis of the Water Supply Project, and a copy of the text of the Power Point presentation is annexed to this Resolution as Exhibit C;

NOW THEREFORE, after review of the record in the Monroe Inquiry, including but not limited to, the transcript of the special meeting held August 19, 2008, the Water Agreements, Briarcliff Manor work to date on the Water Supply Project, and after due deliberation, it is:

RESOLVED, that the Briarcliff Manor Board of Trustees does hereby find:

Findings Set I: The Board of Trustees analyzed, considered and discussed the following factors as set forth in *Matter of County of Monroe* in relation to Briarcliff Manor's Water Supply Project and Tarrytown's zoning and land use regulations and found as follows:

1. The nature and scope of the instrumentality seeking immunity.
 - (a) Tarrytown and Briarcliff Manor are municipal corporations of equivalent authority and status.
 - (b) This is only one factor to be considered and is not controlling.
2. The kind of function or land use involved and the extent of the public interest to be served thereby.
 - (a) The Water Supply Project and service of water therefrom is a public utility.
 - (b) The Water Supply Project and service of water therefrom will serve the public interest by ensuring the provision of a clean, safe and reliable water source.
 - (c) Provision of water service is an essential government function.
 - (d) Briarcliff Manor's supply of water provides a critical water supply to the area, and includes Briarcliff Manor residents and areas of Mt. Pleasant and Ossining.

- (e) Briarcliff Manor has entered into the following stipulations with the New York State Department of Health which require Briarcliff Manor to replace the existing Croton Aqueduct water supply with a water supply from New York City Catskill Aqueduct system:
 - (1) February 1, 1999 – Stipulation between the Briarcliff Manor and the New York State Department of Health in the Matter of the Filtration of the Croton Source.
 - (2) May 11, 2005 – Amended Stipulation Between Briarcliff Manor and New York State Department of Health in the Matter of the Filtration of the Croton Source.
- (f) Completion of the Water Supply Project will bring the Village into compliance with the requirements of the U.S. Environmental Protection Agency's Surface Water Treatment Rule.
- (g) Based on the mandate from DEP, the Croton will be discontinued as a source of water, and unless the Water Supply Project is completed, Briarcliff Manor will not have a water supply that can adequately serve Briarcliff Manor's water demand.
- (h) If filtration is required for Catskill–Delaware system in future, the DEP may construct a filtration plant at Eastview which Tarrytown, Sleepy Hollow and Briarcliff Manor can tap to provide filtered water to the villages.
- (i) Improvements will be made under the Water Supply Project to Tarrytown and Sleepy Hollow's existing delivery system and Catskill Aqueduct that would maximize both Tarrytown and Sleepy Hollow's capacity and improve their system reliability and operation.
- (j) Currently, Tarrytown and Sleepy Hollow's existing vacuum priming pumps operate excessively and result in decreased capacity, and the Water Supply Project will replace them and maximize the capacity of the existing tap while priming and maintaining the vacuum in both taps.
- (k) System costs will be shared by Briarcliff Manor, Tarrytown and Sleepy Hollow under the Water Agreements which will result in a decrease of system maintenance costs to all three communities.
- (l) Tarrytown will be receiving compensation for tap in rights.
- (m) The Water Supply Project work in Tarrytown is zoning compliant, and the only Tarrytown land use regulatory requirements to which the work would be subject are site plan approval, which includes tree removal, wetlands and steep slopes permitting.

3. The effect of local land use regulation would have upon the enterprise concerned and the impact upon legitimate local interests.
- (a) The pump station site is zoned residential, but municipal uses are a permitted use and would include Briarcliff Manor's pump station.
 - (b) The site of the new pump station is wooded and directly adjacent to the existing Tarrytown/Sleepy Hollow pump station.
 - (c) The Briarcliff Manor pump station is a continuation of an existing use on the site.
 - (d) The location of the Briarcliff Manor pump station includes previously disturbed land.
 - (e) There is a small wetland (0.056 acres) adjacent to the proposed project footprint and construction will occur within the wetland buffer area but not the wetland. The project includes 0.06 acres of wetland replacement at the proposed Village of Tarrytown pump station site.
 - (f) There will be some temporary increase in traffic associated with installation of the main. Installation would take place mainly within the utility right-of-way and proceed in sections, so any impact to traffic would be temporary and localized. A comprehensive maintenance and protection of traffic plan will be developed to minimize any potential temporary impacts on transportation associated with the proposed project.
 - (g) Chemical storage and feed systems are proposed within the pump station. Water treatment chemicals to be stored and used at the proposed pump station include sodium hypochlorite, sodium hydroxide and corrosion inhibitor (phosphoric acid). The chemical facilities for operation of the proposed project would be designed in accordance with New York State Department of Health, DEC, and Westchester County Department of Health requirements. Regulatory requirements encompass chemical storage capacity and secondary containment of chemicals to protect against potential spills. With these procedures in place, it is not anticipated any impacts would result from storage of chemicals associated with the proposed project.
 - (h) The Briarcliff Manor pump station will be constructed to reduce the visual impact of new building and appurtenances.
 - (i) Tarrytown has agreed in the Tarrytown/Briarcliff Manor Water Agreement to provide the licenses and easements necessary to construct the Briarcliff Manor pump station.

- (j) Pursuant to the Tarrytown/Briarcliff Manor Water Agreement, the footprint location of the Briarcliff Manor pump station was determined by engineering analysis and approved by Tarrytown and the Village.
- (k) A new tap will be constructed directly upstream of Tarrytown and Sleepy Hollow's tap in the Town of Greenburgh which will effectively increase the overall system capacity and provide improved system capacity and reliability to Tarrytown and Sleepy Hollow.
- (l) Subjecting the Water Supply Project work in Tarrytown to an open ended site plan review by the Tarrytown Planning Board may delay the project and result in prohibitive cost increases and time delays.

4. Applicant's legislative grant of authority.

- (a) Village Law Article 11 authorizes Briarcliff Manor to create a water system, sell water inside and outside of its municipal boundaries, and extend its mains outside of its municipal boundaries.
- (b) Village Law Section 11-1126 provides that a village can take water from New York City reservoir system upon such terms and conditions agreed to with New York City and further that such village does not need any further authorization in order to construct its water facilities:

...and to that end such village is authorized and empowered to lay the necessary mains and pipes to the source of supply, valves, hydrants, supply pipes, and other necessary appurtenances for the use of said water, including its purification, without the consent of any board, officer, bureau, or department of the state, or any subdivision thereof... (emphasis added)

5. Alternative locations for the facility in less restrictive zoning areas.

- (a) The Briarcliff Manor pump station site is in a zoning district that permits municipal uses and is zoning compliant, so no less restrictive zoning area exists.
- (b) Briarcliff Manor pump station is a continuation on the site of an existing use (the Tarrytown/Sleepy Hollow pump station) which is the same as the Village's proposed use.
- (c) The Briarcliff Manor pump station site is specifically exempted from the 300 foot setback requirement from the Tarrytown Lakes, Tarrytown Zoning Code, Section 305-14C(2).
- (d) Hazen and Sawyer conducted a Study of Alternatives for Catskill Water Supply set forth in a report dated June 2006, and found this to be the best method of providing the needed improvement.

- (e) Malcolm Pirnie conducted a Water Supply Alternatives study set forth in a report dated July 28, 1995.
 - (f) Riddick Associates, P.C. reviewed the Catskill Aqueduct connection as preferred water supply alternative in 2000.
 - (g) The range of possible locations for the Briarcliff Manor pump station is limited by hydraulics and proximity to the Catskill Aqueduct.
6. Alternative methods of providing the needed improvement.
- (a) Hazen and Sawyer conducted a Study of Alternatives for Catskill Water Supply set forth in a report dated June 2006, and found this to be the best method of providing the needed improvement.
 - (b) Malcolm Pirnie conducted a Water Supply Alternatives study set forth in a report dated July 28, 1995.
 - (c) Riddick Associates, P.C. reviewed the Catskill Aqueduct connection as preferred water supply alternative in 2000.
 - (d) Hazen and Sawyer, P.C. evaluated a connection to New Castle as an alternative and concluded that it was not viable in 1998.
7. Intergovernmental participation in the project development process.
- (a) The Water Supply Project has been planned in accordance with the Tarrytown/Briarcliff Manor Water Agreement which Briarcliff Manor and Tarrytown negotiated over a 2 year period.
 - (b) Tarrytown's Water Consultant, Consulting Engineer, PCI Professional Consulting, LLC, provided significant input during negotiation of the Tarrytown/Briarcliff Manor Water Agreement.
 - (c) The Tarrytown/Briarcliff Manor Water Agreement affords Tarrytown significant input in the construction and implementation of the Water Supply Project as follows:
 - (1) Briarcliff Manor, Tarrytown and Sleepy Hollow jointly selected Hazen and Sawyer as Consultant Engineer under the Water Agreements to perform the engineering analysis to determine the system improvements necessary for the Water Supply Project.
 - (2) Any improvements to the Catskill Aqueduct Connection and the 30 inch main are subject to the consent and reasonable approval of Tarrytown.

- (3) Tarrytown hired PCI Professional Consulting, LLC to review all engineering work on ongoing basis, at the expense of Briarcliff Manor.
 - (4) Briarcliff Manor will consult with Tarrytown with regard to the designation of the lowest responsible bidder for construction of project.
 - (5) The construction of the improvements in Tarrytown will be subject to the reasonable review and on-site inspections of Tarrytown.
 - (6) Bi-weekly construction meetings will be held to update Tarrytown on the construction status and obtain consents.
 - (7) Additional special job site meetings will be held as deemed necessary by Tarrytown.
 - (8) The location of the Briarcliff Manor pump station has been determined by engineering analysis and agreed to by Briarcliff Manor and Tarrytown.
- (d) Briarcliff Manor representatives have met with the Tarrytown Board of Trustees and/or Tarrytown representatives at least 13 different times:
- (1) On or about 1998/1999 – a “kick off meeting” was held with the following present at which time the Water Supply Project was outlined to all: Sleepy Hollow Mayor, Superintendent of Public Works, Village Administrator, Water Consultants; Tarrytown Mayor, Superintendent of Public Works, Village Administrator; Briarcliff Manor Mayor, Village Manager, Water Consultant, Village Counsel; and United Water representatives.
 - (2) February 7, 2002 - meeting between Tarrytown representatives and Briarcliff Manor Village Manager, Water Consultant, and Counsel.
 - (3) March 13, 2002- Presentation by Briarcliff Manor Village Manager at Tarrytown Board of Trustees work session.
 - (4) July 2, 2003 - Tarrytown Board of Trustees special meeting concerning Water Supply Project.
 - (5) On or about August, 2003- joint meeting with Sleepy Hollow, Tarrytown and Briarcliff Manor at Briarcliff Manor Village Hall regarding negotiations with Tarrytown and proposed changes to the Sleepy Hollow water agreement that would be necessitated by the Tarrytown/Briarcliff Manor Agreement.

- (6) January 5, 2004 - Tarrytown Board of Trustees public meeting regarding the joint water project.
 - (7) September 27, 2006 - project meeting at the Village of Tarrytown between Tarrytown Engineer and Consulting Engineers, Sleepy Hollow Consultant Dolph Rotfeld Engineers, and Briarcliff Village Manager and Water Consultant.
 - (8) April 19, 2007 - Meeting at Briarcliff Manor Village Hall between Tarrytown Engineer and Water Superintendent, Hazen and Sawyer and Briarcliff Manor Village Manager, Engineer, Superintendent of Public Works.
 - (9) June 13, 2007 - Meeting at Tarrytown Village Hall with Tarrytown Board of Trustees. Presentation of the project and site plan for the Briarcliff Manor Pump Station by Briarcliff Village Manager and Hazen and Sawyer, with feedback received from Tarrytown Board of Trustees at the previous meeting incorporated into the design and site layout. Tarrytown requested a follow-up meeting to review future potential build-out of the site for a low lift pump station.
 - (10) July 16, 2007 - Meeting at Tarrytown Village Hall with Tarrytown Board of Trustees. Presentation by Briarcliff Manor Village Manager and Hazen and Sawyer as requested of the site plan and the potential build-out for construction of a low-lift pump station.
 - (11) August 2, 2007 - Meeting at Tarrytown Village Hall between Tarrytown Engineer, Water Consultants, Counsel, and Public Works representative and Briarcliff Manor Village Manager and Village Counsel.
 - (12) September 20, 2007 - Meeting at Briarcliff Manor Village Hall between Tarrytown Mayor and Engineer and Briarcliff Manor Mayor.
 - (13) March 6, 2008 - Meeting at Tarrytown between Tarrytown Mayor and Briarcliff Manor Mayor and Interim Village Manager.
- (e) Briarcliff Manor has revised the project in Tarrytown based on environmental, design and site concerns raised by Tarrytown as follows:
- (1) Elimination of the parking lot between the Briarcliff Manor pump station and the Tarrytown pump station by relocation of the main entrance to the west side of the Briarcliff Manor pump station.

- (2) Siting of the Briarcliff Manor pump station building slightly farther from the street to provide for additional buffer area for landscaping to lessen said building's visual impact.
- (3) Addition of significantly more landscaping on the site, specifically coniferous trees and a landscape island between the chemical delivery point and Neperan Road and at the southeast corner of the Briarcliff Manor pump station.
- (4) Replacement of the existing Tarrytown septic system with a more environmentally sound sewerage holding tank.
- (5) Relocation of HVAC equipment from the southeast corner of the Briarcliff Manor pump station to the rear of the building.
- (6) Reduction of 2.5 feet in total height of the Briarcliff Manor pump station from 21.5 feet to 19.0 feet and reduction of the roof-line elevation by 4.25 feet from 281.50 to 277.25.
- (7) Reduction of south side wall height of the Briarcliff Manor pump station by 1 foot, approximately 8 percent of the wall height, to help mitigate visual impact from Neperan Road.
- (8) Imposition of limits on the allowable size of chemical delivery and maintenance trucks and reduction of impervious surface by approximately 45%, constituting a reduction of 20 feet of pavement along the west end of the site in order to avoid direct impact on a wetland buffer.

8. An opportunity to be heard

- (a) Briarcliff Manor gave notice and held a special meeting to hear statements and gather evidence as to the interests of Tarrytown as set forth in *Matter of County of Monroe* and provide an opportunity for public input.
- (b) Tarrytown declined to attend that special meeting as set forth in a letter from the Tarrytown Village Administrator dated August 14, 2008, a copy of which is annexed as a part of Exhibit B.
- (c) On January 5, 2004, the Tarrytown Board of Trustees held a meeting at which time public comment was taken.
- (d) Tarrytown participated in the drafting of the Tarrytown/Briarcliff Manor Water Agreement for the Water Supply Project.
- (e) Tarrytown has participated in a substantial number of meetings held thus far.

- (f) Briarcliff Manor offered 2 proposals that would give the Tarrytown Board of Trustees and Planning Board an opportunity to review, comment and exercise site plan authority over on the Water Supply Project in Tarrytown.

Findings Set II: The Board of Trustees analyzed, considered and discussed the following factors as set forth in *Matter of County of Monroe* in relation to Briarcliff Manor's Water Supply Project and Greenburgh's zoning and land use regulations and found as follows:

1. The nature and scope of the instrumentality seeking immunity.
 - (a) Greenburgh and Briarcliff Manor are municipal corporations of equivalent authority and status.
 - (b) This is only one factor to be considered and is not controlling.
2. The kind of function or land use involved and the extent of the public interest to be served thereby.
 - (a) The Water Supply Project and service of water therefrom is a public utility.
 - (b) The Water Supply Project and service of water therefrom will serve the public interest by ensuring the provision of a clean, safe and reliable water source.
 - (c) Provision of water service is an essential government function.
 - (d) Briarcliff Manor's supply of water provides a critical water supply to the area, and includes Briarcliff Manor residents and areas of Mt. Pleasant and Ossining.
 - (e) Briarcliff Manor has entered into the following stipulations with the New York State Department of Health which require Briarcliff Manor to replace the existing Croton Aqueduct water supply with a water supply from New York City Catskill Aqueduct system:
 - (1) February 1, 1999 – Stipulation between the Briarcliff Manor and New York State Department of Health in the Matter of the Filtration of the Croton Source.
 - (2) May 11, 2005 – Amended Stipulation Between Briarcliff Manor and New York State Department of Health in the Matter of the Filtration of the Croton Source.

- (f) Completion of the Water Supply Project will bring the Village into compliance with the requirements of the U.S. Environmental Protection Agency's Surface Water Treatment Rule.
 - (g) Based on the mandate from DEP, the Croton will be discontinued as a source of water, and unless the Water Supply Project is completed, Briarcliff Manor will not have a water supply that can adequately serve Briarcliff Manor's water demand.
 - (h) If filtration is required for Catskill-Delaware system in future, the DEP will likely construct a filtration plant at Eastview which Tarrytown, Sleepy Hollow and the Village can tap to provide filtered water to the Villages.
 - (i) Improvements will be made under the Water Supply Project to Tarrytown and Sleepy Hollow's existing delivery system and Catskill Aqueduct that would maximize both Tarrytown and Sleepy Hollow's capacity and improve their system reliability and operation.
 - (j) Currently, Tarrytown and Sleepy Hollow's existing vacuum priming pumps operate excessively and result in decreased capacity, and the Water Supply Project will replace them and maximize the capacity of the existing tap while priming and maintaining the vacuum in both taps.
 - (k) System costs will be shared by Briarcliff Manor, Tarrytown and Sleepy Hollow under the Water Agreements which will result in a decrease of system maintenance costs to all three communities.
 - (l) Tarrytown will be receiving compensation for tap in rights.
 - (m) Greenburgh land use regulatory requirements to which the Water Supply Project work in Greenburgh would be subject are, among others, special permit approval and wetlands permitting.
3. The effect of local land use regulation would have upon the enterprise concerned and the impact upon legitimate local interests.
- (a) The meter building site is zoned residential, but public utility structures are a permitted use subject to the issuance of a special permit.
 - (b) Improvements and upgrades will be made to Tarrytown and Sleepy Hollow's existing Catskill Aqueduct tap located northeast of Executive Boulevard on DEP property adjacent to the Catskill Aqueduct in the Town of Greenburgh.
 - (c) A new tap will be constructed directly upstream of Tarrytown and Sleepy Hollow's tap in Greenburgh.

- (d) Improvements to Tarrytown and Sleepy Hollow's existing meter building located at Executive Boulevard is a continuation of an existing use on the site.
- (e) There will be some temporary increase in traffic associated with installation of the main. Installation would take place mainly within the utility right-of-way and proceed in sections, so any impact to traffic would be temporary and localized. A comprehensive maintenance and protection of traffic plan will be developed to minimize any potential temporary impacts on transportation associated with the proposed project.
- (f) There is a small wetland (0.041 acres) that surrounds the Meter Building. There would be temporary disruption to the wetland vegetation, buffer and soils during construction. The wetland would be restored after construction. In addition, the project includes 0.06 acres of wetland replacement at the proposed pump station site. Therefore no net loss to wetlands is anticipated for the proposed project.
- (g) The Briarcliff Manor addition to the meter building will take place alongside and under the existing meter building so any potential effects will be minimized.
- (h) Subjecting the Water Supply Project work in Greenburgh to special permit approval may delay the project and result in prohibitive cost increases and time delays.

4. Applicant's legislative grant of authority.

- (a) Village Law Article 11 authorizes Briarcliff Manor to create a water system, sell water inside and outside of its municipal boundaries, and extend its mains outside of its municipal boundaries.
- (b) Village Law Section 11-1126 provides that a village can take water from New York City reservoir system upon such terms and conditions agreed to with New York City and further that such village does not need any further authorization in order to install its water facilities from any board:

...and to that end such village is authorized and empowered to lay the necessary mains and pipes to the source of supply, valves, hydrants, supply pipes, and other necessary appurtenances for the use of said water, including its purification, without the consent of any board, officer, bureau, or department of the state, or any subdivision thereof... (emphasis added).

5. Alternative locations for the facility in less restrictive zoning areas.
 - (a) The meter building addition is in a zoning district that permits public utility uses subject to issuance of a special permit, and Greenburgh does not have any less restrictive zoning districts for the improvements in Greenburgh.
 - (b) This is a continuation on the site of an existing use which is an addition to an existing meter building.
 - (c) Hazen and Sawyer conducted a Study of Alternatives for Catskill Water Supply set forth in a report dated June 2006, and found this to be the best method of providing the needed improvement.
 - (d) Malcolm Pirnie Water Supply Alternatives study set forth in a report dated July 28, 1995.
 - (e) Riddick Associates, P.C. review of Catskill Aqueduct connection as preferred water supply alternative (2000).
 - (f) The range of possible locations for the Briarcliff Manor meter building addition is limited by hydraulics and proximity to the Catskill Aqueduct.

6. Alternative methods of providing the needed improvement.
 - (a) Hazen and Sawyer conducted a Study of Alternatives for Catskill Water Supply set forth in a report dated June 2006, and found this to be the best method of providing the needed improvement.
 - (b) Malcolm Pirnie conducted a Water Supply Alternatives study set forth in a report dated July 28, 1995.
 - (c) Riddick Associates, P.C. reviewed the Catskill Aqueduct connection as preferred water supply alternative (2000).
 - (d) 1998 Hazen and Sawyer evaluated a connection to New Castle as an alternative and concluded that it was not viable in 1998.

7. Intergovernmental participation in the project development process.
 - (a) Briarcliff Manor presented plans to the Greenburgh Planning Department, Superintendent of Public Works and Town Attorney, and Greenburgh expressed the opinion that the impacts of the project in Greenburgh are minimal.
 - (b) Two meetings were held with Greenburgh's Planning Department and Briarcliff Manor representatives and Hazen and Sawyer.

- (c) Support for the Village's immunity from local land use regulation was expressed by Greenburgh Town Attorney Timothy Lewis' letter dated August 15, 2008, a copy of which is included in Exhibit B.

8. An opportunity to be heard.

- (a) Briarcliff Manor gave notice and held a special meeting to hear statements and gather evidence as to the interests as set forth in *Matter of County of Monroe* and provide an opportunity for public input.
- (b) Notice of the special meeting was given to Greenburgh and Greenburgh Town Attorney Timothy Lewis responded with letter dated August 15, 2008, in support of the Water Supply Project.
- (c) Two meetings were held with Greenburgh Planning Department and Briarcliff Manor representatives.

AND FURTHER RESOLVED, that for the reasons and on the basis of the findings set forth above, the Water Supply Project is not subject to the land use review and regulatory jurisdiction and authority of Tarrytown, or its agencies as set forth in New York Village Law Article 7 and the Tarrytown Village Code;

AND FURTHER RESOLVED that for the reasons and on the basis of the findings set forth above, the Water Supply Project is not subject to the land use review and regulatory jurisdiction and authority of Greenburgh or its agencies as set forth in New York Town Law Article 16 and the Greenburgh Town Code.

Dated: September 4, 2008

Vote:

Ayes 4

Noes 0

Absent 1