

WAYLAND WASTEWATER MANAGEMENT DISTRICT COMMISSION

MEETING OF 11 March 2015

MINUTES

In attendance: Fred Knight, Sam Potter(arrived at 7:25), Rick Greene, Cindy Cincotta

Absent:

Guests: Sonja Starmer, Dan Starmer, Kurt Fliegau, Jonathan Buchman, Donna Carleton, Lyn Whinston-Perry, Dr. Len Carapezza, Nancy Carapezza, Sherman Lin, Mary Farley, Marian Stanton, Lionel Wolpert, John Tardif

Location of meeting: Selectmen's Meeting Room, Wayland Town Building

Fred Knight motioned to called the meeting to order at 7:00 PM.

7:00 1. Call to order

7:01 2. Executive Sesson for approval of executive session minutes.

- In executive session for one half hour.

7:32 3. Any action to be taken as a result of executive session minutes

- None

7:30 4. Public Comment

- Jonathan Buchman asked if we are able to discuss everything tonight.
- Lyn Perry wants to discuss the Massachusetts SC Credit.
- Jonathan asked about selling more gallons on the system.
- Fred stated the library might be interested and wanted to make gallons available. There is sufficient capacity to allow the Library to use.
- Sam Potter stated we explored selling to the TOW. The town has decided not to buy the capacity.
- Fred said that it is within our allocation to use the extra capacity.
- Jonathan asked about the leaching field behind the Town. Fred said the WWMDC agreed to build an extra leaching field, if necessary. We feel we will never be at a level that would require building.
- Jonathan it cost \$35,000 to design and \$1.2 million to build and the users will be forced to pay for it. The EPA will force you to do so and the users will be stuck paying for it.
- Sam spoke about the administrative consent order which has a trigger of three consecutive months with average flow of 42,000 gpd. Average right now is 21,000 gpd. It should only go up 2-3 thousand per day gpd with the new development. The chances of going up are so far away from what we are using, it is not worth discussing. Jonathan just wants the WWMDC to be

mindful that the users have already overpaid and do not want any further capital improvements added to their fees.

- Sam looked at the risk of triggering the ACO and is comfortable, that it will not happen.
- Jonathan stated the Town is picking up the legal fees. Sam stated the money is coming from the gift, there will not be a tax implication because of the lawsuit. No tax revenue is going to go to pay the judgement.
- Jonathan asked if there will be any capital expenditures in the future.
- Kurt Fliegau. – releasing minutes question. We still have the right to withhold and will be reviewed by Town Counsel and redacted.
- Every executive session will eventually be released.
- Kurt F. – do we know when the ES minutes will be reelease? Fred stated they should be released fairly soon.

7:42 5. Discussion of abatement requests. Presentation by WWMDC on settlement results. Accept input from public.

- Presentation of the Summary of WWMDC/Town of Wayland Settlement with 20 Wayland. This will be posted on the website.
- Background
- The Start of Settlement Negotiations
- Two appeals filed, counsel advised that statistically the chance of prevailing were low, 10-15%, some would say less than 10%
- Who would pay? Citizens in town would push for all of the users to absorb all judgment costs. \$424,000 was for over billing. That had a real possibility of being passed onto user fees.
- The users came to us and the BOS and asking the town for appropriate cost-sharing for legal fees and contribution of costs.
- The WWMDC was looking to represent users and wanted to Town and 20 Wayland to pay an equitable share of the costs for the WWTF.
- We wanted to come up with a settlement and we did not want re-litigation to happen.
- We wanted to minimize potential conflicts between WWMDC users and other taxpayers over the WWTF and judgment costs.
- Additional risks. Mounting post-judgment interest from current suit.
- New legal action by 20 Wayland.
- Uncertainty over whether and how Town would contribute to WWTF costs-complicating the issue of betterments versus surcharges.
- The decisions over betterment and surcharges. We felt the betterment would protect the users, but elimintate the town share.
- Key features of settlement with 20 Wayland
- PILOB of approximately \$500,000 toward cost of plant. This allowed us to reduce the betterment amount from \$5 million to \$4.5 million. The reduction was due to the PILOB contribution.
- One of the stipulations of the settlement was that the town pay their share.

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- The judgment was reduced to \$895k, to be paid solely out of 20W gift money. \$720k to be paid from gift linked to residential development. The \$175k to be paid from the gift linked to completion of WWTF.
- Town reimbursed the WWMDC \$24k for one-half of past legal costs
- 20 Wayland agreed not to challenge its betterment assessment. 20 Wayland did not file a sewer abatement.
- What settlement means to “average user.” Reducing the judgment and paying using gift moneys avoids costs.
- Town’s payment of PILOB and legal costs directly saves the average user approximately \$1,514.
- Cut off continuing and new legal challenges by 20 Wayland.
- Town agreeing to pay PILOB allowed WWMDC to choose betterments vs. surcharge, which ultimately benefited users.
- By reaching a settlement the uncertainty was put to rest. We hope there are no more ugly surprises.
- The betterment benefited users. If we had gone with surcharges, any user, including 20 Wayland, could have challenged us every single year. It was a better way of going forward. If you were able to pay up front you avoid the interest charge. The town came to us and asked us to do betterments. We came back and said if you want betterments, we want the PILOB. The town agreed and that was a negotiated point. We basically said we would not do betterments unless they would do the PILOB.
- The settlement benefits saved users up to \$3800.
- Finally we had a lot of potential worse outcomes.
- We discussed all strategies during executive sessions.
- Extensive discussion over betterments versus surcharges. The allowable betterment apportionment based on Massachusetts law.
- Sam wanted to make it clear that the BOS were never in WWMDC executive sessions discussions, and we received the legal advice that we use a consistent method for all users.
- Communication was difficult due to open meeting law restrictions. Coming to a consensus was challenging. Going forward was very difficult, it took a lot of time to get this done.
- Fred thanked the users and the BOS for their patience. Sam would encourage people to read the interboard agreement. The agreement with ammendments was very heavily negotiated.
- Rick added that at no point in the dicussion that the BOS lost sight of the impact of the decision made for users. The agreement to use the gift money speaks volumes about the concern of settling this. There are a number of people in town who are not happy with the use of the gift money.
- There were two parties at this table and we did a good job in representing the users.
- Jonathan asked about the role the additional Counsel that represented the users. Rick stated the WWMDC did not want to add excessive additional use of independent counsel. Broad lines were decided with input from

independent counsel, and then the details were hammered out without additional costs. It was helpful to have two legal opinions. In the final negotiation Joe Nolan was meeting with 20 Wayland. We constantly had to send Joe back and forth. Sam felt the WWMDC did not to be at the meetings. The WWMDC had already cut their deal and our exposure was capped.

- The \$175k that was allocated was for the users and was added it into the deal. It was triggered due to this lawsuit. We were forced to spend \$35k on the design of the leaching field.
- Fred feels it was a great deal. Jonathan feels it was irresponsible.
- Sam said there are two issues. This was a good deal. Jonathan feels the developer should have paid for the plant. The WWMDC inherited this and the cards that we had we played them the best we could. Sam feels the Interboard agreement was a victory. Rick stated that the outcome for the users is much better than he expected regarding the postential costs for users.
- Sam said the judgment had \$424k, for overbilling. We had to return the money we collected. They could have said they had to be paid out of user fees.
- Lyn Perry said the lawsuit was a good outcome, but we still have to address what it should have been. Are we still twice as high? Rick does not believe that the facility was over built. We right now have the 76,245 gpd.
- Lyn asked if Wayland Commons could have been on the town system.
- A prior board committed to 7200 gallons for Wayland Commons.
- Kurt F. – does the WWMDC feel that the 20 Wayland litigation prevents you from changing the pro-rata share? There is a basis of why you could not make 20 Wayland pay more. Kurt feels the regulation is clear.
- Sam said there is nothing in the settlement agreement that addresses that point.
- Kurt F.- I realize you will not grant the betterment abatements. If everyones abatement gets granted by 30%, how will you pay for the shortfall. Rick's understanding is that we would have to charge surcharges to the users again. The WWMDC would risk lawsuits.
- Sam said we have budgeted \$50k for fiscal year 2016 for legal fees related to the users' lawsuit.
- Kurt F. – is there any other additional gift money that is coming to the town?
- Rick said we are not a party to that. It is public knowledge that there is \$620k, but that does not involve us. The WWMDC has no say and does not benefit.
- Donna Carleton said users were told if we went with the betterments. It could be deducted from taxes. Sam said he did say you could deduct betterment payments from your federal taxes. Sam was assuming on his part. He does not have an answer.
- Rick said he cannot speak on that, but the difference on the tax code if you did a betterment or a replacement. Because it was a replacement plant it might not be true for those that were not already on the system.

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- Fred mentioned the Schedule SC credit. Three items on the form. Please contact Cindy if you need information she can provide you with the necessary information.
- Cindy will post it on the website.
- Lyn Perry asked if it needed to be replaced and Fred said yes.
- Sam said once people had disconnected. Every single building could not flush their toilets unless the plant was replaced.
- Sam said the deal in 1999 was done and there is no going back.
- Donna asked to create a section on the website specific to the Schedule SC.
- Lyn Perry stated she was the only one who had an accountant who told her about the credit.
- Sam said unfortunately we did not know about the Septic Credit.
- Donna said it is unfortunate that none of the Wayland Commons owners know about the betterment.
- Add Rick's presentation to the website.
- Sonja Starmer has a \$112k betterment and does not feel the settlement was a good deal.
- Rick said the board is in agreement the betterment is high, but he is saying the settlement is a good deal compared to the judgment.
- Second week of April we will announce a meeting and have a formal hearing.
- Post the different methods. Post on website.
- Kurt would like the Massachusetts guidelines for different methods.
- We will address these issues at the hearing.
- Kurt F. would like to see the federal regulation that the permit is a design flow and based on that why you are denying the abatement application. If you can convince him of the regulation he will not continue with legal fees.
- Sam said the WWMDC had to increase rates due to potential legal fees.
- Kurt said Mark Lanza spent \$48,000. Sam said we wanted to leave our options open. We did not want to preclude ourselves from defending the lawsuit effectively.
- Jonathan wants us to explain the design flow and why Kurt's position is wrong. If the board can convince Kurt he will not file a case in superior court.
- Rick said we put in the worse case scenario of \$50k in legal fees and budgeted for these fees in FY2016. This will cause us to charge the users higher fees.
- Kurt speaks of design flow and pro-rata share.
- Kurt wants to be shown why he is wrong and he will drop it. The permit is actual flow.
- Rick stated the the WWMDC is waiting for 80,000 gallons permit. Sometime this summer this is expected to be granted.
- Kurt said rationally why should the other users get a better deal. Kurt said they are a commercial entity and should be charged based on the contract.
- Sam said the contract is based on pro-rata share.
- Sam said users cannot get off the system at this point.

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- Sam said the WWMDC wants to know if Kurt is going to file in Superior Court. He would like to be able to hold another rate hearing to reduce the rates for FY2016.
- Nancy C. said they had deadlines and were unable to make a decision. Why is this more than any other place in the country?
- Sam said it is unreasonable to think we can reduce the betterments.
- Lyn Perry asked has anyone ever done any research on grants or state aid? Yes, we have applied and will receive a small amount. Maybe \$1,000.
- Has anyone spoke to the BOS regarding the \$1.6 million to defray the costs of the users fees.
- Donna said based on communications on June 15, 2014 and shut us down.
- Nancy said they are being blamed for the \$50,000 in the budget for FY2016.
- Rick agrees with the points being made. He would have liked to make the presentation in November, but the shape of the agreement did not change. A lot of the little details took time. Issues between the BOS and 20 Wayland.
- Jonathan asked about the good deal with 20 Wayland. Sam said we made a good deal with the town, not 20 Wayland.
- Rick said hammering out a lot of details and various things delayed. People being out of town. The court date for the appeal stopped the delays.
- Donna said the pressure or decision can change.
- Jonathan is waiting for interpretation. The basis for the rejection.
- Kurt F. said the document discussing pro-rata decision explains the basis.
- Donna asked if the WWMDC can set a date.
- Fred said we are at an impass and our decisions will not be changed.
- Sam said the WWMDC has their position. We have gotten two legal opinions that agree with pro-rata share.
- Fred said Kurt's interpretation of pro-rata share.
- Sam went before FINCOM and increased budget another \$15,000 in legal fees to defend our position in the lawsuit.
- Rick said we would schedule a one hour abatement hearing. We would probably need an executive session before the hearing. We do not want the users to sue. He does not see a path were the users would see lower costs. Anything we can do you help you out.

9:41 6. Pay bills

- Total March Bills \$10,581.02
- Motion made to approve bills. Approved 2-0. Sam left the room momentarily.

10:07 7. Budget update FY2015 and FY2016

- Transfer will be done from retained earnings in the amount of \$45,000
- A understated bonded debt payment was reported in the amount of \$12,606.

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Brian Keveny and Tom Abdella have been notified and this will be corrected along with the current year transfer.

- Discuss noise mitigation with Brian Keveny. Can we use funds left over from building the plant to pay for mitigation?
- Motion made to approve the expense transfer of \$45,000. Approved 3-0.
- Motion made to approve debt transfer of \$12,606. Approved 3-0.

10:07 8. Approve open session minutes

- Table

10:07 9. Noise abatement and WWTF status

- Table

10:07 10. Discussion of what to do

- Table

10:07 11. Rivers Edge discussion

- Table

10:07 12. Web site status: recent postings and organization

- Post DEP Clearwater Test Approval Letter
- Post Schedule SC Septic Credit 2014
- Post Summary of WWMDC/Town of Wayland Settlement

10:07 13. Topics not reasonably anticipated by chair 48 hours in advance of the meeting, if any.

- Table

10:07 14. Calendar: upcoming meetings and events, including hearings.

- March 23, 2015 hearing- one topic meeting
- Executive Session before
- April 15, 2015 next regular meeting

10:07 15. Public Comment

- John Tardiff representing Whole Foods plaza would like excess capacity discussion.
- Discuss non – use of 380 gallons. Take back flow. Brendon Homes relinquished. Land should be donated to Conservation. Reassign unused.
- Questions to DEP – Do you have any objections? How to reallocate capacity?
- The WWMDC needs to develop a procedure
- Post a notice of available capacity
- When do we go to DEP? Do they have to be involved?

10:26 16. Adjourn

MOTION TO GO INTO EXECUTIVE SESSION

MOVER: I move that the Wastewater Management District Commission enter into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(3) to discuss strategy with respect to potential litigation between a group of WWMDC users as threatened by their lawyer and the Commission and / or the Town of Wayland over sewer use charges, if an open meeting may have a detrimental effect on the bargaining or litigating position of the Town.

CHAIR: Is there a second to the motion to enter into executive session? The Chair declares that discussion of strategy between a group of WWMDC users as threatened by their lawyer and the Commission and / or the Town of Wayland over sewer use charges may have a detrimental effect on the litigating position of the Town.

CHAIR: Roll call vote. Mr. Greene. Aye. Mr. Potter. Aye. Chair votes aye. Motion passes.

CHAIR: The Board invites attendance by Cindy Cincotta. The Board will return to a second executive session in approximately 40 minutes to adjourn.