

Date of Meeting: April 10, 2008

Kind of Meeting: Business

Place of Meeting: Village Hall

Members Present: Chairman Robert Murphy  
Beth Coursen  
Tracy Durkin  
Robert Liffland  
Wayne Osborn  
Colette Zito

Consultants Present: Scott Volkman of Gellert & Klein  
Ron Gainer of Stantec Engineering  
Steve Mance of Environmental Consultants  
Rich Kane of Environmental Consultants

Others Present: Donna Frosco of Keane & Beane, P.C.  
Richard O'Rourke of Keane & Beane, P.C.  
Jerry Schwalbe for Castagna Group  
Ted Petrillo from the Westage Group  
Maureen & Rich Savarese of Savarese Septic Service  
Glenn Carey

At 7:06 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 Tracy Durkin to approve the minutes of March 13, 2008 meeting. Beth Coursen said that all of the references in her comments from last meeting to DEC should be DEP, if the motion could be amended to make that modification. MOVED by Tracy Durkin to amend her motion to approve the minutes with the modifications, SECONDED by Beth Coursen. All were in favor and motion carried.

MOVED by Beth Coursen, SECONDED by Tracy Durkin to approve the treasurers report of March 1, 2008 through March 31, 2008 as presented. All were in favor and motion carried.

MOVED by Beth Coursen, SECONDED by Wayne Osborn to approve the March vouchers and the April prepaid vouchers as presented. All were in favor and motion carried.

MOVED by Tracy Durkin, SECONDED by Wayne Osborn to approve the Correspondence Log of April 4, 2008 as presented. All were in favor and motion carried.

## **Old Business**

### **Attorney Report**

Scott Volkman said he is here tonight just filling in for David Wise and has no report to give.

### **Engineering Report**

Ron Gainer said he has two things to discuss tonight. He said one is the bid for the VFD project at the plant. He said they have evaluated the low bidder who is Delco Electric. He said he sent over a recommendation letter to the Commission. (REF#148)

Ron said the second matter to discuss is the treatment plant flows for the first quarter. He said the Commission is aware there have been some high flows at the plant and it has actually created a situation where the 12 month running average for the annual plant flows exceed the permit. Ron said Stantec has been working with the operator over these last few weeks to evaluate a recommended program to investigate sources of infiltration inflow, (I/I). He said he sent over a memorandum, (REF#149) that has a variety of recommendations to pursue. He said there are specific areas to the collection system where there is apparently excessive I/I. Ron said that Environmental Consultants can do inspections of these lines with the TV equipment the Commission has. Ron said he recommends to authorize the camera work be done and that it should be done overnight when there is very low flow. He said if this can be done within the next month they can bring a report to next months meeting.

Chairman Robert Murphy asked if there were any questions. Beth asked that within a month, using television technology, Environmental Consultants will determine where the problems are? Ron said that is correct. He said there are a few specific suspect areas where there appears to be leaks and the TV inspections will identify them.

Steve Mance said the billing will be based on the hourly rate in the contract. There will be no extra overtime rate.

Beth asked Steve if EC also does the work to repair the problems they find. Steve said it's one step at a time, it's just in the investigation stage and it will depend on what they find. Chairman Robert Murphy said he and Rich Kane discussed that some of the manholes don't have inserts. He said they only have one in stock now. Chairman Robert Murphy asked Rich if he got some prices and Rich said no. Chairman Robert Murphy said he wanted to move on this tonight but it will have to wait until next month when Rich can get some prices to the Commission. Beth asked if the Commission can go ahead and move forward on getting the inserts some how tonight. Ron asked Rich if he has any idea on the value of the inserts. Rich said he believes they are in the \$100 range and they want to get probably around 20 of them. Beth asked if they can approve tonight the television work and an amount not to exceed \$2,500 for the inserts. Chairman Robert Murphy said if the Commission is comfortable with that they will do two approvals, one to approve the purchase of the inserts and one for the TV work.

MOVED by Beth Coursen, SECONDED by Wayne Osborn to purchase the inserts needed for the manholes, not to exceed \$2,000.00. Rob Liffland asked Rich if 20 is all they will need and will that leave some spares. Rich said yes. Tracy asked if there are quantity breaks. Rich said he believes so. MOVED by Beth Coursen to amend her motion to an amount not to exceed \$2,500.00, SECONDED by Tracy Durkin. All in favor and motion carried.

MOVED by Robert Liffland, SECONDED by Tracy Durkin to approve Environmental Consultants move ahead with doing the investigative work. All were in favor and motion carried.

Scott Volkman asked if the Commissions procurement policy allows them to spend \$2,500 without getting at least a written quote. Rich said they normally just order from USA BlueBook but that he can get a written quote.

### **Sewer Operator Report**

Steve Mance read over the report submitted to the Commission. (REF#147)  
Chairman Robert Murphy asked the members if they have any questions and there were none.

### **New Business**

Chairman Robert Murphy said there are members from the Castagna Group here tonight. He said they would like to talk a little bit about their project and to give the Commission an update on what they plan on doing.

Richard O'Rourke stood up and introduced himself. He said he was with Keane & Beane, the attorneys for Castagna. He introduced Donna Frosco as his partner and said she prepared the capacity reservation agreement. He introduced Ted Petrillo from Westage Companies who will be jointly venturing with the Castagna Group for the medical office facility. He then introduced the engineer, Jerry Schwalbe from Divney, Tung, Schwalbe, LLP.

Richard said they are there tonight to plead their case. He said they are at a point now in their critical path that they are at the juncture of serious negotiations with some physicians and some medical groups to come into town. He said that as part of this, sewage disposal is an important component. He said they did already file their application with the town board as well as with the planning board in the town. Richard said they deposited with the Commission \$10,000 for the escrow account, they know the business terms in terms of the hook up fee of \$80,000 for the 6,000 gallons have been negotiated and, he thinks has been agreed upon. He said they're at a point now where they would very much like to see if they could enter into the capacity reservation agreement subject to review and approval of the Commissions attorney.

Richard said he thinks the business terms for the most part are done, that it is really just a matter of making sure they dot the i's and cross the t's and move forward. He said the concern they have is that they have to, in earnest, begin this critical path. He said they recognize the Commission has some administrative issues and Castagna is not coming on line for quite some time. He said notwithstanding what he thinks has been a positive reception on the town part and by the boards, they have to go through the SEQRA process, the approval process and public hearings for site plan approval and related matters with outside agency's. He said at least if they could get started with the capacity reservation agreement with the 6,000 gallons that would be extraordinarily helpful to them.

He said they would be happy to answer any questions any of the members have.

Chairman Robert Murphy asked if they were asking for some sort of approval tonight contingent upon attorney review. Richard said yes, the capacity reservation agreement was forwarded some time ago to David Wise and Miss Frosco can respond to this, as there was some negotiation back and forth with respect to certain corrections as to the capacity reservation agreement. He said all they are asking for is an approval subject to review and authorization by the Commissions attorney.

Chairman Robert Murphy asked Richard what their time limit is with the town. Richard said where they are at with the town is the public hearing has been scheduled and the necessary referrals have been made to the Dutchess County Planning Dept. He said they appeared before the planning board on Monday again to push the ball forward. Richard said their intentions are to at least not loose the building season. He said they would like to start getting into the ground this year and to do so there is a sequential order in which they have to proceed in order to get all their ducks in a row. Richard said this is one critical part of it.

Tracy Durkin asked if he expects this project to be completed this year. Richard said no.

Mr. Petrillo said that assuming they can get into the ground in August or September; he would expect completion at the end of the first quarter of 2009 or the early part of second quarter '09.

Beth said given that time frame, it appears that it would give the Commission ample time to address the I/I issue. She said she thinks that the agreement should include language that acknowledges that at the current time the capacity does not exist but that it is anticipated that with the work the Commission is undertaking will create the capacity within a specific time frame.

Beth said she did review the proposed agreement and had just a few other minor requests for changes. She said there are several references to the Village of Pawling which are inappropriate; it should say the Pawling Joint Sewer Commission. Beth said there is a reference of Village of Pawling Sewer Dept. she is not aware that exists. She said other than that, she thinks that given commitments were made previously to the Castagna organization that the possibility was there and their process proceeded down that path; that it is important for the Commission to honor commitments that were made. Beth said she certainly would favor approving the agreement if the language was added in that the Commission acknowledges that the capacity does not exist at this time and they anticipate that the capacity will exist by the first quarter of 2009.

Chairman Robert Murphy asked Ron if there is engineering that has to be part of the tenancy agreement. Ron said he hasn't actually seen the agreement, it was transmitted to Stantec just yesterday by David Wise. He said he does anticipate some communications with the attorney to make sure that any engineering issues are addressed.

Chairman Robert Murphy said, with all due respect he is very reluctant to move forward or give any kind of conditional approval until he has a chance to sit down with the attorneys and review their comments. He said it is probably something that can certainly be done by May but without having a chance to go over it with the attorney he would just be very reluctant. Chairman Robert Murphy said he can't speak for the rest of the members of the Commission but he thinks they all have been very supportive of the Castagna Group wanting to hook up to the sewer, he believes they are all in favor of that.

He said he just doesn't think it is appropriate to approve the agreement now, even conditional. Chairman Robert Murphy said he thinks there are some things they need to talk about, such as the cost. He said Castagna was originally scheduled to build a 3,000 square foot building and now they are saying instead of 3,000 gallons they want 6,000 gallons. Richard said yes, phase one includes a building which they believe the estimated flows will be 3,000 and there is attached thereto, say a second wing which will then bring them up to 6,000. He said the agreement itself does call for the 6,000 gallons per day. Beth asked Richard if he said the terms were \$80,000 for the 6,000 gallons. Chairman Robert Murphy said that is another issue with the agreement, that it is incorrect. He said it was \$80,000 for 3,000 gallons. Chairman Robert Murphy said if you double it then it will be \$160,000. Beth asked if the \$80,000 was previously negotiated and agreed upon by the full Commission. Chairman Robert Murphy said it is based on the rate that the Commission set for the hook up fees. He said the residential rate is \$8,000 per household and the commercial rate is a conversion of that and comes to \$26.67 per gallon. Chairman Robert Murphy said the reason the original number was \$80,000 was because at the beginning Castagna was talking about only the first building which is the 3,000 gallon number. Beth asked if it was a strict formula that was approved by the full Commission and that now it's just a matter of doing the math? Jerry Schwalbe said his understanding is that in September the rate was approved and that is the cost no matter what the flow is. Beth said she just wants to make sure the full Commission approved it because she keeps hearing about meetings, but they have to go on what the full Commission approved. Beth reiterated, the full Commission approved a rate of \$26.67 per gallon for commercial. Chairman Robert Murphy said yes. Beth said in doing the math it would be 6,000 times that figure. Chairman Robert Murphy said it comes to around \$160,000. Beth said that is one thing that needs to be revised in the proposed tenancy agreement. She asked what other issues are there. Chairman Robert Murphy said he hasn't even talked to the attorney about it yet. He said he is very uncomfortable moving forward at this time. He said he doesn't see where one month is going to hurt this project. Beth said she understands that, but that counsel is here tonight and she thinks it's important that these discussions take place where the full Commission has the opportunity to ask questions, where the full Commission is aware of concerns and they take action. Beth said counsel has had this agreement now for several weeks.

Scott Volkman from Gellert & Klein said the agreement came under cover letter dated March 31<sup>st</sup>, which is not even two weeks ago. He said it has not been reviewed, it has not been approved, it has not been negotiated and it is extremely premature to agree or to even try to negotiate this on the floor of a Commission meeting. Scott said he thought David should have an opportunity to review it, make his comments and report back to the board, what ever issues that need to be dealt with and addressed can be dealt with, changes can be made to the agreement and then it can come back. Scott said he doesn't think the Commission should be approving an agreement the he's sure some of the members haven't even seen or read yet, and certainly that the attorney hasn't even reviewed yet. He said he doesn't know what the rush is, he understands they want to get it done but in conjunction with the application with the town, this is a little bit premature. Scott said it's early in the process for the Commission to be forced to make a decision right now.

Richard asked if he could make a suggestion. He said they are available and will be available between now and the May meeting anytime. He said they want to move this ball forward. Chairman Robert Murphy said the Commission does too.

Richard said he thinks there might have been unfortunately some miscommunication. Scott said there really hasn't been. He said Gellert & Klein sent a sample agreement out over five months ago, got it back ten days ago and they are being told they have to adopt it tonight. Scott said that is not fair and it's not right and the Commission shouldn't be forced to make a decision tonight. He said he was involved a little bit with this last year, he thinks it is a great project and he's not trying to be an obstructionist, he just has to protect the interest of the Commission and to contingently approve a document which may or may not be acceptable is just premature. Richard said he will be available. He said he understands and respects the Commissions position, that he just wants to get it done.

Chairman Robert Murphy said they will get it done. Richard asked when the meeting will be in May. Chairman Robert Murphy said it's the second Thursday. Scott said Dave has the agreement, he's started to review it, he sent it to the engineer because there are some engineering comments he felt in his initial review needed to be addressed. He said they will come back with some changes, maybe there won't even be anything with substance but it needs to go through this review process.

Chairman Robert Murphy said once the Commission gets the comments, he will have them distributed and the Commission members notified that the draft has been distributed so they can have plenty of time to review it and give back comments. Chairman Robert Murphy told Richard they will try to expedite this as quickly as they can and try to get this done in May; but to try to understand his reservation about doing it tonight. Scott said if any of the Commission members have comments just send them along and they will be addressed. Beth said she reviewed it and her only concerns are with so many references made to the Village of Pawling which is inappropriate, they should be to the Pawling Joint Sewer Commission. She said she feels that it is prudent on the Commissions behalf to add in language that acknowledges that the capacity does not currently exist but that the Commission will take all appropriate actions to ensure the capacity does exist by the first quarter of 2009. Scott said there was also a reference to the department. Beth said yes, there was a reference to the Village Sewer Dept. should be deleted.

Scott asked Richard to fill him in on where they are at with the town planning board. Richard said they filed their application for site plan approval together with an application for a zone change, text amendment, to add a footnote in the zoning ordinance so as to prevent a relaxation of the setback requirement for a percentage of the frontage along the property. He said those applications have been filed, they have been the subject of meetings informally. Richard said the town board has set the date for the public hearing on the zoning amendment. He said in addition to that they appear in front of the planning board on Monday pursuant to the referral made as required by the zoning board. He said there is a site visit scheduled for this Saturday and the public hearings are scheduled for early May. Richard went over the history of the SEQRA review. There were no further comments. Richard thanked the board.

MOVED by Beth Coursen, SECONDED by Tracy Durkin to approve sewer bill adjustment of \$148.44 to sewer customer #006-18. All were in favor and motion carried.

MOVED by Beth Coursen, SECONDED by Tracy Durkin to approve sewer bill adjustment of \$595.87 to customer #431. All were in favor and motion carried.

MOVED by Tracy Durkin, SECONDED by Wayne Osborn to approve sewer bill adjustment of \$100.67 to customer #072A. All were in favor and motion carried.

MOVED by Wayne Osborn, SECONDED by Tracy Durkin to approve penalty credit of \$26.14 to sewer customer #447-1 due to the customer was hospitalized and in rehab since Nov. 2007. All were in favor and motion carried.

MOVED by Robert Liffland, SECONDED by Tracy Durkin to approve transfer of \$30.00 from Lanman & DeWinter escrow acct.#15004214220515 to O&M MMA#15004203346918 for legal fees paid. All were in favor and motion carried.

Chairman Robert Murphy said the last thing on the agenda is the approval of the bid for the variable frequency drive upgrade. He said it would be to Delco Electric in the amount of \$24,227.00.

MOVED by Robert Liffland, SECONDED by Tracy Durkin to approve the bid for the VFD from Delco Electrical in the amount of \$24,227.00. All were in favor and motion carried.

#### Commission Member Comments:

Beth thanked Chairman Robert Murphy for having counsel come to the meeting tonight. She said at the last meeting she raised a couple of issues, one was in regards to a negotiation that the village board is undertaking with a cell tower operator to locate a cell tower on the property where the plant is and she wondered about the appropriateness of that negotiation with the Village Board rather than the Commission.

Scott said he wasn't aware of some of those issues but, that property is owned by the village. He said the village has the right to control that property, notwithstanding the fact that the plant is there. Scott said provided it doesn't interfere with the operations of the Commission and the treatment plant, the village can make whatever deal they feel is best for the village. He said he's not privy to the facts, he doesn't know anything about it but as far as property ownership goes, that is owned by the village. Beth asked Scott if the real property is owned by the village? Scott said yes, any property within the Joint Sewer Commissions district that's within the village is owned by the village and any property in the town is owned by the town. He said ownership is retained by the municipality where it is located. Beth said the other question she has is if the district is expanded beyond the boundaries of the current district, can the district itself be expanded rather than proceed through tenancy agreement, and if it is expanded, does the makeup of the Commission then change? Scott said the Commission right now has no authority to expand the district. He said the expansion of the district would be solely within the jurisdictions of the town and the village. Scott said the only thing the Commission can do right now is approve tenancy agreements without an expansion to properties outside the district. Scott said if the town and village chose to expand the district or create a new district; that would certainly alter the terms of the inter-municipal agreement and probably require renegotiations between the town and the village. He said, again it's really not a commission issue. Scott said he could take a closer look at it but he's pretty sure any change to the agreement is done by the two boards. Scott said even as mundane as changing the times of the meetings, both the town and the village had to approve that and the agreement was amended. Scott said then there is the issue of whether it's in the Commission's best interest to expand a district or to have tenants. He said there are some benefits to a municipality and to this kind of commission to have out of district tenants. Scott said tenancy can be a preferred option because certain expenses can be recovered and additional fees and rates could be charged. Also it is very difficult to expand the district without having the capacity at the plant. Beth said her concerns about expanding under tenancy is that the Commission then to a certain extent becomes de facto land use decision makers, especially the Commission now is expanding three miles south into the town and is engaged in dialog for the expansion and in between there is a lot of land that is owned by the town which the town may be inclined to up-zone if they had control over the wastewater treatment facility. She said given the fact they don't have control they don't have the possibility of up-zoning given there is a wastewater treatment plant available. She said those are her concerns with regards to tenancy agreements. Scott asked Beth if she was saying that the planning board could approve a project but if this commission decided not to grant tenancy status to it, the project wouldn't be able to proceed. Beth said that is one problem. Scott said he doesn't know what the benefits to the Commission would be to take that kind of position unless there truly is a capacity issue. If they are going to start increasing the district and altering that process, it ultimately will require state comptroller approval and they won't get that unless they expand the plant.

Beth said she fully understands the financial constraints and the considerations that the Commission makes, but her concern is, like what became evident tonight with this project that has been pending approval and has been given, certainly some presentations were made, that the Commission was inclined to approve it, she has more concern with the Town Board, that has the option of up-zoning significantly which is typically done in community's where you have wastewater treatment, but that can't be done in this case because it's at the mercy of the Commission. Scott said that is not unusual. He said he represents a number of clients, such as the Town of Fishkill which, Mr. Petrillo can speak to this because part of his property is developed there, derive services from the Village of Fishkill. He said the planning board can approve a project and if they can't negotiate with the village, there is no commission there, they have to go to the village and get water and sewer from there. Scott said up in Red Hook projects in the town need water, they have to go to the village to get that water. He said so this is not an unusual scenario in the planning of land use process. Scott said it's a question of who's got the infrastructure of facilities to provide those needed utilities. He said he doesn't know that at this point in time going with the district or tenancy agreement provides any particular benefit, particularly if the capacity isn't there to serve it. Chairman Robert Murphy said that typically with an expansion that large, the hook up fees associated with it should cover any kind of cost of plant expansion that would allow that user to come in. He said that is how it has been set up. He said obviously now they can't do it but he doesn't think capacity would be an issue because they would generate enough revenue to expand the plant. Chairman Robert Murphy said that it would also be concurrent, that they told every interested developer who wanted to hook up, that the Commission's time line is basically their time line because the Commission won't expand the plant when they don't have any one to serve it. He said there is no sense in the Commission borrowing a million, two million dollars and then hoping a developer will come along.

Scott said going back to the issue of expanding the district, he can go back to the agreement but that it seems that it will require both municipalities for any kind of amendment to it.

Beth said given that now she understands what counsel said about the cell tower, having approved cell towers she thinks it's important to keep in mind there is fall zone needed and a fall zone can't have anything in it so that will reduce the possibility of the plant expansion in providing for fall zone for the cell tower. Chairman Robert Murphy said they will take that into consideration.

Chairman Robert Murphy asked if there are any other Commission member comments. There were none.

MOVED by Robert Liffland, SECONDED by Beth Coursen to close the meeting and adjourn. Time: 8:10 p.m. All were in favor and motion carried.