

Date of Meeting: July 13, 2006

Kind of Meeting: Business

Place of Meeting: Village Hall

Members Present: Chairman Robert Murphy  
Tracy Durkin  
Wayne Osborn  
Allen Rundall  
Mike Montemarano

Members Absent: Robert Liffland

Others Present: Steve Mance of Environmental Consultants  
Rich Kane of Environmental Consultants  
David Wise of Gellert & Klein

At 7:00 p.m. the regular business meeting of the Pawling Joint Sewer Commission was called to order by Chairman Robert Murphy with the Pledge of Allegiance.

MOVED by Wayne Osborn, SECONDED by Mike Montemarano to accept the minutes of the June 8, 2006 meeting as presented. Tracy Durkin abstained, 5 in favor and motion carried.

MOVED by Tracy Durkin, SECONDED by Mike Montemarano to accept the treasurer's report of June 1, 2006 through June 30, 2006 as presented. All were in favor and motion carried.

MOVED by Wayne Osborn, SECONDED by Tracy Durkin to approve the June, 2006 vouchers and July, 2006 prepaid vouchers a presented. All were in favor and motion carried.

MOVED by Tracy Durkin, SECONDED by Wayne Osborn to accept the Correspondence Log of July 6, 2006 as presented. All were in favor and motion carried.

## **Old Business**

### **Attorney Report**

David Wise said he has three things that he has been working on this month. One is the Bruggemann matter which he has advised the Commission in writing and he sees it is listed under new business on the agenda.

The second is the Baxter Green pump station situation which is also listed on the agenda under new business.

The third is the plumbing bill that is listed as number one on the agenda under new business.

Dave said he can discuss these issues as they get to them down on the agenda.

**Engineering Report**

Chairman Robert Murphy said he did not here from the engineers so he doesn't know if they are coming tonight and there was no report sent.

**Sewer Plant Operator Report**

Rich Kane said everything at the plant was good. They've had 9" of rain so they were a little over the SPDES permit for average flow.

Rich said he wanted to thank everyone for stopping up at the job site where they ran the sewer line up at 25 Charles Colman Blvd.

He said they had a backup that same night, the 14<sup>th</sup>. They had Electric Snake clean the line out that was plugged up with some rags and debris, and then on the 15<sup>th</sup> they cleaned the sewer lines down Charles Colman Blvd., up Broad St. and all the way down to the end of the RR tracks. He said then on the 16<sup>th</sup> they had a backup down at the parking lot. They had Electric Snake clean that out and they've been good since.

Rich said last week the Wheel Horse tractor mower deck broke again. He got some prices on new tractors. Rich went over the prices he got. (Attach. I)

Rich feels the Empire Power Tools & Repair has the best machine.

MOVED by Tracy Durkin, SECONDED by Mike Montemarano to approve the purchase of the Husqvarna lawn tractor from Empire Power Tools & Repair for \$2,099.00 with free delivery. All were in favor and motion carried.

Rich said Empire may be interested in purchasing the old tractor for a couple of hundred dollars or they can put it out front to see if they could sell it for 3 or 4 hundred dollars. He'll let the Commission know next month.

Rich said the last thing he has is that the Commission started getting charged extra for sludge hauling for a vac truck to come in at \$65.00. He said he has a pumping system down at the plant that they can repair and use so they won't have to have the vac truck come in. Rich said the repair would probably be about \$1,500.

MOVED by Tracy Durkin, SECONDED by Wayne Osborn to approve the repair of the pump system at the plant, not to exceed \$1,500, so they do not need to have the vac truck come to do the pumping. All were in favor and motion carried.

Rich said just one more thing, everything went well with the power outage they had. All the generators worked well and everything is back on line.

**New Business**

Chairman Robert Murphy said there is a customer that had incurred some plumbing charges due to the break in the main sewer line. They had the work done before they learned the problems they were having were due to the break. The customer sent a letter to the Commission, REF#204. Chairman Robert Murphy asked David Wise if it would be OK for the Commission to pay for something like this. Dave said it's OK for the Commission to pay it. He said there must be clarification from the customer so he recommends the Commission have the customer sign a voucher and staple the letter and bills to the voucher.

Allen Rundall asked why the customer needed the new pvc pipe that cost them \$414.85. Chairman Robert Murphy said he will speak to the customer to clarify that part of the bill.

MOVED by Allen Rundall, SECONDED by Tracy Durkin to approve payment of the bill submitted to the Commission, REF#204 with clarification of the pvc pipe at \$414.85. All were in favor and motion carried.

MOVED by Tracy Durkin, SECONDED by Wayne Osborn to approve transfer from Escrow MMA#15004203347239 to O&M MMA#15004203346918 for \$20.00 for vouchers paid for Polesovsky. All were in favor and motion carried.

MOVED by Allen Rundall, SECONDED by Mike Montemarano to approve adjustment of \$56.76 O&M charge on sewer bill acct. #373 due to O&M charged in error. All were in favor and motion carried.

MOVED by Allen Rundall, SECONDED by Tracy Durkin to approve penalty adjustment of \$28.51 to sewer customer acct. #803. All were in favor and motion carried.

MOVED by Allen Rundall, SECONDED by Mike Montemarano to approve adjustment of \$62.44 to sewer customer acct. #646 due to the town provided meter reading and confirmed the meter was broken for this billing. All were in favor and motion carried.

MOVED by Allen Rundall, SECONDED by Tracy Durkin to approve adjustment of \$1,522.99 to sewer customer acct. #261A due to faulty meter. All were in favor and motion carried.

MOVED by Tracy Durkin, SECONDED by Mike Montemarano to approve adjustment of \$124.81 to sewer customer acct. #467 due to faulty meter. All were in favor and motion carried.

MOVED by Allen Rundall, SECONDED by Wayne Osborn to approve adjustment of \$69.41 to sewer customer acct. #731 due to faulty water softener. All were in favor and motion carried.

Chairman Robert Murphy said that Linda's computer monitor went out and she needs a new one. Linda went over the different quotes she got and explained that the Dell is the best choice.

MOVED by Allen Rundall, SECONDED by Wayne Osborn to approve purchase of a Dell Monitor for \$288.00 plus shipping. All were in favor and motion carried.

Chairman Robert Murphy asked David Wise if he could bring the members up to date with the Bruggemann situation so they can discuss what they would like to do.

Dave said he has written to the Commission a few times over the past month. Dave said he'll highlight the two most important letters, the first one being June 2<sup>nd</sup>. He said at the May meeting there was a 1995 inquiry reviewed by the Commission as well as a 1996 inquiry being mainly the tax document. The one inquiry from 1996 which was marked redeemed, there was some questions and concern about whether the 1996 assessment had in fact been paid. Dave said upon reviewing the matter with the Dutchess County Assessors office, the tax grid number for the 1996 tax inquiry was for a town of Pawling property and not a village property. Therefore absent of proof of payment by the property owner the 1996 assessment appears in fact to be due and payable. The second is a letter of June 19<sup>th</sup> closely followed the very next day, June 20<sup>th</sup>. This letter concerns the calculation for the amount due with respect to this claim. Dave said the letter sent to him dated June 12<sup>th</sup> from Jeffrey Rothschild who is the attorney for Mr. Bruggemann, is a detailed itemization of the amount he believes is due as well as the calculation of interest of 1%. Dave said his letter of June 20<sup>th</sup> he confirmed for the Commission that the calculation that is presented from Mr. Rothschild appeared to be the accurate calculation with respect to the 1% interest as apposed to the 1½% interest. Dave said he then received a letter from Mr. Rothschild on July 6<sup>th</sup> setting forth his understanding that no interest would accrue after May 15<sup>th</sup>. Dave said he responded saying he never said that and he doesn't know what that date signifies. Chairman Robert Murphy said it might be the date of closing for the refinance for Mr. Bruggemann who said he didn't remember the date of closing.

Chairman Robert Murphy asked Tom Bruggemann if he had anything to say before the Commission votes on a decision. Tom said he just wanted to reiterate what transpired. He went over what he believed to have been discussed over the past few months starting with the first time he came in front of the Commission. He said at the end of that meeting Mr. Rundall asked him to fix the sewer line on his property and he left with the understanding that the Commission would get back to him in 10 days. Tom said that for what ever reason the board wasn't able to do that. He said he had no idea that he could put money into escrow to close his loan. Tom said he went to Mr. Cappillino to find out how he could do that. He said that's how they found that the village had added the 1.5% instead of just 1% interest. He said that the fact that one of the tax sale certificates weren't found also meant something. Tom said he didn't go to a lawyer to try to create a problem; he went there only to find out how he can set up an escrow account.

Tom said he would like to present some extenuating circumstances that the board needs in order to consider approving credit on some of the penalty's and interest. He said number one is the bill that wasn't disclosed to his attorney or himself at the time of closing when he bought the property. He said it was a serious bill that he had to pay within six months of buying the property or they would have foreclosed on it. He said to Linda that he was not accusing her of lying but there could have been a mistake with not reporting it to his attorney Bob Marvin. Tom said he is in the process of getting a statement or affidavit from Mr. Marvin explaining that when he did come to the village he was not told about the \$15,000.

Tom said the other reason is the fact that there is a miscalculation of over \$10,000 that he was willing to pay, less a waiver of penalty and interest. And in order to figure out there was a miscalculation, he had to go to an attorney and it cost him thousands and thousands of dollars to do that. He feels this is an extenuating circumstance, that there was a miscalculation and he did have to pay an attorney to figure it out.

Tom said the last one is the missing tax sale certificate for one of those years and his understanding is the reason there is a tax sale certificate is made up is for when a new owner buys the property the tax lien is carried with them. He said the tax sale certificate guarantees that the new owner has to pay and there is not one. Tom said to be honest, if the village says there is a tax he'll pay it. He said he's not going to litigate the fact that there is no certificate.

Tom said at this point he would be very happy to get his legal fees paid for which total \$6,000 as a waiver of penalty and interest. So instead of 25% or 50% of penalty and interest, if the board would give him a waiver that equals his legal fees he will settle this thing tonight. He said he'll call his attorney that has the money in escrow and have them release it immediately. It will pay in full the two years that have been in question plus the penalty and interest, less the \$6,000 for attorney fees.

Chairman Robert Murphy asked Mr. Bruggemann if he was finished and Tom said yes. Chairman Robert Murphy said the reason the Commission didn't get back to him in a timely manner is because David Wise had to do some research based on some of the things that Tom brought up.

Chairman Robert Murphy said as for the sewer work that Tom had to do on his own property; he would have had to do that anyway because he was in violation of the sanitary code. He said the Commission does appreciate the fact that he took care of that promptly. Chairman Robert Murphy opened the floor up to the members.

Allen Rundall said that he's been a supported of trying to help Tom since he's come in front of the Commission but he has some reservations now. He said number one is the comment that Tom did the sewer line because he asked him to. Allen said the Commission appreciates it but in essence, the village had to plug that line because the pumping station wasn't able to keep up with the inflow of water coming from that property.

Allen said number two is the Sewer Commission can only act on the sewer charges not the whole tax bill, and he looked to see if the taxes and the sewer have been paid since Tom has purchased the property and found that the bills have not been paid.

Allen said he feels Tom hasn't done anything to help himself to show that he's trying to do the right thing by keeping the bills paid up until the back bills are squared away. Tom said he was under the impression that at this closing all the bills would be paid. Allen said to Tom that he really wanted to help him, especially in the beginning when Tom first bought the building and asked for some credit. Allen said he really pushed for that but Tom didn't do what he was asked to do from the village. He said Tom is just blaming everybody else for his problems instead of taking responsibility himself. Allen said, he can not at this point say that he is in favor of giving Tom any kind of break on interest. Tracy Durkin said putting aside any inferences for the moment, the point before the sewer commission are the two bills of 1995 and 1996. She said to Tom that he said he would have paid these bills because he had the money set aside except for this unexpected expenditure, but at that time financially he couldn't pay. She said he didn't come before the Sewer Commission at that time to see whether some other equitable payment schedule could be worked out or something like that. Tom said that everything just fell apart for him when that \$15,000 popped up. His relationship with Bob Marvin also fell apart. Chairman Robert Murphy asked the members if they have anything else to add. Tracy said the one part she does agree with is that no penalty be charged for the time that Mr. Bruggemann was in front of the Commission.

Chairman Robert Murphy asked the members what they want to do.

Allen Rundall said he'll make the motion that Mr. Bruggemann pay the full amount due to the Sewer Commission based on the interest as of May that was calculated by Mr.

Rothschild and confirmed by the Commissions attorney. David Wise asked Allen to just state the amount for purposes of clarifying the motion as the amount set forth in the June 12<sup>th</sup> letter from Rothschild. Linda handed Chairman Robert Murphy the break down of what is due to each department that she got from the village treasurer.

Chairman Robert Murphy said the break down the village has is not the same as what Rothschild has in the letter so they are going through it for clarification purposes.

Tom Bruggemann said that the Commission should take into consideration that if they are going to charge him for both of the base taxes and all of the penalty and interest it will force him to file a civil suit with respect to the tax sale certificate which will cause both of them considerably more than they are talking about here. As the Commission was figuring out the exact amount to add to the motion Mr. Bruggemann left.

MOVED by Allen Rundall, SECONDED by Wayne Osborn that Mr. Bruggemann be assessed the amount of unpaid tax and interest which would be payable to the Commission, a portion of the total amount set forth in the letter of Jeff Rothschild of June 12, 2006. All were in favor and motion carried.

Chairman Robert Murphy asked Dave if he has anything about the Baxter Green pump station. Dave said he did get in touch with the comptrollers office and he'll go through some history of the pump station issue with the Commission.

Dave said the Commission was looking at three options with respect to the pump station over at Baxter Green. Contributing towards the repairs while Baxter Green remained owner of the pump station which is impermissible. That would be a gift of public funds. Dave said the Commission was also discussing having ownership of the pump station dedicated to the Commission after it was brought sufficiently on line and certified by the engineers, perhaps with a small amount of money deposited in an escrow account by Baxter Green for any short term maintenance issues which may pop up after the dedication. This Dave says is the most favorable.

Dave said in between there was some general discussion the evening that Mr. Zarecki and Mr. Berelson was here at the meeting about making the repairs to the pump station which was said to be around \$16,000 to \$18,000 and doing that, transferring ownership of the pump station in it's "as is" condition with about half the amount of money towards the estimated repairs. Dave said he confirmed with the comptrollers office that under the state constitution that type of a solution would be permissible for the Commission to consider. He said while there would be some individual benefit to Baxter Green, perhaps with some relief of \$8,000 to \$9,000 towards the repair bill, that relief is for the greater public interest. Dave said number two, taking ownership of the pump station and then once that is done by the Commission, they then can go ahead and contribute towards the repair. Dave said it sounds like a distinction without a difference but contributing towards the repair while the Commission doesn't own it is an absolute impermissible transaction. Contributing to the repair once ownership has been transferred to the Commission is permissible. He said all of this being done under the guise of \$16,000 to \$18,000 disburse would cost both sides much more than that in legal fees to fight this makes that type of solution permissible in the comptrollers eyes. Dave said that while there is clearly a contractual obligation on the part of Baxter Green to not only maintain the pump station, but to have it in fully working condition for the Commission and approved by the Commissions engineers when transfer takes place, they do know that Baxter Greens position is, whether right or wrong, that there were engineering mistakes made by the Commissions engineers.

Chairman Robert Murphy said all of that sounds good except that Baxter Green owes the Commission and the village a ton of money. He said his concern is they are getting down to the last couple of houses to get CO's and what kind of leverage do they have in collecting that money they owe. Dave suggested he could open up a dialog with Baxter Green in which he can make it clear to them that there is some interest on the part of the Commission to resolve the pump station issues but the escrow issues need to be addressed first. Chairman Robert Murphy asked Linda to get the numbers to Dave in the morning.

MOVED by Tracy Durkin, SECONDED by Wayne Osborne to close the meeting and adjourn. All were in favor and motion carried. Time: 8:25 p.m.