

# STATE OF DELAWARE ENVIRONMENTAL APPEAL BOARD

APPEAL OF WELL PERMIT  
APPLICATIONS #267708 AND  
#267709

APPEAL NO. EAB ~~2020-02~~

## JOINT STIPULATION OF FACTS

The Parties to the above appeal hereby stipulate to the following facts, and jointly submit this Stipulation of Facts and accompany exhibits:

1. The Board of Public Works of the City of Lewes (“BPW”) is the municipal utility for the City of Lewes, chartered by the Delaware General Assembly.
2. Jerry Frank Peter (the “Applicant”) applied for permits to construct a supply well (permit no. 267708) and recharge well (permit no. 267709) (collectively, the “Permits”) on Sussex County tax parcel number 3-35-08.00-0009.00 (the “Property”). The wells are geothermal and the supply well will also be used to supply potable water.
3. The Property is located on New Road in eastern Sussex County, within an enclave surrounded entirely by the City of Lewes. The enclave, however, is not within the incorporated limits of the City of Lewes. Within the enclave that is

surrounded on four sides by the City of Lewes, the Property itself borders the City of Lewes on three sides and is therefore within two miles of Lewes's municipal boundary.

4. The Property is undeveloped and located in the BPW's water, sewer, and electric service areas. *See*, Joint Exhibit 1. As designed, the house footprint will be approximately 300 feet from the water main on New Road.

5. The BPW has approved the provision of water, electric, and sewer service to the Property.

6. On November 7, 2019, Darrin Gordon ("Gordon"), the General Manager of the BPW, wrote to DNREC at DNREC's request advising that the BPW opposed issuance of the Permits because of the well's threat to the municipal water supply and because the applicant, Jerry Peter, could easily connect to the municipal water supplied by the BPW. Joint Exhibit 2.

7. On January 7, 2020, DNREC denied the Permits on the basis that the BPW declined to issue a statement of approval as required for a well permit application by 7 *Del. Admin. C.* § 7301, subsection 3.12.7. Joint Exhibit 3.

8. The Applicant appealed the initial denial to the EAB on February 3, 2020.

9. During the pendency of the first appeal, DNREC reversed course and issued both Permits on April 7, 2020, at the direction of the Delaware Department of Justice.

10. In 2013, the BPW duly adopted Resolution 13-004. Joint Exhibit 4.

11. On October 12, 2016, DNREC wrote to the BPW's then-president, Wendell Alfred, advising him of legislative changes to the well permit approval process. Joint Exhibit 5.

12. On July 20, 2020 Gordon wrote to the Applicant reminding him that he is required to receive water service from the BPW. Joint Exhibit 6. In the alternative, Gordon advised the Applicant that the Property would not be eligible to receive sewer service if the Applicant elected not to receive water service from the BPW.

**DEPARTMENT OF JUSTICE**

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