

**TOWN OF EDGARTOWN
BOARD OF WASTE WATER COMMISSIONERS**

**MINUTES OF THE
REGULAR MEETING OF OCTOBER 18, 2018
AMENDED DECEMBER 3, 2020**

WASTE WATER COMMISSIONERS PRESENT:

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

EWWD STAFF PRESENT:

Mrs. Pia Webster, Administrative Assistant

OTHERS PRESENT:

Ms. June D. Ameen, Resident, 13 Duarte Circle
Ms. Judith A. Conley, Resident, 15 Duarte Circle
Mr. Andrew J. Farrissey, President, Farrissey Tele-Comm, Inc.
Mr. Henry R. Fauteux, Resident, 9 Duarte Circle
Mr. E. Douglas Sederholm, Attorney

MEETING CALLED TO ORDER:

The Board of Waste Water Commissioners of the Town of Edgartown held their Regular Meeting on Thursday, October 18, 2018, at 4:00 p.m. at a special location, in the Board Room on the Second Floor of the Edgartown Public Library, 26 West Tisbury Road, Edgartown, Mass. At 4:00 p.m. Chairman Glen S. Searle called the meeting to order. Also present from the Board were Waste Water Commissioners Scott Ellis and Sean E. Murphy.

OLD BUSINESS:

DISCUSSION: CONCERNS ABOUT DUARTE CIRCLE SEWER CONNECTION.

Chairman Searle welcomed everyone and requested that only one person speak at a time. Mr. E. Douglas “Doug” Sederholm introduced himself as an attorney in town who had been retained by six of the lot owners of Duarte Circle, that is, everyone on Duarte Circle except for the owners of 11A and 11B Duarte, Catherine Clairmont and Patrick Kager, who had proposed the extension of the sewer main. “I am here on behalf of the other lot owners,” Mr. Sederholm explained,

“because they are very disturbed by this proposal by their neighbors. They’re not opposed to a sewer line on Duarte Circle. They *are* opposed to this *particular* proposal because of the way it was done without any notice to them by [Mr. Kager] and [Ms.] Clairmont.

Mr. Sederholm went on with his opening remarks: “[Mr. Kager] and [Ms.] Clairmont came to you ... over a year ago, and you went through a number of iterations with them ... and they got your approval. And then months went by and then they sort of *sprung* it on their neighbors. They have refused to share any cost information with the neighbors. They’ve refused to share the terms of the trust with the neighbors. They insist that only one of them will be the trustee. They insist that they will run this, and it’s basically their way or the highway. The neighbors find that very distressing. They’re not opposed to a sewer project. They’re opposed to *this* one and to the way it’s been handled by the proponents. And they’ve come here, they want to get some clarity on what the status of this project is.”

Mr. Sederholm continued. “We understand you’ve approved it, okay? We understand that. We understand that Mr. Thompson has signed a covenant already,” said the attorney, referring to David Thompson, Facilities Manager of the Waste Water Treatment Facility. “So we understand that, you know, the train is running. The question is, What’s going to happen next?”

“And there are two key issues,” said Mr. Sederholm. “One seems to be – and [Admin Assistant] Pia Webster has been very forthright in giving us information, we appreciate that, and the Waste Water Commission has been also – but we just want to get some clarity so we understand what could happen down the road.”

“We’re also very concerned,” stressed Mr. Sederholm,” about the costs that these proponents, the trust has come up with. You may or may not know, they’re saying, ‘If you join us now and pay ten thousand dollars whether you hook up now or not, you’ll be able to hook up whenever you want. If you don’t and you don’t pay, join us by, I think, January one, [if] you want to do it on January *two*, it’s going to cost you *eighteen* thousand dollars.’ Those numbers strike us as rather outrageous when you consider what Vickers Street was. Now maybe Vickers Street got an economy of scale because there were more people. We understand that. But it still strikes us that this is a for-profit enterprise by the neighbors, and we’re not happy about that. And we have no way of knowing, because they won’t tell us anything....”

Mr. Sederholm stated that it appeared that Facilities Manager Thompson had told engineer Richard J. Barbini in an e-mail that if the sewer main project were not done by February 20, 2019, “it’s a dead project.” Admin Assistant Webster corrected him: “February *sixteenth*.” “I’m a little concerned,” said Mr. Sederholm, “not because of that deadline, but because of the fact that Mr. Thompson has signed a covenant already and I didn’t see any expiration date in the covenant. So I find it, I’m a little distressed that the proponents, the trust could come in and say, ‘Wait, we already have a covenant. We have forever.’ So I would love to get clarity from the Commission about whether or not there is a sunset on this project as of February sixteenth two thousand nineteen.”

Mr. Sederholm went on. “The other thing that’s important to the neighbors is knowing whether or not the trust can proceed with this if they only have one pump that they can sign up, which is their house. They own two lots. They have one pump assigned to each lot, eleven A and eleven

B. They only have a house on eleven B, I think it is. And they're not going to be able to build a house and install a pump by February sixteen of twenty nineteen. But I'm also unclear as to whether they need an active pump by that date or do they just need a written commitment for two pumps."

Mr. Sederholm began to wind down. "Lastly, I should point out that as part of our concern, the trust has on three separate occasions threatened to not install valves at the other lots that haven't signed up by January one. If you haven't signed up, they say, 'We don't know whether we will or not.'"

"We're not opposed to a sewer," the attorney reiterated. "Sewers are a good idea. We appreciate that you have a limited capacity, and you have to use that capacity in the best interests of the Town. We get that. But we don't like being railroaded by our neighbor. So that's why we're here today."

Admin Assistant Webster referred Mr. Sederholm to an answer sheet she had updated on October 11 for June Ameen of 13 Duarte Circle and asked him if he was familiar with it. Yes, he was, he replied. "Well, the answers that are in there still stand," Mrs. Webster said. "February sixteenth two thousand [nineteen] is the deadline, and in the e-mail to Mr. Barbini four days later ... Mr. Thompson wrote, 'If it is not done, it will have to be re-evaluated by the Department and the Commission.' So it's *not dead*. It would just be re-evaluated by the Commission. That's not saying the project is dead. That's the answer to your first question."

"The answer to the second question," continued Mrs. Webster, "I rechecked with Dave on the eleventh, and definitely, in spite of the letter we got from F. R. Mahoney, Dave's stand is still *two active sewer accounts*. What that means is, you have to come in, get your application and at least be in the process ... of installing the pumps... They can't just reserve it. You have to get your application in and get your easement and be actively pursuing the account."

Commissioner Murphy stated that when the Duarte Circle extension had first been proposed, he had raised the issue of notifying the neighbors. But when it came time to vote on it, engineer Barbini had assured the Board members that later on, if the line was full, a property owner could install a nitrogen-mitigating septic system and get roughly an equivalent number of bedrooms. "So we sort of let it go," he said.

Commissioner Murphy contrasted how the Duarte Circle project had proceeded with the way Joseph Giacalone, organizer of the Vickers Street project, had reached out to every neighbor immediately after the Board's decision, offering full disclosure of finances and procedures. "We have never seen a project like this before, *never*," remarked Admin Assistant Webster. "We did the same thing with Hye Road," related Commissioner Ellis. "We all chipped in." "Personally, I would vote to revoke it," said Commissioner Murphy, "but I don't think we have that power. But if it's not done by February sixteenth, I'm certainly not willing to extend it further. Then we would have the power to amend it."

Ms. Ameen wanted to know if there might be a situation where a lot owner put a minimal structure on his land, along with a grinder pump, and then counted it as an active account. "It's got to have bedrooms and bathrooms," answered Commissioner Murphy. Mrs. Webster said that

the structure had to be “a real house” that would be issued a Certificate of Occupancy by Building Inspector Leonard Jason, Jr.

Admin Assistant Webster passed out copies to all present of an e-mail sent that morning by Facilities Manager Thompson to Ms. Clairmont. (Mr. Thompson was unable to attend the Regular Meeting, having been waylaid by electrical problems with the generator for the Dock Street Substation.) The Admin Assistant read the e-mail aloud into the record:

“Dear Catherine,

Just to clarify a couple of points on the 1½ inch line alternative:

This line would be a sewer LATERAL, not a sewer EXTENSION, as the 2-inch line with multiple services would be. It is one line, with one owner. It would not require the air relief manhole at the terminal end, which the Department would use to service the line in the event of a blockage. As far as town maintenance:

SEC. 3 ALL COSTS TO BE BORNE BY OWNER¹

All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

The Department’s obligation for maintenance of this line would be only the extent which it runs in the public way. The additional pump (same owner) would be permitted. If the additional property were to change owners, it is suggested that an easement for use (and repair) of that line be part of the sale document.

David Thompson, Edgartown WWTF”

Mrs. Webster explained that the other six lot owners would then install their own two-inch sewer main with laterals and manhole, establishing their own trust, procedures and financing. Mr. Thompson was unable to see, she said, how otherwise the Board members and staff would not continue to be pulled into the conflict already brewing.

What Mr. Thompson was presenting in his e-mail, said Mrs. Webster, was an alternative plan, where Ms. Clairmont would have her own inch-and-a-half line, a lateral as opposed to a sewer *extension*, which would require only a single pump to “fire up,” thereby sidestepping the discord that have been stirred up between her and the neighbors.

Responding to a query from one of the neighbors, Mrs. Webster explained that F.R. Mahony & Associates was a vendor of the E-One grinder pumps. She then described the October 17 letter to Patrick Kager from F.R. Mahony president Ed Quann (which Mr. Thompson had seen only that morning), in which he argued that “the low-pressure sewer system as designed will function properly with one dwelling connected.”

The Admin Assistant said that she and the Facilities Manager had been gobsmacked by the letter, prompting Mr. Thompson to pull out his manual for the E-One Extreme Series – *Low Pressure*

¹ From ARTICLE IV BUILDING SEWERS AND CONNECTIONS, TOWN OF EDGARTOWN SEWER RULES AND REGULATIONS.

Sewer Systems Using Environment One Grinder Pumps – to show her the table and schedule which indicated that in fact two active pumps were required for the Duarte Circle line. Mrs. Webster added that the letter brought to mind the occasion of engineer Barbini’s abruptly changing his position that the capacity of the Road to the Plains line had been broached with the approval of the Vickers Street project.²

Some minutes were spent reiterating for Mr. Sederholm and the neighbors what Ms. Clairmont and Mr. Kager wanted (a two-inch extension with manhole, with one active pump for the time being); what Mr. Thompson was requiring (a two-inch extension with manhole, with two active pumps); and the additional options that Mr. Thompson was offering (a) Ms. Clairmont and Mr. Kager (an inch-and-a-half lateral with no manhole and one active pump [11B], with the possibility of adding a second pump [11A] later) and (b) the six other property owners (their own two-inch sewer main extension with manhole and individual laterals for each property).

Commissioner Murphy noted that if the Facilities Manager’s alternative plan were accepted, another vote of the Board would be required and the original approval, altered. “We’re going to have to talk to Mr. Rappaport,” said the Admin Assistant, referring to Town Counsel Ronald W. Rappaport of Reynolds, Rappaport, Kaplan & Hackney. Mr. Sederholm suggested that Mr. Rappaport also look into the question of whether the covenant could be terminated. But, argued Commissioner Murphy, if Mr. Kager and Ms. Clairmont were willing to give up the covenant and their right to eight pumps and just take their own two pumps with a lateral line, that would in effect resolve the issue. “As long as they’re no longer controlling the other six lots,” said Mr. Sederholm.

So, concluded Admin Assistant, after the Facilities Manager had received a final e-mail not approving the alternative approach, he resolved there was to be no further communication with Ms. Clairmont or Mr. Kager that day and that the meeting with the neighbors was to proceed as planned, with his recommendation of the alternative plan being presented as proposed. Mr. Sederholm again confirmed with the Board members and the Admin Assistant the particulars of the alternative plan.

Andrew J. Farrissey of Farrissey Tele-Comm, Inc., whom Ms. Clairmont and Mr. Kager had consulted about laying the main, pointed out that in his experience over the years the Waste Water Department had “done well by keeping to a standard.” He continued, “I think this is breaking all the norms for the model that’s been successful with Hye Road and all these other places. Mechanically, we’re talking about breaking a norm. Regardless of how it’s [inaudible], you’ve created a system to a municipal standard consistently. And now we’re talking about creating a stand-alone thing. Would you prohibit somebody else from tying in to that inch-and-a-half lateral? Because mechanically it’s not an issue...”

Commissioner Murphy had a proposal: Let Ms. Clairmont and Mr. Kager keep the terms of the approval that they had – eight pumps, two-inch line, standard clean-out – and then vote to allow six more pumps on a second two-inch line. “But we only have eight pumps available,” noted Admin Assistant Webster. “But they can’t install eight pumps,” countered Commissioner Murphy. “They only have two lots.”

² See pages 1-2 of the Minutes of the Regular Meeting of November 16, 2017.

Ms. Ameen posed a question: If in fact February 16, 2019 arrived and Ms. Clairmont and Mr. Kager did not have the second active pump; and the Board of Waste Water Commissioners then needed to re-evaluate, would the Board consider an alternative proposal from the rest of the neighborhood? “Yes,” answered Commissioner Murphy. “Yes,” said Chairman Searle and Commissioner Ellis in unison.

“First of all, they have eight pumps right now, right?” began Commissioner Murphy. “They’re allowed eight pumps. They only own two lots, correct?” “Correct,” said Commissioner Ellis. “And I haven’t seen the covenant, but I assume they can only put these pumps on Duarte Circle,” said Commissioner Murphy. “Right,” said Mr. Sederholm, “it’s per specific plan approved by Mr. Thompson.” “Okay, so that’s the only place those eight can go,” said Commissioner Murphy, who went on, “If we vote another six pumps for the neighbors ... these people [Ms. Clairmont and Mr. Kager] are going to have to run a full wastewater line down there with manholes and whatever we require to the end of the road, and they’re going to get their two pumps and that’s it. And if we vote to give the neighbors six more pumps, my guess is these people at the end of the road are going to come in and ask to re-evaluate it themselves without us getting involved.”

A discussion ensued. Admin Assistant Pia Webster cautioned those present that the January 18, 2018 vote by the Board was very specific as to the allocation of the eight pumps voted for the Clairmont-Kager line. She referred to a summary of that vote in the meeting binders.³

Commissioner Murphy asked Mr. Sederholm if his clients would be willing to void their right to tie in to the Clairmont-Kager line if the Board were to vote a second two-inch line with manhole and six pumps for the six neighbors. “I imagine they would,” replied Mr. Sederholm, adding “We would have to consult with them.” “So we’re still at eight pumps,” said Commissioner Murphy, “and if these people want to pay whatever it is to run it all the way down Duarte on their own...”

“You could make your vote contingent on that,” interjected Mr. Sederholm, continuing, “We vote to allocate six pumps to these six lots contingent on their waiving their right to attach to the Clairmont line.” “Solves the problem,” said Commissioner Murphy. “Yeah,” said Commissioner Ellis. The Chairman also expressed agreement. “And that way you’re maintaining the standard this gentleman [Mr. Farrissey] has pointed out,” said Mr. Sederholm.

Mr. Farrissey raised the possibility that if the six lot owners did a second line themselves, they could wind up spending more than the \$10,000 apiece that tying in to the Clairmont-Kager line

³ The summary of the January 16, 2018 vote by the Board reads as follows:

“Subject to final approval by Facilities Manager David Thompson of a plan submitted by engineer Richard J. Barbini, eight pumps will be allowed to be added to the Road to the Plains sewer line on Duarte Circle, with one allocated to each of the following lots: 7 Duarte Cir (36-15.2122); 9 Duarte Circle (36-15.22); 10 Duarte Circle (36-15.25); 11A Duarte Circle (36-15.23) 11B Duarte Circle (36-15.24); 12 Duarte Circle (36-15.241); 13 Duarte Circle (36-15.243); and 15 Duarte Circle (36-15.242). No. 3 Duarte Circle already qualifies for one pump because it abuts Road to the Plains and was included in the Road to the Plains plan.

“There remain two lots on Duarte Circle that qualify for subdividing: 9 Duarte Circle at 1.04 acre, with the potential for two lots; and 10 Duarte Circle, at 1.14 acre, also with the potential for two lots. If subdivision does occur, the areas now covered by Nos. 9 and 10 Duarte Circle will still qualify for only one pump each. One pump can serve only one lot. Therefore, the second, newly formed lot will have to be served by an enhanced nitrogen-mitigation system.”

would them cost now. “So just give yourself a hedge that possibly [we could] solve and come together and we [could] build one pipe to the proper standard,” he said.

Mr. Farrissey added that the initial \$10,000 figure did not seem far off but that usually afterward a project organizer would raise the cost five percent a year. He did not understand the \$18,000 figure after January 1, he remarked.

Judith A. Conley of 15 Duarte Circle presented the scenario of her septic system failing in five years with her not having paid the \$10,000 to tie in to the Clairmont-Kager line: suddenly she might be paying \$40,000 to tie in. “I’m just in favor of doing it *once*,” said Mr. Farrissey. “If we vote this, that’s a decision for [Ms. Clairmont and Mr. Kager] to decide,” said Commissioner Murphy. “I don’t think we’re not going to vote this tonight, but at our next meeting, that would be my motion,” he added, “and they can decide if they want to fight, argue about it or run their own line.” Chairman Searle said the Board would decide that in a November meeting.

Commissioner Murphy said he would be moving that Facilities Manager David Thompson not alter the January 18, 2018 approval of the Board of Waste Water Commissioners with regard to the Duarte Circle sewer main extension. “We’re not going to negotiate ... whether they can do laterals or they can do whatever,” he said. “The design was drawn by Barbini, approved by Dave, that’s the design that should stand. The question is whether the neighbors can tie in to it or not. And if they can’t work it out in twenty-nine days, then we’ll work it out for them. Does that make sense?”

“So if I’m understanding what I’m hearing, you going to confirm that if they want to do this, they got to have two active accounts by February sixteen of twenty nineteen,” said Mr. Sederholm. Commissioner Murphy responded that this was kind of beside the point.

“Because,” said Mr. Sederholm, “if they don’t work it out with us within the next thirty days, we can come in and you would look favorably upon – one never knows what a vote would be – we can come in and present a proposal for a separate line for six lots and six pumps and that proposal is contingent on us waiving our right to attach to, to connect to the Clairmont line, so that you’re not, so you’re still dealing with only eight pumps.” “Correct,” said Commissioner Murphy. “That’s something you would seriously consider,” said Mr. Sederholm. “Yes,” said Commissioner Murphy.

The discussion continued. When Mr. Farrissey again raised the issue of cooperation, Ms. Ameen stressed that the neighbors had no objection to the sewer. After they had been notified on September 4 of the Clairmont-Kager plan, they had put together a meeting with a Q-and-A session. “But during that meeting,” she related, “we were provided with *no answers* to questions. We were told they were not allowed to give us information, we were told they weren’t *willing* to give us information. So we have *tried* to avoid *this*, but we were unable to.”

Ms. Conley, a 24-year resident, pointed out that as a neighborhood they had dealt with electrical, snowplowing and road work and that invoices had been handled and divvied up, with each paying a fair share. “And that’s how we’ve been operating,” she said. “So I think maybe we’ve been portrayed some other way.” “I don’t think so,” responded Commissioner Murphy. The discussion turned to other sewer projects where the level of cooperation among neighbors had been high.

“Was that a motion that you made?” asked the Admin Assistant, referring to Commissioner Murphy saying a few minutes before that he would be moving that Facilities Manager David Thompson not alter the Board’s January 18, 2018 approval.⁴ Commissioner Murphy said he had made that motion. Commissioner Ellis made a second, and the motion was approved unanimously by voice vote.

Admin Assistant Webster went over the November calendar, and the Board settled on Thursday, November 8, for a Special Meeting to approve the FY20 Operating Budget and possible Warrant Article and Thursday, November 29, for their Regular Meeting, when they could take up the Duarte Circle sewer extension. Mrs. Webster added that Ms. Clairmont and Mr. Kager wished to appear at the next Regular Meeting. “And that should be the extent of it,” stressed Commissioner Murphy. “They’re not going to tie up your and Dave’s time...”

Commissioner Murphy then made a motion: That this matter was tabled from staff’s perspective until the meeting on November 29 and that unless it was an emergency, they did not have to go back and forth with Ms. Clairmont and Mr. Kager. Chairman Searle provided a second, and the motion carried unanimously by voice vote.

Mr. Sederholm thanked the Board for hearing him and his clients and for coming up “with a very workable solution that may open the door to us resolving this with our neighbors.”

NEW BUSINESS / OTHER BUSINESS.

Since the first item had taken longer than expected; the Facilities Manager had been unable to attend the meeting; and the Board was required to vacate the Library Board Room by 4:45 p.m., the Chairman elected to table most of the other agenda items until the November 8 meeting.

APPROVAL OF MINUTES.

The Board members turned to the **Minutes of the Regular Meeting of August 23, 2018**. Admin Assistant Webster pointed to the amendments on page 2 suggested by Mr. Thompson after the draft minutes had been e-mailed to the Commissioners. Commissioner Ellis made a motion to approve the Minutes of the Regular Meeting of August 23, 2018 as revised, seconded by Commissioner Murphy. The motion carried unanimously by voice vote.

Next, the Board members considered the **Minutes of the Regular Meeting of September 20, 2018**. Admin Assistant Webster noted the typographical error on page 4, third paragraph, where the name “Clairmont” had been spelled “Chairmont.” Commissioner Ellis made a motion to approve the Minutes of the Regular Meeting of September 20, 2018 as revised, seconded by Commissioner Murphy. The motion carried unanimously by voice vote.

⁴ See the first full paragraph on this page.

ADJOURNMENT

There being no further business, Chairman Searle made a motion to adjourn the Regular Meeting, which Commissioner Ellis seconded. The motion carried unanimously by voice vote. The Regular Meeting adjourned at 4:41 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