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June 29, 2010

Clerk, Superior Court, Law Division
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860

Re: *Friends of Lake Neepaulin, Inc. v. Township of Wantage, et. al.*
Docket No. SSX-L-616-09
Our File No. 3020-1031

Dear Sir/Madam:

Enclosed please find an original and one copy of the following:

1. Notice of Motion for Reconsideration Concerning Relief from Judgment, returnable Friday, July 23, 2010;
2. Certification of Mailing;
3. Certification of Counsel in Support of Motion for Reconsideration; and
4. Letter Brief.
5. Proposed form of Order.

Kindly file and return the additional copy marked "filed" in the self-addressed, stamped envelope provided. Also, please bill our Account No. 140063 for the Court's filing fee.

By copy of this letter, I am this day serving a copy of the within pleadings upon the trial court and my adversary. Thank you for your courtesy.

Very truly yours,



Michael S. Garofalo

MSG:wab

Sent via Overnight Mail w/enclosure

cc: Hon. B. Theodore Bozonelis, AJSC, sent via overnight mail
Eileen Born, Esq., sent via overnight mail
Edward J. Trawinski, Esq., Attorney for Plaintiff, sent via overnight mail

LADDEY, CLARK & RYAN, LLP

Attorneys-at-Law

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Sparta, New Jersey 07871-2600

(973) 729-1880

Attorneys for Defendant, Township of Wantage, et. al.

Friends of Lake Neepaulin, Inc.,

Plaintiff,

-vs-

Township of Wantage, Mayor and
Committee of Township of Wantage,
Tax Assessor of Township of Wantage,
Tax Collector of Township of Wantage,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SUSSEX COUNTY

Docket No. SSX-L-616-09

CIVIL ACTION

**NOTICE OF MOTION FOR
RECONSIDERATION CONCERNING
RELIEF FROM FINAL JUDGMENT**

To: Hon. B. Theodore Bozonelis, AJSC
Morris County Courthouse
Washington and Court Street
P.O. Box 910
Morristown, NJ 07963-0910

Edward J. Trawinski, Esq.
Schenck, Price, Smith & King, LLP
220 Park Avenue
P.O. Box 991
Florham Park, NJ 07932

Eileen Born, Esq.
Dolan & Dolan
53 Spring Street
P.O. Box D
Newton, NJ 07860

PLEASE TAKE NOTICE that the undersigned attorney for the
Township of Wantage will move before the Superior Court of New Jersey,

Law Division, Sussex County, on Friday, July 23, 2010, at 9:00 A.M. in the forenoon or as soon thereafter as counsel may be heard, for an Order (1) reconsidering the Judgment entered on June 8, 2010, requiring the Township of Wantage to implement a special tax assessment for the repayment of a Dam Restoration loan in favor of Plaintiff, and (2) for such other relief as the Court may deem just.

PLEASE TAKE FURTHER NOTICE that the undersigned shall rely on the annexed Certification of Counsel and letter brief. A proposed form of Order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that the movant requests oral argument if the motion is opposed.

STATUS OF CASE: A bench trial of this matter was heard before the Hon. B. Theodore Bozonelis, J.S.C. on May 14, 2010. The Court entered Judgment in favor of Plaintiff on June 8, 2010.

Pursuant to Rule 1:6-2(a), a copy of the proposed Order is annexed hereto and the motion shall be deemed uncontested unless responsive papers are timely filed and served stating with particularity the basis of the opposition to the relief sought.

LADDEY, CLARK & RYAN, LLP
Attorneys for Defendant, Township of
Wantage

By: 

Michael S. Garofalo

Dated: June 29, 2010

CERTIFICATION OF MAILING

I hereby certify that an original and one copy of the within Motion with supporting Certification and Order were served upon the Clerk of the Superior Court, Law Division, Sussex County at Newton, New Jersey. I hereby further certify that a copy of the within pleadings were served (via the means indicated) upon the following:

Honorable B. Theodore Bozonelis, AJSC
Morris County Courthouse
Washington and Courts Streets
PO Box 910
Morristown, NJ 07963-0910
Sent via overnight mail

Edward J. Trawinski, Esq.
Schenck, Price, Smith & King, LLP
220 Park Avenue
P.O. Box 991
Florham Park, NJ 07932
Sent via overnight mail

Eileen Born, Esq.
Dolan & Dolan
53 Spring Street
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Newton, NJ 07860
Sent via overnight mail

LADDEY, CLARK & RYAN, LLP
Attorneys for Defendant, Township of
Wantage

By: 
Wendy Brick, Legal Assistant

Dated: June 29, 2010

LADDEY, CLARK & RYAN, LLP

Attorneys-at-Law

60 Blue Heron Road, Suite 300

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Attorneys for Defendant, Township of Wantage, et. al.

Friends of Lake Neepaulin, Inc.,

Plaintiff,

-vs-

Township of Wantage, Mayor and
Committee of Township of Wantage,
Tax Assessor of Township of Wantage,
Tax Collector of Township of Wantage,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SUSSEX COUNTY

Docket No. SSX-L-616-09

CIVIL ACTION

**CERTIFICATION OF COUNSEL
SUPPORTING MOTION FOR
RECONSIDERATION**

Michael S. Garofalo, of full age, certifies as follows:

1. I am a duly licensed and practicing attorney at law of New Jersey and am fully familiar with the facts set forth in this certification. This law firm represents Defendant, Township of Wantage.
2. In this application, Wantage Township seeks reconsideration of the Court's June 8, 2010 Judgment in this matter.
3. At trial, it was represented to the Court that Byram Township was


implementing a special tax assessment on behalf of the Boy Scouts of America to fund a Dam Restoration Loan. Wantage Township has learned that no special tax assessment will be implemented by Bryam Township.

4. Attached to defendant's letter brief is the Certification of John Ritchey, Supervising Engineer of the New Jersey Department of Environmental Protection Dam Safety and Flood Control Division. The Certification of Mr. Ritchey indicates that the State is aware that many municipalities enter into co-borrower agreements with dam restoration loan applicants that do not require special tax assessments in order to repay the loan.
5. The Court relied heavily on the representation by Plaintiff that the Boy Scouts of America was the beneficiary of a special tax assessment in Byram Township that would be used to fund a dam restoration loan. The Court reasoned that municipalities are required to implement special tax assessments in favor of private non-profit corporations that seek State funded dam restoration loans.
6. Defendant has learned that the Boy Scouts of America are repaying the State loan absent a special tax assessment within Byram Township.
7. It is the opinion of Wantage Township that the State's acquiescence to funding mechanisms other than a special tax assessment leads to the conclusion that the Dam Safety Act does not preempt local discretion to refuse to implement a special tax assessment when the recipient of the State loan is an

exclusive, private non-profit corporation existing solely for the benefit of its members.

LADDEY, CLARK & RYAN, LLP
Attorneys for Defendant, Township of
Wantage

By:



Michael S. Garofalo

Dated: June 29, 2010

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06/29/10

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June 29, 2010

Honorable B. Theodore Bozonelis, AJSC
Morris County Courthouse
Washington and Courts Streets
PO Box 910
Morristown, NJ 07963-0910

Re: ***Friends of Lake Neepaulin, Inc. v. Township of Wantage, et al.***
Docket No. SSX-L-616-09
Our File No. 3020-1031

Dear Judge Bozonelis:

Please accept this letter memorandum in lieu of a more formal brief urging the Court to reconsider its June 8, 2010 Judgment in the above referenced matter.

The Township of Wantage respectfully requests that the Court reconsider its Judgment of June 8, 2010 based upon Plaintiff's representation to the Court that the Boy Scouts of America ("Boy Scouts") are the beneficiary of a special tax assessment implemented by Byram Township. Wantage Township has learned that Byram Township has not and does not intend to implement a special tax assessment instead relying on a co-borrower agreement that requires the Boy Scouts to repay a State dam restoration loan with its own funds.

At the trial of this matter, the Court reasoned that the Plaintiff, a private non-profit organization, is similarly situated to the Boy Scouts and therefore Wantage Township must implement a special tax assessment as did Byram Township. The absence of this essential fact argues in favor of another interpretation of the Safe Dam Act (N.J.S.A. 58:4-11 et seq.) that is that exclusive private, non-profit corporations exist solely for the benefit of their members, and do not benefit citizens not associated with the non-profit organization.

The Boy Scout camp at French's Pond in Byram Township permits exclusive access to its members only. Stated simply, one must be a Boy Scout or a scout leader to access the camp and

its lake. Similarly, one must be a member of the Friends of Lake Neepaulin (“FOLN”) to access Lake Neepaulin.

Reconsideration is not improper when the Court has based its ruling on erroneous information. This is particularly true when, here, the Court has based great weight on the fact that the Boy Scouts are a private, non-profit corporation as is FOLN and the Boy Scouts sought and allegedly received the benefit of a special tax assessment in Byram Township. This motion is an opportunity for correction of that misstated fact. Fusco v. Board of Educ. of Newark, 349 N.J. Super 455, 463 (App. Div. 2002).

Substantively, a Motion for Reconsideration is governed by R. 4:49-2. It provides that such a motion “shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the Court has overlooked or as to which it has erred.” A leading case setting forth standards for reconsideration is Cummins v. Bahr, 295 N.J. Super 374 (App Div 1996). In Cummins, the Appellate Division wrote that reconsideration “should be utilized only for those cases which fall into that narrow corridor in which either (1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, complete evidence.” Cummins v. Bahr, supra. at 384.

The attached Certification of John Ritchey (attached as Exhibit A), Supervising Engineer of the Dam Safety Section indicates that the State is aware than many municipalities do not implement special tax assessments to fund dam restoration loans. The State takes no position on this procedure. With that fact, and with knowledge of the Boy Scout loan now known to the Court, Wantage Township submits that an essential element of State law preemption does not exist.

State law preemption is found when the regulated field inherently requires uniform treatment at the State level. Tanis v. Township of Hampton, 306 N.J. Super 588, 599 (App. Div. 1997) Here, the State expressly acknowledges that it permit municipalities to require that private, non-profit organizations repay dam restoration loans from their own funds rather than by way of special tax assessments. Wantage Township respectfully submits that this State action recognizes that a special tax assessment may only be levied against real estate benefited by the purpose of the assessment. No Byram Township citizen (except a member of the Boy Scouts) benefits from the private lake owned by the Boy Scouts.

In addition, the New Jersey Office of Legislative Services (“O.L.S.”) has stated in writing that the DEP will not force Wantage Township to co-sign a dam restoration loan and implement a special tax assessment. (See Exhibit B annexed.) This fact further evidences that the State does not intend the Safe Dam Act to be the final word, or to be exclusive, in the field of dam restoration. To the contrary, the opinion of the O.L.S. and the actions of the Dam Safety Section clearly indicate that municipalities may decide when and if a special tax assessment is warranted in order to repay a dam restoration loan.

June 29, 2010

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Wantage Township respectfully asserts that the Court's Judgment of June 8, 2010, must be revised to reflect that the State's acquiescence to alternative funding mechanisms by way of co-borrower agreements argues against an interpretation of the Safe Dam Act that would require special tax assessments and that the Safe Dam Act is not an example of State law preemption.

Respectfully submitted,



Michael S. Garofalo

MSG:wab

Sent via overnight mail

cc: Eileen Born, Esq.

Edward J. Trawinski, Esq., Attorney for Plaintiff

WAB
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06/29/10

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Attorneys for Defendant, Township of Wantage, et. al.

Friends of Lake Neepaulin, Inc.,

Plaintiff,

-vs-

Township of Wantage, Mayor and
 Committee of Township of Wantage,
 Tax Assessor of Township of Wantage,
 Tax Collector of Township of Wantage,

Defendants.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: SUSSEX COUNTY

Docket No. SSX-L-616-09

CIVIL ACTION

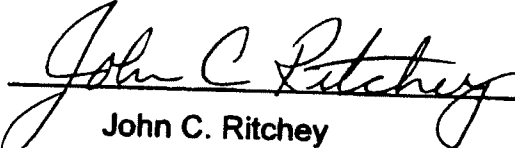
**CERTIFICATION OF
 JOHN RITCHEY**

JOHN C. RITCHEY, of full age, certifies as follows:

1. The NJDEP Dam Safety and Flood Control Division is aware that most, if not all municipalities require a co-borrower agreement with a private entity as a condition of a municipality co-signing the dam restoration loan. The Dam Safety and Flood Control Division takes no position on this procedure.

2. Upon information and belief, I am not aware of any dam restoration loans that have been extended to private associations that do not have enforceable covenants within the deeds to properties within the private association community.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



 John C. Ritchey

Dated: 4/6/10

LEGISLATIVE SERVICES COMMISSION

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RONNIE WATSON, CLERK



New Jersey State Legislature

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EMILY G. WILSON
Legislative Counsel

GABRIEL KATZ
Legislative Counsel

April 8, 2010

Honorable Steven V. Oroho
115 Demarest Rd., Suite 2B
Sparta, NJ 07871

Dear Senator Oroho:

You have requested a legal opinion addressing whether a local government unit is legally obligated to accept Department of Environmental Protection (DEP) loan moneys and use those moneys for the repair of a particular dam if the Legislature has appropriated funds to the DEP for the provision of such loans, and the appropriations bill (Senate Bill No. 922 of 2010) provides that certain of the moneys appropriated therein "shall be allocated" by the DEP for the purposes of that specific dam repair project. For the reasons set forth below, it is our opinion that a local government unit is not so obligated.

A. Factual Background

Lake Neepaulin Dam in Wantage Township, Sussex County is a dam that is privately-owned and maintained by the Friends of Lake Neepaulin, Inc. (FOLN). See *Dam Rehabilitation - FAQs*, at <http://foln.embarqspace.com/#/dam-rehabilitation/4530694859>; Christina Tatu, *Wantage mulls possible repairs to dam*, *New Jersey Herald*, at <http://www.njherald.com/printerfriendly/31NEEPAULINVOTE-web>. The FOLN is an exclusive 125 member non-profit group that allows only its paying members to make use of Lake Neepaulin - the lake that has been created, and that is sustained, by the existence of the dam. *Ibid*.

The DEP has designated Lake Neepaulin Dam as a "significant hazard dam," and has ordered its repair - a repair order which is long-standing. See *Ordinance Authorizing Special Tax Assessment for Lake Neepaulin Dam Reconstruction, Ordinance #2008-16*, at http://wantagewp.com/municipal/2008/ordinances/Ordinance_2008_16.pdf; *Dam Rehabilitation - FAQs*, *supra*. However, the FOLN cannot afford the costs associated with the ordered dam repair. See *Dam Rehabilitation - FAQs*, *supra*; *Wantage mulls possible repairs to dam*,

Honorable Steven V. Oroho
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April 8, 2010

supra. Although the FOLN has submitted an application to obtain a DEP loan for this purpose, because it was prohibited by law from applying for such a loan without the partnership of a local government unit, the Township of Wantage agreed to, and did, sign as co-applicant with the FOLN on its DEP loan application. See Dam Rehabilitation - FAQs, supra; Ordinance Authorizing Special Tax Assessment, supra.

As an indication of its commitment to assist the FOLN with regard to its DEP loan request, the Township Committee of the Township of Wantage also passed **Ordinance 2008-16**, which authorized the levying of a special property tax assessment on township residents in order to subsidize the costs associated with repayment of the DEP loan. Ordinance Authorizing Special Tax Assessment, supra. However, residents vocally opposed the passage of this ordinance, contending that they should not be responsible for financing the repairs of a dam that was privately-owned by the FOLN, and that it was unfair to lay the costs of dam repair on township residents who were prevented from using or enjoying the associated lake due to the exclusive nature of the FOLN. See Tom Hoffman, *Township weighs options for lake dam*, The Advertiser News, at http://www.strausnews.com/articles/2009/05/15/advertiser_news/news/7.txt; Minutes of the Special Meeting of the Mayor and Committee of the Township of Wantage, held at the High Point Regional High School Auditorium, Wantage, New Jersey on June 1, 2009, at http://www.wantagetwp.com/municipal/2009/minutes/mc_0601.pdf. In June of 2009, following a public hearing at which several residents challenged the appropriateness of the tax assessment, the township indicated its intent to recede from the agreement to aid the FOLN in seeking a DEP dam repair loan. Subsequently, it passed **Ordinance 2009-16**, which rescinded the earlier ordinance that would have permitted the special property tax assessment for loan repayment purposes. See Minutes of the Special Meeting of the Mayor and Committee of the Township of Wantage, supra; An Ordinance Rescinding a Special Tax Assessment for the Lake Neepaulin Dam Reconstruction, Ordinance #2009-16, at http://www.wantagetwp.com/municipal/2009/ordinances/Ordinance_2009_16.pdf.

Senate Bill No. 922, which, as of March 22, 2010, has passed both Houses, would appropriate \$16,950,000 to the DEP for use in providing loans for dam repair and restoration projects. The bill provides a list of particular dam repair and restoration projects to which the appropriated moneys "shall be allocated," and that list specifically includes a \$1 million allocation of appropriated funds to finance the Lake Neepaulin Dam project loan.

You have indicated that a constituent who lives near, but not on, Lake Neepaulin, is concerned that the passage of S-922, which includes the legislative direction that certain funds appropriated therein "shall be allocated" for the specific purpose of financing the Lake Neepaulin Dam repair loan, will effectively obligate Wantage Township to assist the FOLN in its repair efforts through acceptance of DEP loan moneys and imposition of a property tax

Honorable Steven V. Oroho
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assessment, despite the township's reluctance to provide any such assistance. Accordingly, the issue is whether Wantage Township, as a co-signatory on the DEP loan application, can legitimately refuse to proceed with the loan request in the event that S-922 is enacted into law and the DEP is directed thereby to allocate certain appropriated funds for the purposes of financing the Lake Neepaulin Dam repair loan.

B. Allocation by DEP of Legislatively Appropriated Funds

As a practical matter, the legislative appropriation of funds to the DEP and the specification in the appropriations bill of projects to which funds "shall be allocated" does not necessarily guarantee that the appropriated funds will, in fact, be allocated by DEP in the exact manner provided. In fact, DEP regulations related to dam repair loans specifically provide that any funds that have been appropriated for a particular loan and that remain unused are to be "retained by the State and deposited in the Fund to be applied to other dam restoration and inland water projects, as appropriate" N.J.A.C. 7:24A-4.7.

S-922 specifically provides that the \$16,950,000 appropriated therein is money that has been ". . . made available due to project cancellations, withdrawals, and cost savings" The accompanying bill statement provides, moreover, that the sum appropriated for dam repair ". . . represents unexpended balances made available due to project cancellations, withdrawals, or cost savings for projects previously approved by law for funding" (emphasis added). In practice, because the DEP will not always agree to provide a loan applicant with all the funds needed to proceed with an approved project, and because the commencement and completion of the project may be contingent on the applicant's receipt of appropriate permits, any failure by the applicant to obtain the necessary additional funds or permits may result in the cancellation or withdrawal of the project prior to any allocation of funds thereto by the DEP. See, e.g., subsection (c) of N.J.A.C. 7:24A-3.2.

Although S-922 provides that funds "shall be allocated" in accordance with the list of specified dam repair projects, the DEP Bureau of Dam Safety has confirmed that the word "shall," in this context, is not interpreted by the DEP, in practice, to mean that the moneys "must" be allocated as provided in the bill. The term "shall" in this context is understood to provide a non-mandatory prescription - a suggestion for fund allocation, and a flexible directive that the appropriated moneys "should" be allocated for particular projects, so far as is possible. A close evaluation of DEP regulations discloses that such a flexible interpretation is necessary since the legislative appropriation and suggested allocation of funds occur prior to the DEP's finalization of the loan award agreement, which is the document that commits the borrowers to accept the awarded funds and to complete the relevant project for which funds have been awarded.

Honorable Steven V. Oroho
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C. Regulatory Procedure for DEP Loan Applications and the Execution of DEP Loan Award Agreements

N.J.A.C. 7:24A-1.4 provides for three distinct phases in the DEP loan application and approval process: (1) the application phase, (2) the development phase, and (3) the implementation phase. The application phase consists of a pre-application conference, the submission of the application, the DEP review of the application, the DEP priority ranking of the project, and the applicant's receipt of a notice of qualification. See subsection (a) of N.J.A.C. 7:24A-1.4. Significantly, the notice of qualification received during this phase does not indicate that the loan, itself, has been approved, but indicates only that the DEP has "approv[ed] the application for priority ranking and [a] possible loan." See N.J.A.C. 7:24A-2.6; N.J.A.C. 7:24A-2.7. The application phase, therefore, results only in a determination that the applicant is eligible and qualified for a potential loan. See paragraph 4 of subsection (a) of N.J.A.C. 7:24A-2.5; N.J.A.C. 7:24A-2.6. **As explained by the DEP Bureau of Dam Safety, a township's signature on a DEP loan application indicates an intent on the part of the township only to establish its eligibility for a loan award, and it signifies only that the township is considering signing onto the formal loan award agreement. If a formal loan award agreement is executed at all, it will not be executed until late in the development phase of the loan application and approval process. See subsection (b) of N.J.A.C. 7:24A-1.4.**

DEP regulations make a significant distinction between an "applicant" for a loan and a "borrower" of loan moneys. See N.J.A.C. 7:24A-1.7. An "applicant" is defined to mean ". . . any local government unit that applies independently, or a private lake association or similar organization or private dam owner who has a local government unit as a co-applicant, for a loan . . ." N.J.A.C. 7:24A-1.7. A "borrower," on the other hand, is defined to mean ". . . an applicant who has been awarded a loan pursuant to the Act and this chapter, and who has executed a loan award agreement." N.J.A.C. 7:24A-1.7 (emphasis added). An "applicant," therefore, does not become a "borrower" until a formal loan award agreement is executed.

Pursuant to DEP regulations, "[t]he loan award shall become effective upon execution of a loan award agreement by the Department and the applicant, and shall constitute an obligation of the Fund in the amount and for the purposes stated in the loan award agreement." Subsection (b) of N.J.A.C. 7:24A-3.3. In other words, an applicant for a loan is not bound to accept loan award moneys or to complete the project for which a loan is sought, until the loan award agreement has been formally executed and the "applicant" has become a "borrower." This is supported by N.J.A.C. 7:24A-2.7, which provides that an applicant for a loan who has received a notice of qualification may, at any time prior to the awarding of the loan, notify the DEP that the applicant has decided to forego the project. Although the regulations provide that, absent notification of project cancellation by the applicant, the DEP "shall" award the

Honorable Steven V. Oroho
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loan thereto, the regulations provide that the award may only be made ". . . subject to available appropriations, [and the] execution of a loan award agreement." Subsection (c) of N.J.A.C. 7:24A-2.7. Because a loan cannot be awarded if the DEP lacks the necessary funds needed to finance the loan, and because the DEP will be required to fulfill its obligations under the loan once the loan becomes effective, the formal loan award agreement cannot be executed and finalized until *after* the Legislature has made the necessary appropriation of funds to the DEP. See N.J.A.C. 7:24A-1.5 ("[f]unding of loans shall be conditioned upon the appropriation by the legislature of funds" from a relevant bond act). Hence, at the time legislative appropriations are made, no formalized loan agreement can exist between the DEP and the applicant, and the signatories on the loan application will remain unbound "applicants" for the loan, even after the passage of a relevant appropriations bill, until such time as a formalized loan award agreement is executed.¹

Because Wantage Township has not signed a formalized loan award agreement, the township has not yet agreed to become a borrower on the loan requested by the FOLN. The township's agent's signature on the loan application indicates only that the township was *considering* acting as a co-borrower at the time the application was submitted to the DEP. Because the township's agent's signature on the initial loan *application* did not have the effect of binding the township to an agreement, the township has not bound itself to the terms of the loan, and it can, therefore, refuse to sign the loan award agreement even after S-922 is enacted into law, and despite the fact that the DEP is specifically directed thereby to allocate certain appropriated funds for the purposes of the Lake Neepaulin Dam repair project.² The DEP will not force the township to sign the loan award agreement simply because the township has

¹ John Ritchey of the DEP Bureau of Dam Safety has confirmed that no formalized loan award agreement has yet been executed in this case, and, moreover, that no such loan award agreement will be executed until *after* the appropriations bill has been passed.

² Although a court may, in the interests of fairness, invoke estoppel concepts to compel certain contractual action in the absence of an express, written contract, where one party has detrimentally relied on the fulfillment of an explicit or implicit promise made and later broken by another party, it is unlikely that a court would do so in this case. See County of Morris v. Fauver, 153 N.J. 80, 104 (1998) (equitable estoppel); Malaker Corp. Stockholders Protective Committee v. First Jersey Nat'l Bank, 163 N.J. Super. 463, 479-484 (App. Div. 1978), cert. den., 79 N.J. 488 (1979) (promissory estoppel). Even if the FOLN could establish that the township made or implied a promise to become a co-signatory on the final loan award agreement, it appears that the FOLN has not expended any funds, and in fact, has had no change in financial or other status as a result of this "promise." Moreover, it does not appear that the "promise" has caused the FOLN to forego any other options that were available with regard to the ordered repairs, as the FOLN has freely admitted that it never intended to pay for the dam repairs itself or seek out the necessary funds from other sources, and that it would elect to dishard the organization and allow the DEP to breach the dam in the event the township did not agree to assist it in securing the DEP loan. See Dam Rehabilitation - FAQs, supra.

Honorable Steven V. Oroho
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indicated its intent to act as a co-borrower by signing on as a co-applicant on the FOLN's previously-submitted loan application.

D. Conclusion

Based on the foregoing analysis and authority, it is our opinion that Wantage Township will not be obligated by the passage of S-922 to accept DEP loan moneys and proceed with the Lake Neepaulin Dam repair project, or to impose the associated property tax assessment. It is our opinion, moreover, that the township may refuse to continue with the Lake Neepaulin Dam repair loan application process at any time prior to the execution of the formalized loan award agreement.

Very truly yours,

Albert Porroni
Legislative Counsel

By: Adaline B. Kasch
Adaline B. Kasch
Deputy Counsel

AP:ak/dd

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Attorneys for Defendant, Township of Wantage, et. al.

Friends of Lake Neepaulin, Inc.,

Plaintiff,

-vs-

Township of Wantage, Mayor and
Committee of Township of Wantage,
Tax Assessor of Township of Wantage,
Tax Collector of Township of Wantage,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SUSSEX COUNTY

Docket No. SSX-L-616-09

CIVIL ACTION

**ORDER
GRANTING RELIEF
FROM JUDGMENT**

THIS MATTER having been opened to the Court upon the motion of Laddey, Clark & Ryan, LLP, attorneys for the Township of Wantage, and upon notice to all Counsel, and the Court having considered the papers submitted and for good cause shown,

IT IS, on this _____ day of July _____, 2010, **ORDERED:**

1. The Judgment entered on June 8, 2010, be and is hereby revised to reflect that Wantage Township is not required to implement a special tax assessment to repay a loan offered pursuant to the Safe Dam Act because

the State permits municipalities to utilize other funding mechanisms by way of co-borrower agreements.

2. A copy of this Order shall be served on all parties within _____ days by counsel for the Township of Wantage.

B. Theodore Bozonelis, J.S.C.

_____ unopposed _____ opposed