

CITY OF VINELAND

RESOLUTION NO. 2018- 123

RESOLUTION AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT AND WITHDRAWAL OF HEARING REQUEST BETWEEN THE CITY OF VINELAND AND NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

WHEREAS, the City of Vineland owns and operates a municipal separate storm sewer system in Vineland which is authorized by the New Jersey Department of Environmental Protection (NJDEP) under Municipal Stormwater Master General Permit NJ10141852 (Permit); and

WHEREAS, in accordance with the terms of said permit the City of Vineland is entrusted with enforcement of the terms of said permit, including the Residential Site Improvement Standards (RSIS); and

WHEREAS, on October 13, 2004, the Planning Board of the City of Vineland granted final major subdivision approval to the developer, Foxmoor Estates, Block 386, Lots 3 and 10.01 and Block 391 Lot 9; and

WHEREAS, it was learned after the completion of the major subdivision approvals and buildout of the stormwater basins that the engineering design submitted by the developer was faulty and inaccurate causing the basins to fail, in violation of the RSIS and the City issued a stop work order which was lifted after the developer submitted an emergency action plan for the short term relief required, however no final repair was instituted by the developer which would require action to address the stormwater control deficiencies; and

WHEREAS, NJDEP issued a Notice of Violation (NOV) and Administrative Order on November 15, 2012 to the City alleging a failure to comply with the Permit and an Administrative Order from which the City of Vineland requested a hearing; and

WHEREAS, the parties wish to resolve their differences without further cost of litigation by way of a settlement agreement which would require the City to agree to pursue enforcement of the RSIS and Stormwater Control Ordinance and withdraw with prejudice the request for an administrative hearing in the Office of Administrative Law, Docket ECE 04293-2013.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Vineland that the Mayor and Clerk are authorized to execute the Stipulation of Settlement and Withdrawal of Hearing Request With Prejudice in the form attached hereto and made a part hereof.

Adopted:

President of Council

ATTEST:

City Clerk

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OFFICE OF ADMINISTRATIVE LAW

DOCKET NO. ECE 04293-2013 S
AGENCY NO. PEA 120001-167095

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Petitioner,

v.

CITY OF VINELAND,

Respondent.

Administrative Action

STIPULATION OF SETTLEMENT AND
WITHDRAWAL OF HEARING
REQUEST WITH PREJUDICE

This Stipulation of Settlement and Withdrawal of Hearing Request With Prejudice (hereinafter "Stipulation") is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "Department" or "DEP") by N.J.S.A. 13:1D-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and duly delegated to the Chief, Southern Bureau of Water Compliance and Enforcement, pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The City of Vineland (“Vineland”) owns and operates a municipal separate storm sewer system in Vineland, Cumberland County, New Jersey.
2. The Department issued authorization NJ0152675 under the Tier A Municipal Stormwater Master General Permit NJ0141852 (“Permit”) to Vineland, effective April 1, 2004, authorizing all new and existing stormwater discharges to surface water and groundwater from its system.
3. Vineland’s authorization under the Permit was renewed effective March 1, 2009, and again on [redacted].
4. Pursuant to Part I, Section F.3 of the Permit, Vineland is required to prevent or minimize water quality impacts, and implement and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb one acre or more. Specifically, under Section F.3.c.i, Vineland shall ensure that any residential new development projects that are subject to the Residential Site Improvement Standards (“RSIS”) for stormwater management, N.J.A.C. 5:21-7, comply with those standards.
5. Under Section F.3.c.iv of the Permit, Vineland shall also ensure adequate long-term operation and maintenance of stormwater best management practices (“BMPs”) on property not owned or operated by the Vineland.
6. Under the stormwater BMPs, stormwater infiltration basins must be designed to drain fully within 72 hours of a rainfall event and must be designed with a minimum permeability rate of 1 inch per hour.

Commented [AAL1]: To be filled in when the permit re-authorization is issued under the new MS4 permit

7. The BMPs also require a minimum two-foot separation between the bottom of an infiltration basin and seasonal high water table (“SHWT”) based upon the most conservative estimate of SHWT obtained from soil profiles at the basin location.

8. In some instances, two feet of separation may be insufficient to ensure proper basin functioning if a high water table causes groundwater “mounding” beneath the basin that prevents the basin from draining. Thus, a mounding analysis is required by N.J.A.C. 7:8-5.3(a)2iv to determine if a separation greater than two feet is warranted by site-specific conditions.

9. Adverse hydraulic impacts of the development on neighboring property owners must be considered and eliminated by the stormwater management design.

10. On October 13, 2004 by Resolution No. 5250 Vineland granted final major subdivision approval to the approximately 30-acre new residential development called Foxmoor Estates, located at Block 386, Lots 3 and 10.01, and Block 391, Lot 9 off North Brewster Road in the City of Vineland.

11. On June 14, 2006, the City’s Engineering Department notified the developer of Foxmoor Estates that review of the development’s perfected stormwater management plans was complete and the plans were approved for building.

12. The stormwater management design proposed for Foxmoor Estates consisted of three infiltration basins, Basins A, B, and C, and three groundwater recharge areas, collectively designed to capture and infiltrate all stormwater generated on the majority of the site for 2-year, 10-year, and 100-year storms.

13. However, the approved stormwater management plans were premised on faulty data submitted by the applicant and as a consequence would did not satisfy the stormwater BMPs or the governing regulations in several key respects.

14. The design engineer used an incorrect permeability rate in the design of the infiltration basins and the recharge areas. The City subsequently determined that the effective infiltration rate for the area is approximately 0.2 inches per hour.

15. The design engineer also determined SHGT incorrectly for Basin A, and improperly used an assumed SHGT elevation for Basin C and the recharge areas, resulting in less than the required minimum two feet of separation between the basin bottoms and SHGT.

16. The design engineer did not perform a mounding analysis for any of the basins or recharge areas.

17. As a result, the infiltration basins did not drain within 72 hours after large rain events.

18. Basins A and B were designed with overflow weirs facing neighboring properties that would release stormwater if levels in the basins rose to the height of the basin berms. After construction, the constructed weir heights were found to be too low and were raised.

19. In 2010, the Department and the City received complaints that overflow from the infiltration basins was causing flooding on neighboring residential properties, and that certain homeowners in the new development were experiencing basement flooding.

20. On February 10, 2010 the City agreed to issue a stop-work order to the developer and to develop short- and long-term plans for resolution of the stormwater management deficiencies at Foxmoor Estates.

21. Vineland issued Stop Construction Orders to Tradition Homes on February 10, 2011.

22. After the stop work orders issued, on February 14, 2011 the City Engineer sent a letter to the developer describing the outstanding deficiencies of the stormwater management system at Foxmoor Estates and recommending a re-evaluation of the entire stormwater management design.

23. On March 1, 2011, the engineering firm retained by the developer submitted an Emergency Action Plan for Short Term Relief Measures to the City.

24. The City lifted the Stop Construction Orders after accepting the Emergency Action Plan and directing the developer to implement it.

25. However, to date neither the developer nor the City has developed a long-term plan for resolution of the stormwater deficiencies at Foxmoor Estates. The City contends that development of a long-term plan is the sole responsibility of the developer. As described and agreed to hereafter, City commits to diligently pursue enforcement of the RSIS, the BMPs, and the City's Stormwater Control Ordinance against the developer and other responsible parties.

26. Based on the facts set forth in these FINDINGS, on October 6, 2011 the Department issued a Notice of Violation ("NOV") to Vineland, citing Vineland's failure to comply with the Permit, specifically Part I Section F.3.c.ii and iv. The NOV required Vineland to submit a proposal and implementation schedule within fifteen days to bring

Independence Walk into compliance with the RSIS for stormwater control, N.J.A.C. 5:21-7, and to ensure long-term operation and maintenance of BMPs on property not owned or operated by Vineland.

27. Since October 6, 2011, the City has not submitted either a long-term plan or a timeframe for implementation as required by the NOV.

28. On November 15, 2012, the Department issued an Administrative Order to Vineland alleging failure to ensure compliance with the RSIS and the Department's stormwater management rules at N.J.A.C. 7:8 by approving the design and construction of the stormwater management system at Independence Walk.

29. Vineland requested an administrative hearing to challenge the Administrative Order on December 5, 2012, which request the Department granted on December 7, 2012. This matter was transmitted to the Office of Administrative Law for determination as a contested case.

30. On April 26, 2016, while this administrative matter was pending, Superior Court Judge Anne McDonnell entered an order in the related matter of Bokma v. Tradition Homes at Vineland, LLC, et al., CUM C-13-10, that "Judgment is entered declaring the City of Vineland the responsible entity for enforcement of its storm water management plan and RSIS compliance" at the Foxmoor Estates development that is also the subject of this matter.

31. On April 7, 2017, the City filed a civil complaint against Tradition Homes at Vineland, LLC, and the Independence Walk Homeowner' Association ("HOA") in Cumberland County Superior Court, Law Division (CUM L-264-17). The Complaint seeks specific performance by Tradition Homes LLC to "take all actions necessary to

bring the three basins at the Independence Walk development into full compliance with the Residential Site Improvement Standards, the BMPs, and [the City's] Stormwater Control Ordinance." The Complaint also seeks to hold the "owners, parent corporations, successors, and controllers of Tradition Homes" liable for compliance. The HOA is named as an indispensable party under Rule 4:28-1(a), but the Complaint does not seek specific relief against the HOA.

32. In the interest of resolving the violation alleged in the Administrative Order without further costs of litigation, the parties have agreed to settle this case. This Stipulation has been agreed to by the parties and sets forth the disposition of this matter.

THEREFORE, IT IS HEREBY ORDERED AND AGREED AS FOLLOWS:

33. In full settlement of the matters described in the Administrative Order, the City agrees to diligently pursue enforcement of the RSIS, the BMPs, and the City's Stormwater Control Ordinance against Tradition Homes, LLC, and other responsible parties identified in the course of the Vineland v. Tradition Homes LLC et al. matter (CUM L-264-17). Such enforcement includes litigation of the Superior Court action, and may also include pursuit of additional administrative remedies available to the City.

34. This Stipulation is a final agency order and is enforceable as set forth in N.J.S.A. 58:10A-1 et seq.

35. The City hereby withdraws, with prejudice, its request for an administrative hearing regarding the Administrative Order, which was docketed in the Office of Administrative Law as Docket ECE 04293-2013, and waives any right it may have to an administrative hearing on the Administrative Order.

36. By signing this Stipulation, the City agrees not to further contest the Administrative Order or the terms and conditions of this Stipulation.

37. This Stipulation relates only to the violations alleged in the Administrative Order and is not a settlement of any other administrative or judicial action arising from such conduct. The Department is not barred or precluded from bringing any other enforcement or penalty assessment actions that it may deem appropriate which it is entitled to bring under the laws of the State of New Jersey.

38. Nothing in this Stipulation is intended, nor shall be construed, to operate in any way to resolve any ~~criminal~~ other liability, if any, of the City arising from the findings described herein.

39. The Department reserves the right to require that additional measures be taken by the City should the Department determine that such measures are necessary to protect human health and/or the environment. Except as may be specifically provided herein, nothing in this Stipulation shall constitute a waiver of any statutory or regulatory right of the Department pertaining to any of the laws of the State of New Jersey.

40. This Stipulation has been approved by the Commissioner of the Department, through the authority delegated to the Acting Director of the Division of Water and Land Use Compliance & Enforcement, and shall be deemed the final decision in this case pursuant to N.J.A.C. 1:1-19.1(c) and -19.1(d).

41. This Stipulation is binding on the City, its successors, and assigns. By signing this Stipulation, the undersigned representative of the City certifies that he is authorized to sign this Stipulation on behalf of the City and to bind the City to the terms and provisions herein.

42. This Stipulation becomes effective on the date on which it is signed by the Department of Environmental Protection.

CITY OF VINELAND

DATE: _____

BY: _____
[-----]
[-----]

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

DATE: _____

BY: _____
[-----], Acting Director
Div. of Water & Land Use Enforcement