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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

In the Matter of the Petition of New Jersey
American Water Company for a Determination
Concerning the Fenwick Water Tank Pursuant
To N.J.S.A. 40:55D-19

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: Docket No. WO22010004
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**MOTION FOR LEAVE TO INTERVENE
ON BEHALF OF PAUL SAVAS**

Paul Savas (“Mr. Savas” or “Movant”, by and through the undersigned counsel, hereby moves for leave to intervene in the above-captioned proceeding pursuant to N.J.A.C. 1:1-16.1 et seq. Mr. Savas respectfully submits that all of the factors required for full intervenor status, as set forth in N.J.A.C. 1:1-16.3, have been met and support the granting of Mr. Savas’ motion herein. In support of his motion for intervenor status in this proceeding (“Motion”), Mr. Savas states as follows:

Background and Procedural History

1. In its Petition, New Jersey American Water Company (“NJAW,” “the Company” or “the Utility”) appeals the decision of the Borough of Bernardsville Zoning Board of Adjustment (“Zoning Board”) that denied the Company’s application for various land development approvals to allow for construction of a replacement water tank substantially larger than the existing water tank located at Block 5, Lot 5 on the Tax Map of the Borough of Bernardsville, also known as 426 Mendham Road, Bernardsville, New Jersey.

2. Movant appeared and fully participated in the proceeding before the Zoning Board, which held hearings on the issue of whether NJAW met the requirements for the granting of conditional use approval and several variances to build the proposed replacement water tank. Hearings were held before the Zoning Board over a period of almost a year, commencing on November 16, 2020 and ending on October 4, 2021.

3. The Zoning Board memorialized its decision by the Resolution of Memorialization attached hereto as Exhibit A on December 6, 2021. NJAW filed its Petition with the New Jersey Board of Public Utilities (“BPU” or “Board”) on January 4, 2022 appealing the Zoning Board’s decision pursuant to N.J.S.A. 40:55D-19.

Movant, Paul Savas

4. Paul Savas is one of two Bernardsville property owners who appeared before the Zoning Board to oppose NJAW’s application for land development approvals. Mr. Savas’ address is 450 Mendham Road, Bernardsville, New Jersey. His property, also known as Block 5, Lot 3 and Block 5, Lot 3.06 on the Tax Map of the Borough of Bernardsville, abuts and partially surrounds the parcel upon which NJAW seeks to construct the new, substantially larger water tank.

5. All communications made with respect to this Motion and any other aspect of these proceedings shall be addressed to the following:

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Standard for Intervention

6. N.J.A.C. 1:1-16.1 sets out the standards for intervention:

[A]ny person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene.

7. In evaluating a motion to intervene, N.J.A.C. 1:1-16.3(a) provides:

In ruling upon a motion to intervene, the judge shall take into consideration the nature and extent of the movant’s interest in the outcome of the case, whether or not the movant’s interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, the prospect of confusion or undue delay arising from the movant’s inclusion, and other appropriate matters.

Savas Meets the Standard for Intervention

8. Mr. Savas will be substantially, specifically, and directly affected by the outcome of this case, as the outcome will determine whether or not NJAW may construct the replacement water tank on its undersized property that abuts Mr. Savas' property.

9. NJAW proposes to construct its replacement tank on an undersized, 0.4 acre property that is adjacent to and partially surrounded by Mr. Savas' property. The property owned by NJAW on which the present water storage tank is located is surrounded by a chain link fence and includes a 20 foot wide right of way through Mr. Savas' property. See Resolution of Memorialization, Denial of Use Variance, Dimensional Variances, and Preliminary and Final Site Plan ("Resolution of Memorialization") at 2. Mr. Savas would be substantially, specifically, and directly affected by the approval of this project, for several reasons.

10. First, the new tank would be physically much larger than the existing tank, and would create adverse physical and visual impacts on Mr. Savas' property. See photograph of existing tank, attached as Exhibit B and photosimulation of proposed tank, attached as Exhibit C. The existing NJAW water storage tank is 21 feet high at its roof and 42 feet wide, with a 250,000 gallon capacity. Solar panels increase the height to 29 feet. Resolution of Memorialization at 2. Views of the existing tank are also screened by surrounding trees and foliage, particularly in spring and summer. But the proposed replacement tank would have a roof height of 74 feet, more than triple the height of the existing tank. With a railing, the entire structure will come to 82 feet high. The width of the existing tank is 42 feet, while the proposed new water storage tank would have a 42 foot pedestal, but a width of 64 feet for the tank itself. Id.

11. The new tank would be much more visible from Mr. Savas' property and other surrounding properties, a condition that would be exacerbated by the removal of some trees from NJAW's parcel during construction. Id. at 6. The new tank would tower over Mr. Savas' property, serving as an eyesore, and disrupting views and the residential character of the neighborhood. The presence of the new tank would also have a deleterious impact on Mr. Savas' property value. Id. at 8-9.

12. Second, construction of the new tank would be enormously disruptive to Mr. Savas' property. Because the NJAW parcel where the water tank is located is only accessible by the easement that runs on Savas' property, the truck traffic, noise, disruption and potential for odors, emissions and disruptions to the grading of his property will negatively impact the use and enjoyment of his property during construction. Construction of the proposed new water tank is projected to take more than one year, and during that time there is the potential of substantial disruption to Savas' use of his property. Savas could also be irreparably harmed by any problems that occur during construction. Because his property is directly impacted, Savas has a unique interest that is not otherwise represented by other parties to this case.

13. Third, the new tank poses a potential safety hazard to Mr. Savas' property that has not been studied. Were the new water tank to experience a failure, the water released could inundate the Savas property and/or lead to loss of life. The proposed tank is quite close to a

carriage house located on the property that is inhabited by permanent residents. Any flooding that might result from such a failure could have a detrimental impact on the residents' living space, property, and lives. Again, these facts are unique to the Savas property.

14. As demonstrated herein, Savas has a unique interest in these proceedings that cannot be fully represented by any other party. Thus, the interests of Savas and others are not necessarily aligned on all issues.

15. Nonetheless, Savas' intervention will not add confusion to the proceedings or otherwise delay them. Rather, Savas' intervention will help to fill out the record, resulting in a more complete understanding of the issues.

Conclusion

16. For the reasons set forth above, Movant respectfully requests that he be granted leave to intervene in this matter pursuant to N.J.A.C. 1:1-16.1 et seq.

Respectfully submitted,

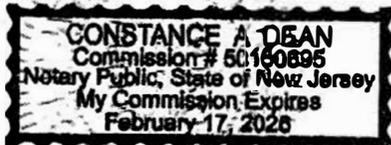
Duane Morris, LLP

By: David B Amerikaner
David B. Amerikaner

Dated: February 16, 2022

State of New Jersey
County of Somerset
02/14/2022

Constance A Dean



VERIFICATION

State of New Jersey)
County of Somerset)

Paul Savas, of full age, being duly sworn, upon his oath, deposes and says:

1. I am the movant in this proceeding and my property, located at 450 Mendham Road, Bernardsville, New Jersey, will be impacted by the outcome of the Board's decision on the Petition.

2. I have reviewed the within Motion and the same is true and correct to the best of my knowledge, information and belief.

3. I certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: _____

Paul Savas
Paul Savas

Sworn to and subscribed
before me this 14 day of
Feb , 2022

CERTIFICATION OF SERVICE

David B. Amerikaner, certifies that I am Special Counsel to the firm of Duane Morris, LLP, and on this date, I caused copies of the attached Motion for Leave to Intervene of Paul Savas to be served via email upon each of the parties named on the service list attached to this filing. The above statements made by me are true. I am aware that if any statement made by me is willfully false, I am subject to punishment.



David B. Amerikaner

Dated: February 16, 2022

**IN THE MATTER OF
THE PETITION OF NEW JERSEY AMERICAN WATER COMPANY FOR A
DETERMINATION CONCERNING
THE FENWICK WATER TANK PURSUANT TO N.J.S.A. 40:55D-19 DOCKET
NO: WO22010004**

SERVICE LIST

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