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Via E-Mail

Honorable Tricia Caliguire
Administrative Law Judge
Office of Administrative Law
P.O. Box 049
Trenton, NJ, 08649

RE: In the Matter of the Petition of New Jersey American Water; OAL Docket No. PUC 00319-2022S; BPU Docket No. W022010004

Dear Judge Caliguire,

As the Court is aware, I represent the Bernardsville Zoning Board of Adjustment ("Zoning Board") with regard to the above captioned litigation. In this capacity please accept this Letter Brief on behalf of the Zoning Board. I have reviewed the excellent and comprehensive Joint Post-Hearing Findings Of Fact And Conclusion Of Law as submitted by the Attorney's for Intervenor Paul Savas and Participant Karen Martin. I fully concur with their proposed findings of fact and conclusions of law set forth therein, and any additional legal argument on my part would simply be repetitive.

However, and on behalf of the Zoning Board, a critical aspect of this matter, that I am certain Your Honor is fully aware of, is the importance of the deference that I believe should be accorded the significant and uncontroverted local interests and concerns of the Borough of Bernardsville in general and, more specifically, the unique residential area in which New Jersey American Water Company proposes for their expanded water facility. These local interests and concerns were fully testified to, and considered, at the hearings before the Zoning Board, and were further supplemented in the testimony of witnesses called by both the Zoning Board and by Intervenor Savas. These concerns included, but were not limited to, the unique historic residential nature of the area within which this enlarged water facility is proposed; the dramatic increase in size of the proposed structure; and the severe reduction in fair market value of properties, not only in the immediate area, but within a broader geographical scope.



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Both the Zoning Board and Your Honor heard this testimony which was undisputed and unchallenged. Neither the New Jersey American Water Company nor any other State Agency involved with this matter offered any contrary testimony whatsoever. The entire process that the Zoning Board and Your Honor has been dealing with for many months is much more than just about water pressure, elevations, water flow, tank capacity, size of pipes, numbers and rates, financial agreements with water purveyors, and the like. What the Applicant and all of the State Agencies involved in this matter have clearly ignored are the very real concerns and interests regarding the human element, and the local interests and concerns of the residents that were heard in large part by the Zoning Board, and in lesser part by Your Honor.

The numerous court and statutory citations in the Joint Brief filed by Intervenor Savas and Participant Martin should be persuasive in convincing Your Honor that the Applicant did nothing, or next to nothing, to address the issues vital to an ultimate determination here. At the time the Zoning Board had to make a determination the Applicant offered no proof whatsoever as to any other sites or locations that were "legitimately" considered by the New Jersey American Water Company as an alternative to the location now under consideration. Contrary to comments stated before Your Honor, the Zoning Board had nothing before it in this regard, and N.J.S.A 40:55D-19 has actually increased local control over a public utility's use of land within a municipality's borders. New Jersey Natural Gas v. Borough of Red Bank, 438 N.J. Super 164 (App. Div., 2014).

It is respectfully suggested that the Courts should have significant respect for, if not deference to, a municipality's determination as expressed through its Zoning Board when those expressions are real, substantial and uncontroverted.

Respectfully Submitted,


Louis P. Rago, Esq.

LPR/fm

cc: Service List (*see attached*)