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CITY OF LEWES

MEMORANDUM

TO: City Council of the City of Lewes
FROM: Thomas P. McGonigle, Esq.
Lindsay B. Orr, Esq.
DATE: May 9, 2017
RE: City of Lewes and Board of Public Works Charters

I. Question Presented

We have been asked to provide an analysis regarding the authority of the City Council of the City of Lewes as it relates to the Board of Public Works of the City of Lewes and the provision of utility services to properties inside and outside the Lewes city limits, and more specifically the authority to direct the Board of Public Works to continue its policy of requiring the execution of pre-annexation agreements as a condition to providing utility services outside City limits. We have set forth below the facts relative to this analysis as we understand them, as well as our legal analysis. This memorandum concludes that the City of Lewes has broad authority to direct the Board of Public Works to continue applying its pre-annexation policy.

II. Factual Background

The City of Lewes, Delaware (“Lewes” or the “City”) was first organized and enabled by a charter, enacted by the Delaware General Assembly (the “General Assembly”) in 1818. The current operative Lewes charter was enacted by the General Assembly in 1969, with subsequent amendments (the “Current Lewes Charter”). The Current Lewes Charter provides that Lewes is to be governed by a city council composed of a mayor and four other councilpersons (the “City

Council”). A separate charter first established the Board of Public Works of Lewes (the “BPW”) in 1901, and it authorized and directed the BPW to establish, operate, and regulate utility systems which may be established for Lewes. In 2009, that charter was modified to provide that City Council is an “operator of public utilities through its Board of Public Works of the City of Lewes.”

The BPW currently requires that when a property owner requests utility services for a property in the areas and subdivisions outside Lewes’ city limits, the owner(s) of the property (the “Applicant”) must sign an agreement with City Council for the annexation of the property into Lewes upon request by the City Council (a “Pre-Annexation Agreement”). In the years leading up to 2007, the BPW followed an unofficial policy of requiring Applicants to execute a Pre-Annexation Agreement as a condition to providing utility services.¹ The BPW formalized this policy in 2007 (the “2007 BPW Resolution”).² In 2013, the BPW amended the 2007 BPW Resolution (the “2013 BPW Resolution”), to require that a Pre-Annexation Agreement be signed prior to construction of the utility extension.³ During this time, the City Council and the BPW shared the view that the 2007 BPW Resolution and the 2013 BPW Resolution were in the best interest of Lewes and the BPW’s customers.⁴

It is our understanding that beginning around 2015, the views of City Council and the BPW regarding Pre-Annexation Agreements began to diverge, and in late 2016, members of the BPW began suggesting that the 2013 BPW Resolution should be revised to eliminate the

¹ BPW Resolution No. 07-002 (Passed March 27, 2007), a copy of which is attached hereto as Exhibit “A.”

² *Id.*

³ BPW Resolution No. 13-004 (Passed December 4, 2013), a copy of which is attached hereto as Exhibit “B.”

⁴ 2007 BPW Resolution at 1 (“WHEREAS, the Board of Public Works deems it in the best interest of the customers and rate payers of the City’s utilities to provide this coordination of utility services and City expansion.”); 2013 BPW Resolution at 1 (same).

requirement of a Pre-Annexation Agreement as a condition to providing utility services to properties outside Lewes' city limits.⁵ In January 2017, the BPW began to consider a draft ordinance that would rescind and replace the 2013 BPW Resolution, eliminating the Pre-Annexation Agreement requirement.⁶

III. Discussion

In light of these diverging viewpoints and their potential negative effect on Lewes, you have asked us to provide an analysis of City Council's authority to require the BPW to continue its policy of insisting upon a Pre-Annexation Agreement or otherwise providing utility services to property owners outside the Lewes city limits only after obtaining such an agreement. This memorandum analyzes the Current Lewes Charter and other relevant documents as they relate to the relationship between the City Council and the BPW, and concludes that the City of Lewes has the authority to direct the Board of Public Works to continue applying its pre-annexation policy.

A. Historical Analysis of the Relevant Charters of Lewes and the BPW

From the time the BPW was first established, the evolution of the charters of Lewes and the BPW demonstrates the necessity to read the charters of the two bodies together. Historically, while the BPW was empowered to provide day to day control over utility services (placement, construction, etc.), the City has always retained oversight and control with respect to the more executive aspects of managing the utilities, such as debt, land ownership and acquisition, and the like. In later enacted charters, most significantly in 1969, the City's authority over utility

⁵ See BPW Meeting Minutes ("Meet. Min.") from the BPW Oct. 26, 2016 Meeting, at ¶ 9, available at: <http://lewesbpw.delaware.gov/files/2017/02/Minutes-2016-October-26.pdf>; BPW Meet. Min. from the Nov. 16, 2016 Meeting, at ¶ 8, available at: <http://lewesbpw.delaware.gov/files/2017/02/Minutes-2016-Nov-16.pdf>.

⁶ BPW Resolution No. 17-001 (the "Draft 2017 BPW Resolution") (in the form of an annotated version of the 2013 BPW Resolution), a copy of which is attached hereto as Exhibit "C."

services was expanded and is otherwise more specifically detailed. A review of the relevant charters highlights these themes, and suggests that the two bodies share control over the provision of utility services today, with the City maintaining control over the BPW.

1. The 1818 Lewes Charter:

In 1818, the General Assembly enacted a charter formally recognizing for the first time the town of Lewes (the “1818 Lewes Charter”).⁷ The 1818 Lewes Charter provided for an election of five persons to serve as the body politic and corporate of the town, under the corporate name the “Trustees of the town of Lewes” (the “Trustees”).⁸ The 1818 Lewes Charter empowered the Trustees to open and repair all streets, lanes, alleys, and other public lands within the town.⁹

2. The 1871 Lewes Charter:

In 1871, the General Assembly enacted a charter (the “1871 Lewes Charter”) to incorporate the Town of Lewes.¹⁰ The 1871 Lewes Charter again provided for the election of five persons to serve as the body politic and corporate in law, but under a new corporate name, the “Commissioners of Lewes” (the “Commissioners”).¹¹ Like the 1818 Lewes Charter, the 1871 Lewes Charter granted the Commissioners “superintendence and oversight of all roads and

⁷ 5 Del. Laws c. 175 (Passed February 2, 1818), a copy of which is attached hereto as Exhibit “D.” While the area now known as Lewes was first settled in the early 1630s, it is believed that the settlement was first called “Lewes” around 1682 by William Penn. JOHN THOMAS SCHARF, HISTORY OF DELAWARE 1609-1888: GENERAL HISTORY 12, 32-34 (1st ed. 1888). The 1818 Lewes Charter marked the first time the General Assembly undertook to formally recognize the area and call for a determination and recordation of its boundaries.

⁸ 1818 Lewes Charter at §§ 2-3.

⁹ *Id.* at § 4.

¹⁰ 14 Del. Laws, c. 114 (Passed March 2, 1871), a copy of which is attached hereto as Exhibit “E.”

¹¹ *Id.* at §§ 1-2.

streets, lanes, alleys, gutters and ditches,”¹² and also authorized and required them to “provide sanitary measures for the health of the citizens.”¹³

3. The 1901 Lewes Charter and the 1901 BPW Charter:

In 1901, the General Assembly enacted a charter (the “1901 Lewes Charter”) re-incorporating the Town of Lewes¹⁴ and providing for the election of a Mayor and four Commissioners.¹⁵ The 1901 Lewes Charter granted the Commissioners “authority to make such regulations and ordinances for the government of the town as they shall deem proper and necessary.”¹⁶ Aside from this broad grant of authority, the 1901 Lewes Charter did not specifically designate for the Commissioners or the Mayor explicit authority over providing utilities such as water, electric light, or a sewer system. Instead, one week later, the General Assembly enacted a separate charter (the “1901 BPW Charter”) authorizing and directing the Commissioners to appoint a Board of Public Works for the Town of Lewes (the “BPW”).¹⁷ The 1901 BPW Charter authorizes the BPW “to do all things necessary for the location, erection, construction, equipment and operating [of] Water Works and Electric Light Plant,” and to “pass and adopt such rules and regulations touching the said light and water . . . and the general management and control of the light and water supply as to the said Board shall at any time seem

¹² *Id.* at § 6.

¹³ *Id.* at § 11.

¹⁴ 22 Del. Laws, c. 199 (Passed March 7, 1901), a copy of which is attached hereto as Exhibit “F.”

¹⁵ *Id.* at § 2.

¹⁶ *Id.* at § 13.

¹⁷ 22 Del. Laws, c. 196 (Passed March 15, 1901), a copy of which is attached hereto as Exhibit “G.”

most expedient.”¹⁸ The 1901 BPW Charter likewise empowers the BPW with “the supervision and control of all the public sewers and drains within the limits of the town.”¹⁹

While granting broad authority over the establishment and operation of utilities to the BPW, the BPW Charter reserved for the town of Lewes certain executive authority with respect to the management of those utilities. For example, the town of Lewes retained the authority to take land at the request of the BPW if the BPW deemed it necessary and could not acquire such land itself by agreement.²⁰ The Town of Lewes also retained the power to impose fines and penalties for violation of the BPW’s rules and regulations.²¹ Additionally, on the same day as the 1901 BPW Charter, the General Assembly authorized the Commissioners, in a separate act, to borrow money and issue bonds to provide a supply of water, electric lights, and a sewage system for Lewes.²² Thus, while the 1901 BPW Charter empowered the BPW to run the utilities, Lewes retained important authority with respect to property acquisition, debt, and other managerial issues.

4. The 1941 Lewes Charter:

In 1941, the General Assembly broadened Lewes’ authority over utility services and the BPW by enacting a charter (the “1941 Lewes Charter”) giving the Mayor and Commissioners

¹⁸ *Id.* at § 3.

¹⁹ *Id.* at § 4.

²⁰ *Id.* at § 3 (“[W]henever the said Board of Public Works shall deem it necessary or expedient to acquire lands for any purpose connected with said light and water supply, and such lands cannot be acquired by agreement between the owner or owners thereof and the said Board of Public Works, the said Board shall direct its Secretary to notify the Commissioners of Lewes, and thereupon the said Commissioners of Lewes shall take such lands for the purpose aforesaid in the same manner and subject to the same conditions and proceedings as are or shall be provided by law for condemning and taking lands for the purpose of laying out and opening new streets in said town of Lewes.”).

²¹ *Id.* at § 6 (“The Commissioners of Lewes shall have power to impose fines and penalties for the violation of the rules and regulations of the Board of Public Works, or any ordinances made by the Commissioners of Lewes touching the protection of the said Light Plant, Water Works and Sewer System.”).

²² 22 Del. Laws, c. 197 (Passed March 15, 1901), a copy of which is attached hereto as Exhibit “H”.

specific regulatory control over utility-like functions.²³ The 1941 Lewes Charter empowered the Commissioners “to provide lamps and to light the streets;” “to make and regulate wells, pumps, aqueducts, and cisterns;” and “[t]o establish, regulate and control a suitable sewer and drainage system.”²⁴ This power of Lewes to “regulate” water and sewer systems implied the authority to regulate the BPW’s employment of those systems.

5. The 1969 Lewes Charter:

The General Assembly significantly broadened Lewes’ authority over utility services in 1969 when it enacted the modern day Lewes Charter (the “1969 Lewes Charter”),²⁵ changing Lewes from a Town to a City and replacing the Commissioners with a City Council composed of five members, of whom the Mayor is one.²⁶ The 1969 Lewes Charter contains an expansive “Enumeration of Powers” section setting forth dozens of enumerated powers vested in the City Council.²⁷ While the section details a list of specific powers, it also makes clear that this grant of enumerated powers is “for purposes of clarity,” and not meant to limit the City Council’s ability to exercise any other power delegated by the 1969 Lewes Charter unless specifically withheld:

“Not by way of limitation upon the power vested in the City Council to exercise all powers delegated by this Charter to the municipal corporation except as may expressly appear herein to the contrary, but, rather, by way of enumeration and for purposes of clarity, the City Council is vested by this Charter with the following powers, to be exercised by said City Council in the interest of good government and the safety, health and welfare of the City, its inhabitants and affairs . . .”²⁸

²³ 43 Del. Laws, c. 170 (Passed May 21, 1941), a copy of which is attached hereto as Exhibit “I.”

²⁴ *Id.* at § 8.

²⁵ 57 Del. Laws, c. 170 (Passed June 19, 1969), a copy of which is attached hereto as Exhibit “J.”

²⁶ *Id.* at §§ 1, 4, 15.

²⁷ *Id.* at § 29.

²⁸ *Id.*

Included among these enumerated powers were broad grants of authority with respect to the provision of utility services for the City. For example, the 1969 Lewes Charter empowered the City with respect to the provision of water as follows:

“To provide an ample supply of pure water for The City and its inhabitants and to this end to acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of wells, reservoirs, pumps, machines, stations, tanks, standpipes, water mains, fire hydrants and all other equipment, property or rights used in and about the collection, storage, purification, conveyance, distribution or sale of water; to regulate and prescribe for what private or public purposes the water furnished by the municipal corporation may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties, or both, for any willful or negligent injury or damage to or interference with the water system or equipment of the City; *to furnish, or refuse to furnish, water from the City system to places and properties outside the City limits*; and to contract for and purchase water and distribute the same to users within or without the City with the same full powers as though such water had been initially reduced to usefulness by the municipal corporation itself.”²⁹

The 1969 Lewes Charter contains similar provisions empowering the City Council “[t]o provide, construct, extend, maintain, manage and control a sewer system and/or a sewage treatment and disposal plant;” “[t]o provide, construct, extend, maintain, manage and control a plant and system, or plants and systems, for the generating, manufacturing and distributing of electric current or gas, or both, to the inhabitants of the City;” and “[t]o fully control within the City the drainage of all water and, to that end, to alter or change the course and direction of any natural water course, runs or rivulet within the City.”³⁰

The 1969 Lewes Charter also vested City Council with the power “[t]o grant franchises or licenses . . . for such period of time, upon such terms, restrictions, stipulations and conditions and for such considerations as the City Council shall deem wise” to use public land for the

²⁹ *Id.* at § 29(12) (emphasis added).

³⁰ *Id.* at § 29(13)–(15).

purpose of furnishing utilities, “provided, that no exclusive franchise or license shall be granted for any such purpose to any person, firm, association or corporation whomsoever.”³¹ The 1969 Lewes Charter similarly vested the City Council with the power “[t]o regulate and control the exercise of any [such] license or franchise.”³² Finally, the 1969 Lewes Charter vested City Council with the broad power to enact any other rules, regulations, or ordinances it deemed necessary to carry into effect any of its other powers.³³

Another critical element of the 1969 Lewes Charter is the inclusion of a survival provision to clarify its relationship with preexisting laws (the “Survival Provision”). The Survival Provision confers on the City Council all powers vested on the prior Commissioners by any law of the state not in conflict with the 1969 Lewes Charter and repeals all parts of any prior charter or amendment that are inconsistent with the provisions of the 1969 Lewes Charter.³⁴ The Survival Provision further confirms that all ordinances, resolutions, and regulations previously enacted by the Commissioners or the BPW shall continue in full force and effect “until the same or any of them shall be repealed, modified or altered by the City Council of The City of Lewes under the provisions of this Charter.”³⁵ Thus, the Survival Provision includes the specific

³¹ *Id.* at § 29(17).

³² *Id.* at § 29(18).

³³ *Id.* at § 29(42) (“To make, adopt and establish all such ordinance[s], regulations, rules and by-laws, not contrary to the laws of this State and the United States, as the City Council may deem necessary to carry into effect any of the provisions of this Charter or any other law of the State relating generally to municipal corporations or which they may deem proper and necessary for the good government of the City, the protection and preservation of persons and property and of the public health and welfare of the City and its inhabitants . . .”).

³⁴ *Id.* at § 41.

³⁵ *Id.*

recognition that the City Council has the power to repeal, modify, or alter prior resolutions or regulations of the BPW.³⁶

Finally, it is important to note that the 1969 Lewes Charter vested City Council with the power to “borrow money and issue bonds or certificates of indebtedness to secure the payment thereof on the faith and credit of The City of Lewes, to provide funds for” the provision of utility services, including “the manufacture and distribution of electricity or gas for light, heat or power purposes; for the furnishing of water to the public; . . . [or] for the construction or repair of sewers or sewage disposal equipment.”³⁷ Since the BPW lacked the authority to borrow money itself under the 1901 BPW Charter, this provision showed the dependence of the BPW on financing by the City. This dependence continues; in the 2009 BPW Charter, discussed *infra*, the BPW can borrow only with the City Council’s consent,³⁸ underlining the City’s ultimate authority over the provision of utilities. The provision of the 1969 Lewes Charter vesting the City Council with the power to issue bonds on the faith and credit of the City for the provision of utility services creates an important nexus between providing utility services to property owners outside the Lewes city limits and requiring those property owners to agree to annexation to Lewes upon request. The City’s issuance of bonds provides the BPW with the funds it needs to build the infrastructure necessary to provide utility services to its customers. This is done on the faith and credit of the City, with the City’s revenue coming from taxes paid by residents of the City. Thus, there is a close nexus between enjoying the benefit of utility services and the

³⁶ *Id.* (“All . . . resolutions and regulations adopted by the Board of Public Works and in force at the time of the approval of this Charter shall continue in full force and effect until the same or any of them shall be repealed, modified or altered by the City Council of The City of Lewes under the provisions of this Charter.”).

³⁷ *Id.* at § 20.

³⁸ 77 Del. Laws, c. 10 (Passed April 9, 2009), a copy of which is attached hereto as Exhibit “K,” at §§ 4.14.1.1 & 4.14.3.

infrastructure investments related thereto, and agreeing to possible future annexation into the City and its corresponding requirement of paying City taxes to help fund those utility services and related infrastructure investments.

The 1969 Lewes Charter marked a turning point in the relationship between Lewes and the BPW. Where the General Assembly in the 1901 Lewes Charter did not explicitly state whether Lewes retained authority over providing utility services, the General Assembly in the 1969 Lewes Charter specifically enumerates Lewes' authority in that regard, notably including the authority to choose whether to furnish such utility services to properties outside the City limits.

6. The 2009 BPW Charter:

In 2009, the General Assembly undertook to amend, revise, and consolidate the 1901 BPW Charter (the "2009 BPW Charter").³⁹ The 2009 BPW Charter repeals all parts of the 1901 BPW Charter "manifestly inconsistent" with the provisions of the 2009 BPW Charter, and confers upon the BPW only powers previously conferred upon or vested in the BPW that are "not in conflict" with the provisions of the 2009 BPW Charter.⁴⁰ The 2009 BPW Charter grants certain powers to the BPW with respect to the control and regulation of utility systems, but also specifically contemplates the City retaining its broader authority over those same systems in certain areas, consistent with the broad grant of power contained in the 1969 Lewes Charter. This dichotomy is evident from the outset, as the 2009 BPW Charter authorizes and directs the Mayor and City Council, "as *operator* of public utilities *through its* Board of Public Works of the City of Lewes" to continue the BPW, and authorizes the BPW "to continue, subject to the

³⁹ 77 Del. Laws, c. 10 (Passed April 9, 2009), a copy of which is attached hereto as Exhibit "K."

⁴⁰ *Id.* at §§ 9.1, 9.2.

jurisdiction, authority and responsibilities provided by this Charter, to establish, to control and to regulate Utility Systems,” including “water works and distribution system; wastewater collection, treatment facility, and sewer system; [and] storm water drainage system.”⁴¹

The 2009 BPW Charter grants to the BPW “supervision and control of all the utility systems, and private sanitary sewerage, storm water drainage, water, and electric systems, as established or to be established within the Service Area,” and allows the BPW to “alter, condemn, repair or remove the same” and to “cause new facilities for the utility systems to be made and opened.”⁴² The BPW has the discretion to determine where such utility systems may be laid and to make proper outlets for sewer and drainage.⁴³ The 2009 BPW Charter also, however, sets forth the ways in which the City retains control over the operation of these same utility systems. For example, “in lieu of franchise fees,” the 2009 BPW Charter requires that the BPW pay Lewes a percentage of its monthly revenues for utility services.⁴⁴ Additionally, any real property purchased with the funds of the BPW must be titled jointly with the BPW and the City.⁴⁵ Further, the 2009 BPW Charter establishes a process in which, before the Mayor and City Council may “cease to operate, or to sell, lease, abandon, or in any other way dispose of any public utility owned by it,” they must follow certain procedures,⁴⁶ thereby contemplating the City retaining ultimate power over the continued existence of any public utility.

⁴¹ *Id.* at § 1 (emphases added).

⁴² *Id.* at § 4.1. “Service Area” is defined as “the corporate limits of the City of Lewes, the territory beyond such limits authorized in this Charter, and any franchised service area.” *Id.* at § 1(6).

⁴³ *Id.*

⁴⁴ *Id.* at § 4.3.

⁴⁵ *Id.* at § 4.21.

⁴⁶ *Id.* at § 9.6.

the BPW have consistently interpreted the Lewes and BPW Charters as granting Lewes comprehensive regulatory oversight over the provision of utility services and the BPW.

1. The BPW By-Laws

The BPW recognizes in its by-laws (the “BPW By-Laws”)⁵² that its authority is subject to the 1969 Lewes Charter. The BPW By-Laws provide that the “BPW operates under the authority granted by the State of Delaware in the Charter of the City of Lewes being Chapter 170, Volume 57, *Laws of Delaware*, as amended [the 1969 Lewes Charter].”⁵³ The BPW By-Laws also incorporate, as the mission statement of the BPW, the provision of the 1969 Lewes Charter that “[t]he Mayor and City Council of the City of Lewes, *as operator of public utilities through its* Board of Public Works, is authorized and directed to establish, to control and to regulate Utility Systems”⁵⁴ The BPW By-Laws even provide the Mayor of the City of Lewes with authority to appoint qualified candidates to fill any vacancy on the BPW.⁵⁵ The BPW’s citation to and reliance on the 1969 Lewes Charter throughout the BPW By-Laws demonstrates its recognition that the BPW Charter must be read as a function of the Lewes Charter.

Additionally, the BPW By-Laws require that all “policies, regulations, tariffs and other resolutions” of the BPW “adhere to . . . [t]he Code of the City of Lewes, as amended.”⁵⁶ The Code of the City of Lewes includes any ordinances issued by the City. Thus, the BPW has

⁵² BPW By-Laws, available at: <http://lewesbpw.delaware.gov/files/2014/11/Lewes-Board-of-Public-Works-BPW-By-laws-00003133-7xB9753.pdf> (Last visited April 6, 2017), a copy of which is attached hereto as Exhibit “L.”

⁵³ *Id.* at § 1.2.

⁵⁴ *Id.* at § 1.3 (emphasis added).

⁵⁵ *Id.* at § 4.1(9).

⁵⁶ *Id.* at § 8.1.

recognized through its by-laws that any resolutions it may enter are subject to any ordinances issued by the City.

2. City Bond Issuances for Utility Infrastructure Investment

The 1969 Lewes Charter's vesting of authority to the City Council to issue bonds on the faith and credit of the City for the provision of utility services is not merely a ceremonial power never exercised in practice. Rather, the BPW has been relying on that provision in order to provide utility services to property owners inside and outside the City limits and to plan infrastructure improvements related thereto for over a decade. In 2004, the City issued a Notice of Adoption announcing that, pursuant to the Current Lewes Charter, it had determined to borrow up to \$39.5 million of general obligation bonds to finance a portion of a Capital Improvement Program of the City and the BPW, consisting in part of upgrades and improvements to the wastewater treatment plant, lines, and systems; the water treatment plant and system; and the electric plant and systems.⁵⁷ The Notice of Adoption provided that the City would "borrow the funds through the issuance of general obligation bonds, the principal of and interest on which will be paid by the City and [the BPW], as appropriate, from current revenues, as budgeted and appropriated; and for such budgeting, appropriation and payment, the City will pledge its full faith, credit and taxing power."⁵⁸ Additionally, recent meeting minutes from the BPW suggest that significant infrastructure investments are being planned for water, sewer, electric, water production, stormwater, and wastewater treatment plant that will require borrowing money on the City's faith and credit.⁵⁹ Thus, there is evidence of both historic and

⁵⁷ Notice of Adoption dated May 10, 2004, a copy of which is attached hereto as "Exhibit M."

⁵⁸ *Id.*

⁵⁹ BPW Meet. Min. from the Feb. 22, 2017 Meeting, at ¶ 6, available at: <http://lewesbpw.delaware.gov/files/2017/03/BPW-2-22-2017.pdf>.

future planned reliance by the BPW on funds provided by the City. As discussed above, this reliance creates an important nexus between providing utility services to property owners outside the City limits and requiring those property owners to agree to possible future annexation to the City, which would bring with it the obligation to pay City taxes that in turn provide funding for the exact utility services and related infrastructure improvements that the property owners seek to enjoy. This provides further support for continuing to interpret the Lewes and BPW Charters as granting Lewes broad authority to require the BPW to continue applying its pre-annexation policy.

IV. Conclusion

In sum, it can fairly be said that the City and BPW share authority over the provision of utility services to properties inside and outside the Lewes city limits, but that the City's authority is broader than that of the BPW and includes the power to regulate the BPW. While the BPW has the authority to supervise and control the day-to-day operation of providing utility services for the City, the City not only has the same power, but also has always had and continues to maintain managerial oversight over functions such as property ownership/acquisition, debt, and the like. Furthermore, the 1969 Lewes Charter makes even clearer that the City's authority over the provision of utility services as well as the BPW is regulatory and comprehensive. Given the historical and continuing necessity to read together the operative Lewes Charter and BPW Charter, the powers bestowed by those documents taken together suggest that the City has the power to require the BPW to continue its policy of requiring Applicants to sign Pre-Annexation Agreements.