

MEMORANDUM

TO: Village of Tuxedo Park Board of Trustees

FROM: Joseph Zongol, PE, NICET III

DATE: August 25, 2025

SUBJECT: Overton Subdivision Sanitary Sewer I&I Financial Contribution

BACKGROUND

Mr. John Overton is the owner of property comprising 69.34 acres $\pm$ and located in the Village of Tuxedo Park, New York, which Property is described as Tax Map ID numbers 101-1-6.21 and 101-1-6.22 and has received a conditional approval from the Village of Tuxedo Park Planning Board for a subdivision of nine (9) single family building lots on the Property. The lots are designated Lots 1 through 9 on a certain subdivision map known as the "Subdivision Map of Overton Mountain Farm & Camp Comfort Roads" in the Village of Tuxedo Park, Orange County, New York, prepared by The Chazen Companies, with a revision date of June 28, 2019. Five (5) of the Subdivision lots (Lots 3, 6, 7, 8 and 9) (the Extension Lots) require extensions to connect to the Village's sewer system. The estimated additional average flow from the Extension Lots is 1250 gallons per day (5 x 250 gallons per day = 1250).

The New York State Department of Environmental Conservation ("DEC") has effectively imposed a moratorium prohibiting the approval of extensions of the Village's sanitary sewer system. The DEC has stated, by email dated May 10, 2019 and letter dated May 21, 2019, that it will review and allow the approval of the requested sewer extensions for the Extension Lots if it can be demonstrated to DEC that three (3) gallons per day of inflow and infiltration ("I&I") to the Village's current sewerage infrastructure will be eliminated for each gallon per day of wastewater that the Extension Lots will contribute. The corresponding total I&I flow offset for the Extension Lots to connect to the Village sewer system at DEC's previously identified 3:1 mitigation offset would be 3,750 gallons per day.

On August 21, 2019, Mr. Overton and the Village entered into an Inflow & Infiltration Community Benefit Agreement (Agreement) which stipulated, in part:

1. The Applicant will, at its sole cost and expense, reduce I&I in the amount required by DEC and undertake all other actions necessary to satisfy the DEC to allow each and all of the Extension Lots to connect to the Village sanitary sewer system prior to the issuance of a building permit for any of the Extension Lots. The Applicant will fully fund (including any engineering, legal and other consultant costs) all I&I reduction requirements of DEC to allow the connection of the Extension Lots to the Village's sanitary sewer system. This reduction will be achieved by, at the Village's election, the Applicant either completing an I&I reduction project or making a financial contribution to an I&I reduction project as identified on the Village's I&I mitigation plan (or as otherwise mutually agreed to) as is necessary to satisfy the DEC requirements to lift the moratorium for the Extension Lots. Any such I&I mitigation is subject to the Village Board of Trustees'

reasonable approval, control and supervision and must be approved by DEC as satisfying all of DEC's requirements that are necessary to connect the Extension Lots, or any other lots identified by the DEC, to the Village's sanitary sewer system. The Applicant is required to complete the I&I mitigation to the satisfaction of DEC and the Village before a building permit will be issued to construct a single-family home on any of the Extension Lots.

2. The Village agrees to cooperate reasonably with the Applicant with respect to the identification and implementation of an I&I mitigation project as referenced herein, it being understood that many factors may affect the timing, availability and practicability of potential I&I mitigation projects and that all such potential projects are in the reasonable discretion of the Village Board of Trustees and must be approved by DEC as satisfying its requirements for the Extension Lots.
3. This Agreement shall remain in place until the issuance of building permits for all five of the Extension Lots.

The entirety of the Inflow & Infiltration Community Benefit Agreement is attached for reference.

I&I MITIGATION REIMBURSEMENT

Based on this agreement, Weston & Sampson has been asked by the Village to develop a price per gallon of I&I remediation to provide a basis of financial contribution to satisfy the terms of the Agreement. The Village has been undertaking a Phased I&I investigation and removal program. This program isolated the Village's collection system into 17 Sub-Basins. Each Sub-Basin was initially evaluated for I&I contribution on a macro level and the DEC prioritized detailed investigation and remediation of the highest contributing Sub-Basins in 2-4 Sub-Basin packages. The first Sub-Basins evaluated and remediated were 14 & 15, followed by Sub-Basins 2, 10, & 13. The Village is currently in the midst of evaluating Sub-Basins 5, 8, 16 & 17.

To develop approximate current cost estimates, Weston & Sampson evaluated the costs associated with the most recently completed investigation and construction of Sub-basins 2, 10, & 13 to determine the overall cost per gallon of I&I removed based on the following methodology outlined below:

$$I\&I \text{ Mitigation Fee} = \text{Cost to Identify 1 GPD I\&I} + \text{Design and Construction Cost to Remove 1 GPD I\&I}$$

With:

$$\text{Cost to Identify 1 GPD I\&I} = \text{Weston \& Sampson Contract Value for Investigation Project} / \text{Sum of Pre-Con Flow Iso Average Weir Readings}$$

And:

$$\text{Design and Construction Cost to Remove 1 GPD I\&I} = (\text{W\&S Design and CS Contract Yr 1} + \text{W\&S Design and CS Contract Yr 2} + \text{Winning Bid Yr 1} + \text{Winning Bid Yr 2}) / (\text{Sum of Pre-Con Flow Iso Weir Readings} - \text{Sum of Post-Con Flow Iso Weir Readings})$$

The results of the Sub-Basin 2, 10, & 13 analysis is summarized within Table 1 below:

Table 1 - I&I Remediation Costs - Previously Completed Work			
	Item	Sub-Basins 2 & 10	Notes
Costs	Investigation	\$99,600.00	2012
	Engineering	\$139,400.00	Year 1 (2015) & Year 2 (2018)
	Construction	\$564,402.16	Year 1 (2016) & Year 2 (2022)
	Total	\$803,402.16	Actual
I&I	Total Identified (GPD)	\$43,852.00	2014
	Total Removed (GPD)	\$39,848.00	2021
Total Investigation Cost per Gallon		\$2.50	Actual
Total Removal Cost Per Gallon		\$17.66	Actual
Total Remediation Fee		\$20.16	Actual

The cost to identify I&I for this project was **\$2.50** and the cost to remove was **\$17.66**, for a total I&I mitigation fee of **\$20.16**.

The DEC has stipulated that the funding must be to remove I&I still existing within the system. The Village has submitted the Sub-Basins 5, 8, 16, & 17 I&I investigation report to the DEC for review. This report contains the I&I findings, repair recommendations, and associated construction cost estimates. Upon acceptance by the DEC, the repairs will be designed and constructed. At the end of construction, post-construction flow isolation will be conducted to determine the effective removal of I&I. The Sub-basin 5, 8, 16, & 17 project has been conceptually agreed upon by Mr. Overton to be used to satisfy I&I offset funding requirement stipulated within the Inflow & Infiltration Community Benefit Agreement. Below is a table of actual and projected costs and I&I removal for Sub-basins 5, 8 16, & 17.

Table 2 - I&I Remediation Costs - Current Project			
	Item	Sub Basins 5, 8, 16, & 17	Notes
Costs	Investigation	\$174,500.00	Actual - April 2023
	Engineering	\$140,000.00	Projected
	Construction	\$393,156.00	Projected - Engineer's Cost Estimate
	Total	\$707,656.00	Projected
I&I	Total Identified (GPD)	\$161,268.00	Actual
	Total Removed (GPD)	\$83,259.00	Projected - See Table 3
Total Investigation Cost per Gallon		\$2.10	Projected
Total Removal Cost Per Gallon		\$6.40	Projected
Total Remediation Fee		\$8.50	Projected

Table 3 below summarizes the I&I removal assumptions that we used to develop the estimate.

Table 3 - Sub-Basin 5, 8, 16, & 17 Projected I&I Removal			
	Identified	Removable	Notes
Flow Isolation	154,002	77,001	<i>50% Removal Assumed</i>
MH Inflow	5,250	5,250	<i>100% Removal Assumed</i>
MH Infiltration	1,008	504	<i>50% Removal Assumed</i>
CCTV Infiltration	1,008	504	<i>50% Removal Assumed</i>
Total	161,268	83,259	

Since the initial value of I&I within the Sub-Basins 5, 8, 16 & 17 was higher than the prior Sub-basins 2, 10, & 13 work but the costs were similar, the cost per gallon is reduced.

As noted in the prior section, reimbursement for 3,750 gallons of I&I needs to be provided. Since the final total cost for removal of I&I within Sub-basins 5, 8, 16 & 17 is unknown, but projected to be lower than Sub-Basins 2, 10 & 13, we recommend that the Village request an escrow payment be provided using the Sub-basins 2, 10, & 13 remediation value, as a conservative estimate, and make a final adjustment once the actual totals are realized. This would result in an initial request of **\$75,606.26** ($\$20.16 \times 3,750$ gpd).

INFLOW & INFILTRATION (I/I) AND COMMUNITY BENEFIT AGREEMENT

This is made this 21st day of August, 2019, between and among **MR. JOHN OVERTON**, a landowner with a mailing address of 14 Manzanita Place, Mill Valley, California 94941 ("Overton" or the "Applicant") and the **VILLAGE OF TUXEDO PARK** (the "Village"), a municipal corporation duly formed under the laws of New York State, with offices at 80 Lorillard Road, Tuxedo Park, New York (Overton and the Village together shall hereinafter be referred to as the "Parties," and this Agreement, the "Agreement").

WITNESSETH:

WHEREAS, Overton is the owner in fee of certain real property comprising 69.34 acres $\pm$ and located in the Village of Tuxedo Park, Orange County, New York, which Property is described as Tax Map ID numbers 101-1-6.21 and 101-1-6.22 (the "Property"); and

WHEREAS, Overton has received a conditional approval from the Village of Tuxedo Park Planning Board for a subdivision of nine (9) single family building lots on the Property, which lots are designated Lots 1 through 9 on a certain subdivision map known as the "Subdivision Map of Overton Mountain Farm & Camp Comfort Roads" in the Village of Tuxedo Park, Orange County, New York, prepared by The Chazen Companies, with a revision date of June 28, 2019, a copy of which is annexed hereto as Exhibit "A" (the "Subdivision"); and

WHEREAS, the New York State Department of Environmental Conservation ("DEC") has effectively imposed a moratorium prohibiting the approval of extensions of the Village's sanitary sewer system; and

WHEREAS, five (5) of the Subdivision lots (Lots 3, 6, 7, 8 and 9) (the "Extension Lots") require extensions to connect to the Village's sewer system; and

WHEREAS, the estimated additional average flow from the Extension Lots is 1250 gallons per day (5×250 gallons per day = 1250); and

WHEREAS, DEC has stated, by email dated May 10, 2019 and letter dated May 21, 2019, that it will review and allow the approval of the requested sewer extensions for the Extension Lots if it can be demonstrated to DEC that three (3) gallons per day of inflow and infiltration ("I/I") to the Village's current sewerage infrastructure will be eliminated for each gallon per day of wastewater that the Extension Lots will contribute; and

WHEREAS, the corresponding total I/I flow offset for the Extension Lots to connect to the Village sewer system at DEC's previously identified 3:1 mitigation offset would be 3,750 gallons per day; and

WHEREAS, the Village has undertaken studies and shall continue to study potential projects to reduce I/I to the Village sewer system; and

WHEREAS, in order to ensure that the Extension Lots have access to public wastewater treatment the Planning Board intends to condition its approval of the Subdivision on the Applicant entering into an agreement with the Village Board of Trustees concerning I/I mitigation (but in which Agreement need not identify a specific I/I project) as a condition precedent to the signing of the plat; and

WHEREAS, the parties hereto are desirous of developing such an agreement; and

WHEREAS, the Applicant and the Village Board of Trustees have agreed that a community benefit fee would be appropriate, in lieu of a recreation fee in accordance with N.Y. Village Law § 7-730(4).

NOW THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree, as follows:

1. The Applicant will, at its sole cost and expense, reduce I/I in an amount required by DEC and undertake all other actions necessary to satisfy the DEC to allow each and all of the Extension Lots to connect to the Village sanitary sewer system prior to the issuance of a building permit for any of the Extension Lots. The Applicant will fully fund (including any engineering, legal and other consultant costs) all I/I reduction requirements of DEC to allow the connection of the Extension Lots to the Village's sanitary sewer system. This reduction will be achieved by, at the Village's election, the Applicant either completing an I/I reduction project or making a financial contribution to an I/I reduction project as identified on the Village's I/I mitigation plan (or as otherwise mutually agreed to) as is necessary to satisfy the DEC requirements to lift the moratorium for the Extension Lots. Any such I/I mitigation is subject to Village Board of Trustees' reasonable approval, control and supervision and must be approved by DEC as satisfying all of DEC's requirements that are necessary to connect the Extension Lots, or any other lots identified by the DEC, to the Village's sanitary sewer system. The Applicant is required to complete the I/I mitigation to the satisfaction of DEC and the Village before a building permit will be issued to construct a single-family home on any of the Extension Lots.

2. The Village agrees to cooperate reasonably with the Applicant with respect to the identification and implementation of an I&I mitigation project as referenced herein, it being understood that many factors may affect the timing, availability and practicability of potential I&I mitigation projects and that all such potential projects are in the reasonable discretion of the Village Board of Trustees and must be approved by DEC as satisfying its requirements for the Extension Lots.

3. This Agreement shall remain in place until the issuance of building permits for all five of the Extension Lots.

4. Within 60 days of the Planning Board adopting a Resolution of Approval, with conditions, of the Subdivision, Overton shall pay to the Village a community benefit fee of \$13,500.00 (\$1,500.00 per lot), in lieu of the Planning Board engaging in a reservation of parkland analysis and potential assessment of a fee to be determined by the Village Board of Trustees, all in accordance with N.Y. Village Law § 7-730(4).

5. This Agreement may be executed in identical counterparts, all of which, when taken together, shall constitute one and the same Agreement.

6. This Agreement may not be assigned except by a written agreement executed by the all parties in interest.

7. Overton (including his heirs, successors in interest, and permissible assigns) and the Village (including its permissible assigns) are the only Parties to this Agreement and are the only ones who may enforce its terms.

8. This Agreement is binding on the parties hereto and their respective heirs, successors and permissible assigns. The rights and obligations of the parties and their respective heirs, successors and permissible assigns shall be subject to and governed by this Agreement, which constitutes the entire agreement between the parties on its subject matter and supersedes the terms and conditions of any and all prior discussions, understandings, writings, agreements, promises, warranties, representations and the like, all of which are deemed fully merged into this Agreement. This Agreement shall be filed with the Orange County Clerk to ensure that all successors in interest are on notice of these obligations.

IN WITNESS WHEREOF, Overton and the Village have duly executed this Inflow & Infiltration (I/I) and Community Benefit Agreement as of the date first above set forth.

Dated: Sept 19, 2019

JOHN OVERTON

VILLAGE OF TUXEDO PARK

By: [Signature]

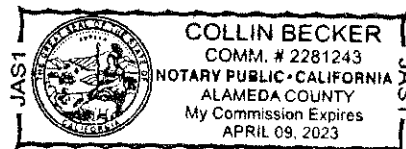
MAYOR

California
STATE OF ~~NEW YORK~~)
COUNTY OF Alameda) s.s.:

On this 19 day of September, 2019 before me, the undersigned, personally appeared JOHN OVERTON, personally known to me to or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual executed the instrument.

[Signature]
Notary Public

STATE OF NEW YORK)
COUNTY OF) s.s.:



On this 19 day of AUGUST, 2019 before me, the undersigned, personally appeared DAVID C. McFADDEN, Mayor of the VILLAGE OF TUXEDO PARK, personally known to me to or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument the person upon behalf of which the individual acted executed the instrument.

[Signature]
Notary Public

BRIAN D. NUGENT
Notary Public, State of New York
No. 02NU6122161
Qualified in Rockland County
Commission Expires February 7, 2021

