

BOROUGH OF SOMERVILLE LANDFILL CHRONOLOGY

1954 - 1984 Operated as Borough Sanitary Landfill for residential and commercial waste

1984 Landfill closed operation and falls under the Comprehensive Environmental Response, Compensation, and Liability Act CERCLA.

FIRST DEVELOPMENT PERIOD - 8 YEARS 1985 to 1994

10/85 - 12/85 Somerville invites proposals for development of the Somerville landfill site. The Borough's goal is to develop the landfill site, and close the landfill at the developer's expense.

1/21/86 Resolution of Borough Council awarding bid to Rosenshein

7/22/86 Somerville enters into a Developer's Agreement with Rosenshein Associates/Somerville Square, Inc.

7/29/88 Somerville Planning Board grants Preliminary Site Plan approval to Rosenshein for the design and construction of a shopping center on the Site.

12/1/90 Bernard Rosenshein individually files Chapter 11 bankruptcy petition

12/6/91 Somerville and Rosenshein enter into a Tolling Agreement which was to suspend the running of various time periods specified in the Developer's Agreement, for 2 years. During this 2 year period, Rosenshein does nothing; Rosenshein argued that he had every right to do nothing under the terms of the Tolling Agreement.

1/18/94 Borough Council votes to terminate the contract with Rosenshein.

FIRST LITIGATION - 3 YEARS 1994 to 1996

2/10/94 The Borough commences action in Superior Court, Somerset County, seeking a declaration that it had acted properly in terminating the Developer's Agreement with Rosenshein. (This is first litigation with Rosenshein)

4/4/94 Rosenshein files its Answer to the Borough's Complaint and its Counterclaim

The Counterclaim sought compensatory and consequential damages, in excess of 40 million dollars together with interest and attorney fees.

1/1/95 David Hollod becomes Council President, New legal team is assembled

2/95-12/95 Fact Discovery in pending lawsuit

12/95 - 7/96 Mediation between Borough and Rosenshein with Justice Clifford acting as mediator

8/1/96 Agreement in "broad concepts" for settlement of litigation

SECOND DEVELOPMENT PERIOD - 2 YEARS 1996 to 1998

8/96 - 3/97 Negotiation of terms of Amended, Restated and Conformed Agreement with new legal team

3/20/97 Rosenshein and Borough enter into Amended, Restated and Conformed Agreement providing a modified developer's agreement, with fixed deadlines and defined obligations. The parties sign a Stipulation of Dismissal, Mutual Releases and Discharges of Lis Pendens. Settlement documents are escrowed pending satisfaction of stated contingencies.

3/97-12/97 Parties commence to perform obligations under the Amended, Restated and Conformed Agreement.

12/8/97 Borough Council adopts resolution designating redevelopment area, after recommendation from Planning Board.

2/25/98 Somerville Borough Planning Board adopts resolution recommending that Borough Council adopt Redevelopment Plan.

3/16/98 Adoption of Ordinance by Borough Council, approving Redevelopment Plan as required by the Amended Agreement

6/24/98 Somerville Planning Board adopts the Amended Site Plan and Subdivision for the Theater Project portion of the Project.

7/30/98 Memorandum of Agreement executed by Rosenshein, an interim modification dated March 20, 1997, between the parties.

8/10/98 Contingencies satisfied for release of settlement documents, including Rosenshein's counterclaim demanding in excess of 40 million dollars in damages, held in escrow by Justice Clifford.

8/28/98 Hoyts Cinema terminates lease with Rosenshein

11/25/98 Somerville advises Rosenshein of Rosenshein's failure to close title to the 58,000 sq. ft. of Landfill property by November 1, 1999, as required by the Amended, Restated and Conformed Agreement.

6/1/99 Rosenshein fails to close title on the Outside Closing Date, for the remainder of the landfill site.

6/7/99 Somerville notifies Rosenshein that it has declared time of the essence for a closing on 7/9/99, for the remainder of the landfill site.

7/9/99 Rosenshein fails to close title or appear at the time of the essence closing.

7/14/99 Somerville issues 7 notices of default to Rosenshein. Rosenshein defaults included:
Failure to close title on November 1st to the 58,000 sq. ft
Failure to close title at the time of essence closing on July 9, 1999 for the remainder of the landfill property
Failure to comply with the terms of the Resolution of Approval
Failure to use best efforts to obtain easements from NJ Transit
Failure to maintain NJ Transit lease in full force and effect failure to enter into the Old Mill sublease
Failure to enter into the Second Amended Restated Agreement

8/15/99 Rosenshein fails to cure any of the defaults within the mandatory 30 day period.

8/17/99 Somerville terminates all contracts with Rosenshein for failure to cure the 7 defaults.

PHASE IV - SECOND LITIGATION

STATE COURT: 1 YEAR 7 MONTHS
BANKRUPTCY COURT: 8 MONTHS

- 9/22/99** Somerville files a Complaint for Declaratory Judgment and Jury Demand in the Superior Court of New Jersey seeking judgment declaring the contracts with Rosenshein terminated.
- 12/23/99** Rosenshein files its Answer, Affirmative Defenses and Counterclaim in the Superior Court Action.
- 4/18/01** Case Management Order No.3 entered, requiring conclusion of discovery by June 21, 2001.
- 5/4/01** Rosenshein Associates/Somerville Square Inc., the contracting party, files Voluntary Petition in Bankruptcy under Chapter 11
- 6/15/01** Rosenshein/Debtor files its motion to assume and assign Somerville and NJ Transit contracts to CIP II Acquisition, LLC (Cherokee).
- 7/2/01** Somerville files its objection to Debtor's motion to assume and assign executory contracts.
- 7/3/01** NJ Transit files its objection to Debtor's motion to assume and assign executory contracts.
- 8/8/01** Case Management Conference before Judge Gambardella
- 8/23/01** Scheduling Order entered in bankruptcy matter.
- 11/2/01** Close of all discoveries in bankruptcy matter
- 11/30/01** Somerville files motion for summary judgment in bankruptcy action and further opposition to Debtor's motion to assume and assign executory contracts.
- 11/30/01** NJ Transit files further opposition to Debtor's motion to assume and assign executory contracts.
- 1/24/02** Hearing before Judge Gambardella on Debtor's motion to assume and assign CIP II/Cherokee contracts along with Somerville's motion for summary judgment.
- 01/06/04** New Jersey State Department of Environmental Protection issue notice of intent to study Landfill for indications of Imminent Environmental Concern (IEC) and commence study

PHASE V – CURRENT PHASE

ENVIRONMENTAL INVESTIGATION
REDEVELOPMENT PLANNING

- 1/1/05** Remington & Vernick Engineers hired by Borough to conduct Preliminary Environmental evaluation of Landfill. A Somerset County EDIP Grant is awarded to Borough to pay for this evaluation.
- 01/05/05** Remington & Vernick present initial findings – confirm previous study findings
- 01/06/05** Remington & Vernick commence preparing documentation for the Borough to apply to DEP for grants to conduct further environmental testing and to develop a comprehensive remediation plan

- 01/06/05** DEP advise that draft report of IEC findings complete – copy to be forwarded to Borough for review
- 07/05–10/05** Remington & Vernick complete various DEP grant applications for submission
- 08/05** Borough starts work on Visioning Plan for Landfill, partnering with NJ Transit and NJ Office of Smart growth both of whom funded the project. Regional Plan Associates of NYC appointed as project team leader
- 09/05** Mayor and staff meet with state Brownfields Interagency Task Force (BRIT) to present Landfill Plan for Redevelopment and to meet with representatives of relevant state agencies for support with this project
- 10/05** Mayor and environmental consultants meet with DEP Assistant Commissioner to outline plans for redevelopment
- 10/05** Grant applications and environmental investigation work plans submitted to DEP for approvals
- 11/05** NJ DCA Office of Smart Growth and DEP staff visit site
- 12/13/05** First Visioning Plan Stakeholders meeting held at Borough council meeting room
- 03/11/06** Stakeholders Visioning Plan Workshop held at County Courthouse Jurors Meeting Room
- 04/29/06** Public Landfill Tour and Visioning Workshop held at County Courthouse Jurors Meeting Room
- 05/06** Borough Representatives meet with New DEP Assistant Commissioner to determine project status
- 05/06/06** DEP approve Environmental Investigation and funding to do testing

This chronology is compiled from a variety of sources and every effort has been made to ensure accuracy. If any inaccuracies do exist we apologize but cannot accept responsibility for external data.