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September 14, 2020

Supervisor Frank Demayo
Town Board Members
Town of Liberty Board
119 North Main Street
Liberty, New York 12754

**Re: Public Comments on Swan Lake Waste Water Treatment Plant Upgrade
Request for Extension of Public Comment Period**

Dear Supervisor and Members of the Board:

I write on behalf of a number of Swan Lake residents, able and active members of the community, that are seeking to contribute to the public record in a timely and meaningful way regarding the Town Board's decision to grant approvals to pursue a substantial \$20 million upgrade and expansion of the capacity of the existing Swan Lake/ Briscoe Road Sewer District Waste Water Treatment Plant. The Town indicated that the public comment period would end on September 14, 2020. The questions presented by this decision are as much about what the community is and what it will become. Community residents who are rightly concerned about protecting clean water are seeking information necessary to participate in the public hearing process but have not yet gotten full access to it. Several Freedom of Information of Law requests remain unanswered. The question of whether to authorize such an increase is significant, and about far more than sewer issues because it will enable community change in dramatic ways by doubling the amount of development possible in the relatively small Swan Lake District. This will impact community character, community resources, environmental quality, and quality of

life – every aspect of daily existence for those that call Swan Lake their home. Based upon the pieces of the record the public has been able to review, as set forth in this letter, it does not appear that the Town Board has been properly informed about the magnitude of impact this decision will have on the community.

The law requires the Town Board to determine that approving the sewer district increase is in the “public interest.” This is a solemn responsibility and doing so requires a full consideration of the implications to the public of this decision. The significant growth-inducing aspects of a decision to triple the capacity of the existing system will enable almost a doubling of the size of the community. These impacts, alone, should be properly addressed in a full environmental review – where options and impacts can be fully considered in a formal process. For these reasons, we request that further consideration of the sewer district proposal be tabled, the FOIL response to requests for Town documents be expedited, and the public comment period be extended for no less than 45 days. The public interest demands no less.

POINT I:

**THE TOWN HEARING PROCESS MUST ALLOW THE PUBLIC ITS
RIGHT TO BE MEANINGFULLY HEARD ON THIS IMPORTANT ISSUE.**

The Town indicated that it is proceeding under Town Law § 202-b which would authorize such actions “whenever it shall determine it to be in the public interest, after a public hearing.” Rarely are communities such as this District confronted by a decision by their elected officials that has the potential to upend and radically change the nature of a community as was the proposal presented in the public hearing on August 31, 2020 for changes ranging from \$10 -

20 million for sewer expansion. The presentation advocated for the full 20 million build-out. Such a public interest determination must necessarily include a budget and details for each option being considered by the Town Board.

There are currently 371 service connections with a capacity of 425,000 gallons per day from the facility according to the Town of Liberty Swan Lake Sewer Upgrade, Public Hearing, August 31, 2020 presentation. Town officials have touted to the community that the main purpose of the significant increase is to increase development - approved, likely, and potential (for both in and out of the district). The proposed increase to the sewer district's user capacity would be a dramatic almost threefold increase and would result in an attendant increase in development and impacts to the environment. Existing District user capacity is 365,000 gallons per day, which would increase to 960,000 gallons per day. Some estimate that this increase would about double the existing residences in the district because the legal restrictions prohibiting development due to lack of sewer capacity would no longer apply after the facility is complete. Although the Town presented some specifications and capabilities of the increase in sewer district capacity, there was no discussion or analysis of what this means to the community, it's environment, or changes to the everyday quality of life for those who live in the Swan Lake sewer district.

While questions about the future of the sewer treatment plant have been a concern for a number of years, the public is now faced with understanding and commenting on a proposal that was presented to the public on August 31, 2020. Thus, with so much on the line, it is important to revisit the purposes of public hearings like this one. The New York Department of State has answered that query as follows, "What Are Public Hearings? — A public hearing is an official proceeding of a governmental body or officer, during which the public is accorded the right to be

heard.” *Conducting Public Meetings and Public Hearings*, Division of Local Government Services, New York Department of State, 2012 at 6. The right to be heard, as a matter of common sense and necessity, requires members of the public to be informed about the issue they are commenting on, especially one of such public interest.

Freedom of Information Law Requests for Government Records Unanswered.

In order to fully inform their comments, members of the community have made a number of Freedom of Information Law requests to various state agencies regarding issues associated with the sewer district, and to the Town for additional information regarding its review. *See* Article 6 of the Public Officers Law. These requested records have not yet been provided, but will provide necessary and vital information to inform comments on the funding needed for the significant increase in capacity. On the minds of many people of conscience is what is actually needed to address issues at the current sewer treatment plant – a question of adequate repair for environmental compliance versus dramatic expansion of sewer district capacity. A way that the issue has been framed is that the \$20 million sewer district expansion is necessary for compliance with the Clean Water Act, but that does not appear to be the case. The compliance problems of the current system, minimally, need to be addressed. The possible issue of a deadline for public financing options should also not unduly influence this decision – the issue of the sewer district has been of concern for at least two years, and notably, the Town has sought an extension of time for New York State funding for water infrastructure which will push the deadline for any such Town actions beyond September 30, 2020. Nonetheless, community residents assert that there is no justification to rush such a decision that will admittedly impact the residents for the next 20 to 30 years and beyond.

POINT II.

ENVIRONMENTAL ISSUES ARE AT THE HEART OF THE NEED FOR ALL ISSUES WITH THE SEWER DISTRICT EXPANSION PLAN TO BE FULLY CONSIDERED AS PART OF THE TOWN BOARD'S DECISION.

It appears that the Town Board did not anticipate the potentially significant environmental concerns and issues associated with a decision regarding either a \$10 or a \$20 million sewer improvement proposal. Swan Lake is one of the few remaining lakes of such water quality, purity, and biodiversity in Sullivan County. The State Environmental Quality Review Act (“SEQRA”) is a significant part of the review process necessary for projects like the proposed Sewer District expansion. *See* Article 8 of the Environmental Conservation Law; DEC implementing regulations at 6 NYCRR Part 617. Indeed, review of the Town Board’s timeline for this project (beginning in April 2020 and extending through project construction completion in August 2023), does not even contemplate the need for environmental review, yet acknowledges the initial steps of the SEQRA process. While we have been unable to yet obtain the SEQRA record, Town records indicate that a SEQRA determination of significance was made on August 31, 2020. *See* 6 NYCRR § 617.7. The Town Record further indicates that such determination was to be filed to the Environmental Notice Bulletin on September 2, 2020. It does not appear that such filing was submitted for either September 2 or for September 9, 2020.

Even a cursory review shows that the Town, in presenting a one option solution for the Sewer District, is walking into many environmental concerns and issues associated with such a substantial increase in the size of user capacity and dramatically increasing the size of the community that the increased sewer district capacity will allow. These types of potentially

significant environmental concerns are precisely the type of concerns that SEQRA is intended to address. SEQRA only requires a determination that a proposal “may include the potential for at least one significant adverse environmental impact” for a full Environmental Impact Statement Review to be required. 6 NYCRR § 617.7(a)(1).

SEQRA also sets forth the criteria for a determination of significance of a proposal, that would require a full review, which include: a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise, impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character, a major change in the use of either the quantity or type of energy and, among others, a substantial change in the use or intensity of use of land, including agricultural, open space or recreational resources, or in its capacity to support existing uses. 6 NYCRR § 617.7(c). For this project, the potentially significant adverse environmental impacts of almost a tripling of daily user capacity in sewer district capacity in the Swan Lake District, and the associated almost doubling of the size of the community are myriad and manifest. The environmental concerns include negative impacts to the watershed, increased development, increased noise, increased traffic, increased energy use, impacts to existing community character, and increased stress on limited Town resources and infrastructure. A clear and concerning element to the proposal is the Town’s aggressive support of the dramatic increases of development made possible by the \$20 million expansion that will be enabled by the proposal. Finally, such an environmental review process will require the consideration of alternatives – including more than just a dramatically increased sewer district capacity to achieving environmental compliance at the facility, and the steps to be taken to minimize significant adverse environmental impacts of the project.

The legal requirements of SEQRA, notably, are mandatory and not discretionary. When the record of the SEQRA decisionmaking is made available to the public, and we request that the FOIL request response be expedited, there may be a need to revisit the August 31, 2020 decision.

POINT 3:
THE SEWER DISTRICT’S ENVIRONMENTAL COMPLIANCE
ISSUES MUST BE ADDRESSED RESPONSIBLY.

Town residents are concerned that the Sewer District meet all of the requirements of the Clean Water Act and related state law and regulations – this is the purpose of these comments. Clean water is important for the community and necessary for life itself. The question facing the community is what upgrades or improvements are actually necessary to achieve compliance improvements versus significant and dramatic expansion of sewer district capacity.

On September 10, 2020, the United States Environmental Protection Agency (“USEPA”) gave the district an “Early Warning” notice that it may be at risk of Significant Non-Compliance but did not begin enforcement compliance beyond the warning letter. This notice underscores community concerns about the current facility’s ability to meet discharge limits under the Clean Water Act. 33 USC 1251, *et seq.* These concerns in the community about the facility and possible future non-compliance have existed for a number of years.

Discharges into the waters of the United States, such as from sewage treatment facilities, are prohibited unless made under permit requirements. In New York, these permits are called State Pollutant Discharge Elimination System (“SPDES”) permits. ECL Article 17, Title 8; 6 NYCRR Sec 750 *et seq.* The permit discharge limitations, often expressed in numerical limits, are set for different chemicals that can be released back into lakes, streams, rivers, and other

waterways after treatment. These releases are reported monthly to New York State and to USEPA officials in the form of Discharge Monitoring Reports (“DMRs”). This system is the backbone of clean water protection in our State and Country. The DMRs for the facility are the basis for the USEPA warning.

The “Early Warning” from federal environmental officials emphasizes what community members have been saying and emphasizing in these comments – they seek and need clean water compliance and they need to achieve it responsibly. This must be done by the Town selecting the best solution - to address the problems and make sure the water remains clean. The solution selection requires the public and the Town Board to fully understand what the solution will do and more importantly, what it will mean to the look, feel, and nature of their community. There is nothing under state or federal law requiring the Town to triple the capacity of the existing district to meet clean water legal requirements. The Town’s decision on the \$20 million upgrade proposal must be considered in light of the law (it is not required at this capacity) and in light of the impacts to the community it will enable (increased development, environmental impacts, impacts to quality of life).

What is clear is that under the current Town project timeline the construction of the newly expanded facility will not be complete until 2023. The public, now, needs the time and ability to provide comment on this important compliance question.

**CONCLUSION: THERE IS A CLEAR NEED FOR ADDITIONAL TIME FOR
PUBLIC COMMENT ON THE \$20 MILLION SEWER DISTRICT EXPANSION PROPOSAL**

For these reasons, the public comment period should be held open for no less than 45 additional days. The extension will allow meaningful comments to be submitted into the record.

The decision of the Town Board must be fully informed, with active public participation, because it has the potential to reshape the community in profound ways. As discussed above, the goal of Clean Water Act compliance for the facility, indeed clean water itself, is an obligation that residents are aware must be met. Nonetheless, the answer to the purported problems of the facility – a \$20 million dollar expansion - will be an ill informed all or nothing proposition without more time to develop the record and the facts. The public needs time to gain access to the government records they have already requested to more fully understand the environmental implications of the proposals.

Thank you for your consideration of these comments, and for extending the public comment timeframe.

Respectfully submitted,

John L. Parker

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