

WAYLAND WASTEWATER MANAGEMENT DISTRICT COMMISSION

MEETING OF 16 April 2014

MINUTES

In attendance: Fred Knight, Sam Potter, Cynthia Cincotta

Absent:

Guests: Linda Segal, Woody Baston, Jonathan Buchman, Donna Carlton, Kurt Fliegau, Karen Laroche, Lin Perri, S Cavel-Goldsmith, Nancy Carapezza, Joan Duffy

Location of meeting: School Committee Room, Wayland Town Building

Fred Knight called the meeting to order at 7:30 PM.

7:30 1. *Public Comment*

- Kurt F. – Lawyer in Boston representing the users (not 20 Wayland) hired to take a look at the allocation process. Basic position more of the cost should shift to 20Wayland, the biggest user. The reason we take that position is simple. There is a contract between the predecessor and the TWO and WWMDC. Under that contract it's clear that 20 Wayland has 45,000 gallons per day of this facility. The facility has a total of 52,000 gallons. Simple math 86%, 20 Wayland should pay more. They knew they would have to pay 86% of the cost of this facility. Brief chronological history. 20 Wayland sued and got a judgment. That is our position. They are being sked to pay only 62%. 1.7 million dollars off the biggest entity shift off 20 Wayland and onto the back of these people who cannot afford it. Consider argument, go over the history. Do a fair analysis.
- Sam Potter responds regarding chronology agrees with chronologically with the exception of the plant's capacity
- Fred Knight – the 1999 MOA guarantees the first 45,000 at that point we had already 65,000, it went up to 76,000. That number is flow, not capacity.

7:49 2. *Discussion with lawyer, Damon Seligson, on charging methodology, betterments vs. surcharge, and related issues*

- Damon Seligson, litigator has worked for real estate litigation, been on zoning boards. A legal and appropriate and provide options on what should or should not do. Has looked at 1997 Chapter 461.

Established the WWMDC, amended December 1996 374 gives the commission specific powers. How it can charge fees based on user sewer capacity. Understanding those agreements, talk about design flow based on my review; they are able to do what they are doing. I don't think the commission is in violation but the impact is the commission basis for the calculation is not illegal. The case in Acton, the decision. Change the methodology with leads them to litigation or continue to do what they are doing.

8:00 3. *Question and Answer*

- Kurt F. – mentions again to look at the 86%. Look at his proposal.
- Sam Potter – the DOR uniform
- Damon S. – How do other towns allocate Chapter 83 Section 15, how a commission allocates. The fixed unity method formula or the uniform unity method. Every property is tied into the unity. Allotted by residential sewer equivalent. The town can make the decision is the one fight going to be against 20 Wayland, the second one the commission has the discretion to decide that.
- Sam P – in the way Kurt is proposing, 20 Wayland brings a lawsuit. Judge Kern has already seen the case. Breach of contract. Paying a judgment. Based on background, chances are less than 50% chance of winning. The users feel they are carrying more than their share of the burden.
- What is the lesser of two evils? You have the ability of pay the 1.7 million dollar judgment. There is still an opportunity to find a solution. State money, gift money, Town 10% contribution.
- Town of Wayland is thing this board's hands.
- J. Buchmann – 20 Wayland sued because they only got 28,000 vs. 45,000.
- You cannot charge a Town a betterment. You can charge a surcharge. Damon S. says you can.
- Kurt F. – do what is fair; potentially have a lawsuit with 20 Wayland. Declaratory judgment action. Declaration of matter of law or at least permissible. Can 20 Wayland sue for damages? What would be the damages? Taking the declaration of 45 out of 52. Wayland Commons has a contract where they have a contractual 7200 gallons. Ask judge for specific relief. If court imposes a way of allocating could be punitive over a similar message. The usage of 20 Wayland is low. Court imposes. If it is done on usages the users will not win. If the entire cost was based on capacity, why would you bill on usage? What we do as litigators, we look at the situation, we give percentages of what the likely result would be.

- 00:00 4. nothing listed for any apparent discussion of FY2013/FY2014 billing: status and next steps.
- 9:20 5. *Discussion of fulfilling public records request*
- Mark Lanza has gone through 20% of messages that have to be scrubbed for litigation questions. Burden will fall on users. Fees will be charged based on users.
 - Jonathan Buchmann – should we continue with email review?
- 9:22 6. *Pay Bills*
- FedEx 22.55
 - NStar 2,016.65
 - NStar 137.43
 - Verizon 50.14
 - Verizon 109.95
 - WhiteWater 3,981.21 (provided the labor is part of the contract,
 - WhiteWater 15,677.25 we will pay. Is it?) It is.
 - WhiteWater 2,319.26
 - TOTAL AMT \$24,314.55
- 9:25 7. *Approval of Minutes*
- Tabled minutes until the next meeting.
8. *Topics not reasonably anticipated.*
9. *New Member needed*
10. *Calendar: upcoming meetings and events, including hearings.*
- Work with Damon (pros and cons)
 - Meet in executive session
 - Regular meeting calendar (May, 2nd Wednesday of May, the 14th)
11. *Public Comment*
- Format
 - Monthly Statement
 - Income, Expense & Balances
- 9:45 12. *ADJOURN*