



TOWN OF EDGARTOWN

WASTE WATER DEPARTMENT
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TOWN OF EDGARTOWN BOARD OF WASTE WATER COMMISSIONERS

MINUTES OF THE SPECIAL MEETING OF FEBRUARY 13, 2019

WASTE WATER COMMISSIONERS PRESENT:

Mr. Glen S. Searle, Chairman
Mr. Scott Ellis, Commissioner
Mr. Sean E. Murphy, Commissioner

EWWD STAFF PRESENT:

Mr. David Thompson, Facilities Manager
Mrs. Pia Webster, Administrative Assistant

OTHER TOWN STAFF PRESENT:

Mr. James M. Hagerty, Town Administrator

OTHERS PRESENT:

Ms. Jinane Abounadi, 7 Duarte Circle
Ms. June D. Ameen, Resident, 13 Duarte Circle
Ms. Judith A. Conley, Resident, 15 Duarte Circle
Mr. Henry R. Fauteux, Resident, 9 Duarte Circle
Mr. Michael A. Goldsmith, Attorney, Reynolds, Rappaport, Kaplan & Hackney, LLC
Mr. E. Douglas Sederholm, Attorney, Miller Sederholm Law Office

MEETING CALLED TO ORDER:

The Board of Waste Water Commissioners of the Town of Edgartown held a Special Meeting on Wednesday, February 13, 2019, at 3:00 p.m. in the Fred B. Morgan, Jr. Selectmen's Meeting Room at the Town Hall, 70 Main Street, Edgartown, Mass. At 3:00 p.m. Chairman Glen S. Searle called the meeting to order. Also present from the Board were Commissioners Scott Ellis and Sean E. Murphy.

NEW BUSINESS:

DISCUSSION/VOTE/SIGNING: WARRANT TO COLLECTOR AND COMMITMENT – FY19 SEWER USER CHARGES.

Referring to a chart titled "Edgartown Waste Water Treatment Facility – Growth of Sewer User Accounts," Administrative Assistant Pia Webster related that the Department had added 30 new sewer

accounts in FY19 and without raising rates had increased revenue by 4.2 percent. In addition, the net increase in the number of OTDs billed was 770.

The next document referred to was the FY19 Warrant to Town Collector Annual Sewer User Charges, which totaled \$1,455,239.75, said Mrs. Webster, and after that was the Sewer User Charges Commitment for the Town Accountant with the same total. Commissioner Ellis made a motion to accept the FY19 Sewer User Charges Warrant to Town Collector and the FY19 Sewer User Charges Commitment No. 1, seconded by Commissioner Murphy. The motion carried unanimously by voice vote. The Board members signed the documents.

DISCUSSION/VOTE/SIGNING: ABATEMENT NO. 1 – FY19 SEWER USER CHARGES (PRORATED ACCOUNTS).

Admin Assistant Webster explained that the way the Munis accounting system was set up, customer accounts that were opened after the start of the fiscal year on July 1, 2018 were billed for the full fiscal year; then the Admin Assistant calculated the portion of the fiscal year the customer was not tied in to the system and abated that amount off the invoice. In addition, when the number of OTDs in the account increased during the fiscal year, the account was billed at the higher number of drains for the full year; then the difference for the lower-rated portion of the fiscal year was abated off.

For the FY19 Sewer User Charges Billing, the total abated for these two purposes had come to \$6,302.03. The Admin Assistant referred the Board members to the list of abated accounts, which included the reason for the abatement, the date of tie-in or OTD increase, and the math behind the abatement. Commissioner Ellis made a motion to accept Sewer User Charges Abatement No. 1 for \$6,302.03, seconded by Commissioner Murphy. The motion carried unanimously by voice vote. The Commissioners signed Abatement No. 1.

OLD BUSINESS:

REVIEW AND DISCUSSION OF REQUESTS FOR SEWER LINE EXTENSION FOR DUARTE CIRCLE.

Attorney E. Douglas Sederholm related that he had first come before the Board last October, representing six property owners on Duarte Circle to express their concerns about the approval the Board had given to Patrick Kager and Catherine Clairmont (the Kagers), owners of 11A and 11B Duarte Circle, for a private sewer line to connect to the Road to the Plains line, allocating to the private line eight pumps. With the prospect of a lawsuit now looming, the circumstances now were much changed, he said.

Mr. Sederholm continued that it appeared that Mr. Kager and Ms. Clairmont had taken the position that the Board of Waste Water Commissioners had granted them a monopoly, an exclusive right, to put in a private sewer line and to be the only ones to control whether or not a property owner could connect to the Town sewer. Furthermore, he said, Mr. Kager and Ms. Clairmont had presented a price structure that was unfair, especially the part indicating that if a property owner did not pay by January 2019, he/she would have to pay \$18,000, plus 5 percent a year, if he/she chose sometime in the future to tie in. His clients were very disturbed, he said, because they had not known about this earlier.

Mr. Sederholm said that he and some of his clients were present because a problem was created long before they knew about it. Mr. Kager and Ms. Clairmont had delivered their proposal to their neighbors in September 2018; the Board had approved the line in January 2018, and Facilities Manager David Thompson had signed off on engineer Richard J. Barbini's plan in February 2018.

The attorney went on that his clients had spent innumerable hours on this matter, as well as considerable money. Furthermore, they now faced allegations of conspiracy and of interfering with contractual relations between the Kagers and the Town and the Kagers and Schofield Barbini & Hoehn. But all they had done was to find out long after the fact that the Commission had granted the Kagers what the Kagers were claiming was an exclusive right to control whether his clients ever connected to Town sewer.

In their presentations to the Board on November 29 and December 20, 2018, said Mr. Sederholm, the neighbors' group had offered their own proposal for a second line. The neighbors did not care if the Kagers had their own sewer line or if they activated that line with a single pump. They just did not want to be compelled to connect to the Kager-Clairmont line and to be under the Kagers' control.

His clients also asked, said Mr. Sederholm, that when the lines were installed, there be minimal disruption of either line. In other words, if Kager-Clairmont put in their line first, it was essential that it be installed deep enough so that when the neighbors installed their laterals, they would not be encountering the first line.

Mr. Sederholm said that if the Board insisted on having a single line running down Duarte Circle, the Town was going to have to "own this." He added that he knew everyone could learn from this experience and that in the future the Board would establish regulations which would ensure that those who were installing sewer lines properly notified the neighbors who would be affected by the project.

Mr. Sederholm repeated that if there were to be a single line, his people did not want to have any interaction with Mr. Kager and Ms. Clairmont; and the Town would have to oversee the construction and determine a fair and reasonable connection cost. He then referred to the memorandum to the Board dated February 13, 2019 from the Duarte Circle Homeowner Group, which included many of the arguments Mr. Sederholm had just made.

Commissioner Murphy asked Mr. Sederholm how many of his clients were prepared to tie in to the sewer system immediately, once the sewer line was installed. After consulting with the four neighbors present, Mr. Sederholm replied that under the right circumstances, that is, provided they were paying the Town or an escrow fund managed by counsel, all six of the property owners would tie in. And, the attorney added, the amount they paid would have to be based on real costs.

Mr. Sederholm mentioned information he had received from Keith Fenner about how much he had charged customers on Road to the Plains for the installation of laterals and for engineering costs, and the figures was far lower than what Mr. Kager and Ms. Clairmont had presented to his clients.

MOTION FOR EXECUTIVE SESSION.

There being no more comments or questions, Chairman Searle moved that the Board go into Executive Session with the following motion: That the Board go into Executive Session for review and discussion of requests for the sewer line extension for Duarte Circle, under the authority of Massachusetts General Laws Chapter 30A, Section 20(a)(3), to discuss strategy with respect to

threatened litigation if an open meeting would have a detrimental effect on the litigation position of the public body, if the Chair so declares, after a Roll Call Vote, and to obtain or receive the advice of counsel, if requested, and that the Board may return to Open Session. Commissioner Murphy offered a second.

The Chairman asked the Admin Assistant for a Roll Call Vote. Admin Assistant Webster conducted a Roll Call Vote, with the results as follows:

Chairman Glen S. Searle	Yes
Commissioner Scott Ellis	Yes
Commissioner Sean E. Murphy	Yes

“All ayes, unanimous,” said Mrs. Webster. The Chairman announced that the Board was going into Executive Session. Jinane Abounadi, June D. Ameen, Judith A. Conley, Henry R. Fauteux and Mr. Sederholm left the meeting room. The time was 3:16 p.m.

RETURN TO OPEN SESSION.

With those who had left invited back into the meeting room, at 3:51 p.m. Chairman Searle made a motion to return to Open Session, seconded by Commissioner Murphy. The motion carried unanimously by voice vote.

Next, Commissioner Murphy made the following motion: That based on conversation with Town Counsel, the Board take a vote on the proposed sewer extension down Duarte Circle. Commissioner Ellis offered a second. Commissioner Murphy referred to a six-page agreement related to the extension, plus two exhibits, drawn up by counsel that would be made public once the vote was taken.

Summarizing, Commissioner Murphy said the Board was going to allow the original (Kager-Clairmont) line to go in, subject to a review by the Commission of all of the costs incurred in putting that line in, included engineering costs and costs for establishing the trust, in addition to a 20 percent management fee for the original applicants.

Furthermore, continued Commissioner Murphy, the Commission would set the tie-in fee once the figures were provided. Town Counsel Michael A. Goldsmith noted that the approval was conditioned upon the production by Mr. Kager and Ms. Clairmont to the Board of documents establishing the costs incurred, from which the Board would decide what a fair and equitable base tie-in cost should be.

Speaking for himself, Commissioner Murphy remarked that one of the reasons he was comfortable with this proposal was that Mr. Sederholm had said that all six property owners in the Duarte Circle Homeowner Group were willing to tie in. Once the fee was paid, no more interaction between the members of the Homeowner Group and the Kagers was necessary, he said, explaining that these types of trusts are established to address the cases of residents not tying in right away; that way there was a means of collecting the tie-in fees in the future and for the initial investors in the meantime to earn a return on the expenses they had incurred.

Mr. Sederholm stated that his clients had expressed concern that Mr. Kager and Ms. Clairmont would still own the line. Facilities Manager David Thompson said that with no more pumps to be added to the line, there would be no reason for the trust to exist, since it would no longer have a purpose. Mr. Sederholm said that he was sure his clients would want to agree to the proposal so long as there was a

global resolution of the lawsuit that was filed. They were not going to be willing to fund the line, he said, if Mr. Kager and Ms. Clairmont were suing them.

Commissioner Murphy stated that what the Board was doing with this agreement was clarifying its previous decision so that it was on record and there was no ambiguity about they had voted.

Mr. Sederholm asked about the timeline. We didn't get to that, responded Commissioner Murphy, who said that Mr. Kager and Ms. Clairmont would have to submit their invoices and that the Commission would review the invoices in a public meeting. Once the tie-in figure was settled on, the neighbors would have one month to tie in; after that the cost would increase by 20 percent. But that would not matter, because everyone would be tying in. Mr. Sederholm clarified with Commissioner Murphy that in reality the neighbors would be paying right away for the right to tie in and for the lateral to tie in but that they could tie in in fact whenever they chose.

Jinane Abounadi of 7 Duarte Circle confirmed with Commissioner Murphy that the tie-in fee would cover engineering, design, construction and the legal costs related to the covenant but not the legal costs related to the lawsuit. Ms. Abounadi also wondered if there would be any written assurance that there would be no interference in the future. Mr. Thompson said that what was on the homeowner's property belonged to the homeowner; the line in the street would belong to the Town.

Commissioner Murphy asked Mr. Goldsmith what would prevent Mr. Kager and Mr. Clairmont from complying with the agreement before them but continuing with the lawsuit. "Nothing," responded Mr. Goldsmith.

Commissioner Murphy clarified that the fee would go from \$10,000 to \$12,000 after one month, then increase 5 percent a year thereafter.

Commissioner Murphy expressed concern to Mr. Goldsmith that Items 3 and 4 on the agreement said only that Mr. Kager and Ms. Clairmont had to produce the cost figures and not that the Commissioners had to approve them. Mr. Sederholm wanted to know if it would be reasonable for the Commission to approve the agreement contingent on a dismissal of the action. Mr. Goldsmith responded that it was difficult to negotiate such things in Open Session and that to issue a fair and reasonable decision, the Board would have to return to Executive Session.

Having established with the Admin Assistant that their next meeting was on Thursday, February 21, Commissioner Murphy withdrew his motion and proposed that they table the discussion subject to review by counsel until the Regular Meeting of Thursday, February 21. Commissioner Ellis withdrew his second.

Commissioner Murphy reiterated that he wanted it to be clear in the agreement that the Commissioners had to review the costs and approve the basic tie-in fee before work could commence on the sewer line. Mr. Sederholm was concerned that without reviewing the details of the agreement, there might be something in there that could "come back and bite us." Mr. Goldsmith said that the details of the agreement had to remain confidential until the Board had voted it.

With another board slated to meet in the Selectmen's Meeting Room on Thursdays, the Admin Assistant said she would secure the Board Room at the Public Library for the Regular Meeting of the Waste Water Commissioners at 3:00 p.m. on Thursday, February 21.

ADJOURNMENT

There being no further business, Chairman Searle made a motion to adjourn, seconded by Commissioner Ellis. The motion carried unanimously by voice vote. The Special Meeting adjourned at 4:07 p.m.

Respectfully submitted,



Pia Webster
Administrative Assistant

APPROVED:

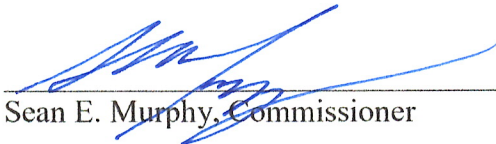
BOARD OF WASTE WATER COMMISSIONERS
TOWN OF EDGARTOWN



Glen S. Searle, Chairman



Scott Ellis, Commissioner



Sean E. Murphy, Commissioner