

Date of Meeting: July 10, 2008

Kind of Meeting: Business

Place of Meeting: Village Hall

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

Members Absent: Wayne Osborn

Consultants Present: Seth Sheraden of Environmental Consultants
Steve Mance of Environmental Consultants
Rich Kane of Environmental Consultants

Others Present: Jennifer Van Tuyl of Cuddy & Feder
Stanley Zinner, P.C.

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 Robert Liffland, SECONDED by Tracy Durkin to approve the minutes of the June 12, 2008 regular business meeting as presented. All were in favor and motion carried.

MOVED by Tracy Durkin, SECONDED by Beth Coursen to approve the minutes of the June 19, 2008 special meeting of the Pawling Joint Sewer Commission as presented. All were in favor and motion carried.

MOVED by Robert Liffland, SECONDED by Tracy Durkin to approve the treasurer's report of June 1, 2008 through June 30, 2008 as presented. All were in favor and motion carried.

MOVED by Tracy Durkin, SECONDED by Beth Coursen to approve payment of the June, 2008 vouchers and the July, 2008 prepaid vouchers as presented. All were in favor and motion carried.

MOVED by Tracy Durkin, SECONDED by Robert Liffland to approve the Correspondence Log of July 3, 2008 as presented. All were in favor and motion carried.

Consultants: Business/Reports

Attorney Report

Chairman Robert Murphy said the attorney is not here tonight but that the Commission members did get a response from the attorney in regards to the negotiation of the sewer lines. He said they got a comment from the Commissions attorney and the Village attorney and now they are just waiting for comments from the Towns attorney.

Beth Coursen said she can discuss that now or wait for the commission member comments. Chairman Robert Murphy said OK, wait to discuss it under the comments.

Engineers Report

Chairman Robert Murphy said there is no report.

Sewer Operator Report

Seth said the overall operations at the plant are normal. He read through his monthly report. (Ref#198)

Seth said he's been putting some numbers together in regards to Rich Savarese wanting to bring sludge into the treatment plant. Seth handed out a spreadsheet with the details and gave it to Chairman Robert Murphy. He discussed some of the numbers and said he will give the spreadsheet to Rich Savarese and see if he still wants to do it.

New Business

Chairman Robert Murphy said there are some representatives from Elm Street Partners here tonight to talk to the Commission.

Jennifer Van Tuyl introduced herself and handed out her business cards. She said Bob Marvin wanted to be here tonight. He is on vacation so he asked Jennifer to come tonight on his behalf. She had copies to give to the Commission members of their property outline. She discussed the zoning of the property. Jennifer said representatives from Elm St. Partners have been having informal discussions with Village and Commission representatives over two years. She said they believe that the flows that any project on this site would be somewhere in the range of 25,000 to 35,000 gallons per day. She said they do not have any definitive site plan developed or submitted yet. Jennifer said, as she mentioned before, they have been having some informal conversations and probably those would have continued over the coming month's, but, when they read several weeks ago that the Commission was negotiating with Castagna, Mr. Marvin wrote a letter to the board because it seemed to them that in view of the proximity of the Castagna and the Elm St. sites, it would be a good proactive thing for them to do is to look at the methodology that the Commission would want to use to serve the two major properties. Jennifer said the letter made it clear that they have no desire to delay service to Castagna but that they believed that the Castagna agreement should be put in contexts of potential future connections by other nearby properties including Elm St. parcel.

Jennifer continued to explain what the letter said saying important issues for consideration include the route of the pipe, the capacity of the pipe and terms for access and connections for future users. She said the letter says that given the proximity of the two properties, legally the decisions can and should be resolved now rather than after a final tenancy or other agreement is reached with Castagna. She said unfortunately they sent the letter at the time that they were surprised to learn that a tenancy agreement had actually been signed with Castagna and that they were very surprised to see in that agreement that Castagna was given sole control and ownership of the line that runs up Route 22. Jennifer said the reason they are so concerned about that is primarily it creates some very serious issues for Elm St. in terms of the cost it could cost them to build their own line would probably well exceed a million dollars, whereas participating in a pipe that serves multiple users would be significantly less economically burdensome. Jennifer went on to explain that when they learned that an agreement had been signed, they obtained a copy of it and read it and when it became clear to them that the agreement allocated sole control and ownership to Castagna, her colleague Stan Zinner contacted Castagna to see if there is any possibility of their being able to come to a terms with them to agree to share the line. Jennifer introduced Stan Zinner. Stan handed out some business cards. He said he contacted Keane & Beane to inquire whether or not Castagna would entertain a hook up from Elm St. He said he spoke with Rick O'Rourke earlier in the week and Mr. O'Rourke said he would contact Castagna and let him know. Stan said Mr. O'Rourke's impression was that he isn't very optimistic about it and that is what gave him pause because if Mr. Castagna declined to permit a hookup, the impact to his client would be severe. He said then, they took a look at alternatives. He said the first thing he did was take a look at the inter-municipal agreement between the Village and the Town to get some guidelines as to where they are headed. He read a paragraph from the agreement from page 3 which references ownership of the lines to be the municipality that it is located in.

Stan said that in the agreement with Castagna, neither the Town nor the Village is going to own those lines and that is a problem. He said the tenancy agreement specifically says that Castagna will own the sewer lines. Stan said that creates several problems and this is not to be in any way confrontational, he just wants the Commission to appreciate that they are in a circumstance now that it's possible they will be frozen out and then it will cost a fortune. He said what he is asking for, as a practical matter, is some assistance because the situation as it presently exists has a clock ticking in the background for them. Stan said they only have a certain period of time within which to contest whether or not the Sewer Commission had the power to grant ownership to Castagna when the enabling agreement limited it to municipal ownership. He said that with this clock ticking in the background they are hoping the Commission can give them some input so that they can avoid having to act promptly. He said within a certain period of time their ability to question what has transpired lapses and they can't let that happen. He asked the Commission if there is any kind of agreement they can work out with the Village, if there is any suggestion, any alternative that can be considered. He said if they are lucky, Mr. Castagna will allow Elm St. to hook up but they wanted to bring their concerns to the Commission as rapidly as possible because the ink is barely dry on the tenancy agreement, so the earlier the Commission is aware of what appears to be a significant problem and certainly a concern for Castagna, the better dealt with promptly than later.

Rob Liffland asked Stan how much Elm St. budgeted for the sewer connection, as if this line wasn't going to go through there. Rob said to Stan he said before that it will cost them a million, million and a half dollars to hook into the sewer plant that means they must have budgeted for that, so how come he says it's going to cost them such financial difficulties. Stan explained the differences in cost for having a line already there as opposed to putting the line in. Stan said to him the focal point initially has to be that the Sewer Commission, which is founded on a precept that they will own the sewer line, gave it to Mr. Castagna entirely. Rob said he understands what Stan is saying but that he had to have budgeted for the full hooking up to the sewer system. Stan said Elm St. has been talking to the Commission for quite some time and things were going fine but for now this ownership issue. Stan said he's looking for some help and if anyone has any questions he would be happy to answer if he can.

Chairman Robert Murphy said he thinks they should wait to hear back from the Castagna Group to see what they say. He said he can relay some of the concerns that Elm St. has to the Commissions attorney. Chairman Robert Murphy told Stan that if he wants to speak with the Commissions attorney he can. Stan said he just wanted to raise for the Commission the issues that he sees on a preliminary basis. He said as they get into it, if there is a need to look at it more closely, to scrutinize every possible factor that lead to the determination and whether or not this tenancy agreement is a viable agreement.

Beth asked if Stan's copies of the inter-municipal agreement includes schedules A,B & C. Stan said yes, he downloaded about 85 pages. Beth asked if Stan could get a copy to the Sewer Commission because they do not have those schedules. Stan said he will.

Beth said Mr. Zinner will report back to the Commission but she feels that the Commission should hear directly from the Castagna Group. Stan said that would be fine.

Beth said she understands all of the comments Stan raised verbally but she doesn't feel it's appropriate for Mr. Zinner to contact the Commissions attorney, that he should put all of the comments he raised tonight in writing and provide those to David Wise just so there is no misunderstanding as to what was said tonight. She said to Stan that he mentioned before that Elm St. representatives had informal discussions with members of the Commission and members of the Town Board over the course of a couple of years and that they were encouraged by those meetings but as he is aware the process to move forward a plan for proposed development is to make a formal application to the Town Planning Board and no such plan has come forward. Beth said tonight Jennifer Van Tuyl stated that they anticipate needing between 25,000 and 30,000 gallons. Beth said there must be an anticipated use if there is an anticipated gallonage. She said she thinks these things's need to be looked at in tandem, with formal proposals rather than on informal discussion with members of the Commission and members of the Town Board. Stan said he agrees with Beth but regardless of the stage of the progress, the points that he raises are unaffected by that as a practical matter. He said what they deal with is the fire at their feet, particularly if this is a fire that will swallow the project and they are very concerned about that. Beth said she understands that but that his is not the only parcel in the vicinity of the line that is going to be newly constructed, it's one of the few that is undeveloped. She said in terms of environmental concerns, as the Towns representative, they are far more concerned with developed parcels because all of this is within DEP watershed.

Stan said no matter who else is going to make a request, Mr. Castagna still owns the line and can say no. Beth said that Mr. Castagna's representatives have entered into the public record their agreement that if there are any immediate sanitary concerns that they will allow hook ups for developed parcels.

Stan said he'll contact the Commissions attorney with his concerns.

Jennifer Van Tuyl said she would like to respond to something that was said earlier and that is if there is an estimate of gallonage than there must be a specific proposal and that is not true. She said the calculations that she provided tonight are based upon the permitted uses under the zoning and obviously the usage would be fine tuned if and when a proposal is developed. Jennifer said the statement either that there has to be a specific development proposal before the Commission before there's any obligation to consider potential future service to property which has been zoned for development for decades isn't accurate either. She said she thinks what the question really is whether the Commission met it's obligation of looking at the long term impacts of what it did and considered what the alternatives were and might have been. She said to Rob, as he said any developer must budget for the possibility of being the only one to ever connect but, it's not so certain that all the authorities that must approve connections, including the DOT, including the Commission for making the decision, going to think it's appropriate to have a number of separate pipes running in the right of way. She thinks one of the alternatives that need to be addressed still is how to handle the issue of connections as they are foreseeable or desirable based on land use plans in a manner that is most fitting. Jennifer said she appreciates what Beth said and they are willing to send a letter to the Commissions attorney but, as Mr. Zinner said, time really is of the essence. She said they would appreciate it if the Commission would restate the authorization for Mr. Zinner or herself to speak with David Wise and they certainly fully consent to the Commission contacting Rick O'Rourke. She said no one is trying to have any secret discussions; they are trying to encourage forthcoming discussions to avoid unnecessary effort. They are just trying to come to a solution that is fair to all parties and she thinks that being able to speak to Dave Wise would materially help them.

Chairman Robert Murphy said that Beth's point is well taken and he doesn't think it would take very long to put a letter together and forward it to Dave Wise. He said in the meantime he will talk with Dave and let him know what they discussed tonight.

Mr. Zinner said it's not a problem and they will do a letter. Mr. Zinner and Jennifer thanked the board.

MOVED by Tracy Durkin, SECONDED by Beth Coursen to approve sewer bill adjustment of \$49.17 to sewer customer #850 because the customer read his meter wrong that generated a high bill. All were in favor and motion carried.

MOVED by Tracy Durkin, SECONDED by Beth Coursen to approve a transfer of \$3,516.89 from Capital Improvement MMA#15004203346926 to O&M MMA#15004219204522 for engineering fees. All were in favor and motion carried.

MOVED by Tracy Durkin, SECONDED by Beth Coursen to approve a transfer of \$4,380.03 from Castagna Escrow Acct. #15004217179503 to O&M MMA#15004219204522 for legal and engineering fees. All were in favor and motion carried.

MOVED by Beth Coursen, SECONDED by Colette Zito to approve a bill adjustment of \$188.39 to sewer customer #275 as submitted by Linda, explained in references 199 and 200. Chairman Robert Murphy explained that Linda went back in this customer's history to when the meter was installed. They took the current reading, subtracted the start read and came up with a quarterly average. Then they were able to work out a credit amount in the one quarter that was really high. All were in favor and motion carried.

Chairman Robert Murphy said there is a request from a customer, Mr. Malagiero of 21 Timberline Trail in Cedar Valley. He said Mr. Malagiero said he lives in a town house for only three months out of the year, that they live in Florida for the rest of the year. He said Mr. Malagiero is requesting the Commission shut off his water so he doesn't have to pay an operation and maintenance charge. Chairman Robert Murphy said he told Mr. Malagiero that he would bring it up with the Commission. Chairman Robert Murphy said he spoke with Dave about it and Dave said he's comfortable with it but suggests that any time frame the Commission gives the customers should be for the people to be away for at least 6 months. He said if they do it for too short of time the problem will be the water will be on for part of a billing period and it won't help. Tracy said the letter Mr. Malagiero submitted says he's gone for only 5 months out of the year. She said the 4 months would be the minimum that there would be an entire quarter without water usage. Beth asked if there would be any service issues for any of the other town homes. Chairman Robert Murphy said they have shut offs in the street except for at Cedar Valley. They have the shut off in their houses. Rob Liffland said they all have a service shut off outside of the town house that services the individual homes. Beth asked Chairman Robert Murphy if he wants to do a motion to authorize this. Chairman Robert Murphy said Dave said the Commission doesn't have to codify it, that if the Commission starts to get some other request's they might want to but it's not necessary now. Chairman Robert Murphy said he'll call Mr. Malagiero and let him know his water can get shut off as per their discussion tonight.

Chairman Robert Murphy said that Dave Wise recommended they get more bids for the Baxter Green pump station improvements. He said at last months meeting they forgot to authorize Stantec to do up a quick RFP for the Baxter Green pump station upgrade so he would like to do that now.

MOVED by Beth Coursen, SECONDED by Robert Liffland to approve authorizing Stantec to prepare RFP for the Baxter Green pump station improvements based on conversations with the Chairman.

Colette asked if the quote from Environmental Consultants was given to Stew Berelson. Chairman Robert Murphy said yes. Colette asked why the Commission is not considering putting it against the bond instead of paying with tax payer dollars. Chairman Robert Murphy said it would cost the Commission more money in legal fees than if they just took care of the pump.

Colette doesn't understand why they can't just put a claim in against the bond, why will the Commission allow the developer just get away with it. Chairman Robert Murphy said they are not allowing anything; they haven't even discussed it or decided on anything. Beth said it sounds like it's going to be based on how much it's going to cost and the RFP that went out, they received a bid on. Chairman Robert Murphy said it wasn't really an RFP, they just asked Environmental Consultants for a price because they are their plant operators. Colette asked what the developer's response was to the quote from EC. Chairman Robert Murphy said they haven't heard from him yet. Colette said we are putting in additional RFP's with the intention of getting other quotes. Chairman Robert Murphy said Dave Wise suggested they do so. Beth said she thinks it's prudent to take these first steps, that maybe they are getting a little ahead of themselves. She asked Chairman Robert Murphy what an estimated cost would be for Stantec to put together the RFP. Chairman Robert Murphy said he wouldn't think it would be that much, that he specifically told Ron to do a very, very min. and basic RFP. All were in favor and motion carried.

Commission member comments:

Beth thanked Jennifer and Stanley for coming tonight and reminded them to forward to the Commission the copy of the inter-municipal agreement they downloaded.

Beth said in terms of comments and interests in the Town, it is her recommendation that the Town Board continue to work cooperatively with the Joint Sewer Commission. She said in terms of next steps with the negotiations on the Jucca/Petrillo proposal, the Town has specific interests which she can share with the Chairman who's going to be the one negotiating the next steps, and so long as the Towns interests are represented at the negotiations, she said she has no problem with the Chairman being the sole negotiator so long as the Towns interest are brought forward. Beth said the only way any economic development proposals can move forward is if they all work cooperatively.

Beth said one of the Towns interest in this is that she is currently negotiating with NYSEG to provide natural gas within the Town of Pawling and also working with the Towns new planner that has provided the town with some advice on how the gas lines can be put within the same trench as the new sewer lines. Beth said NYSEG is interested in moving forward.

MOVED by Robert Liffland, SECONDED by Tracy Durkin to close the meeting and adjourn. Time: 7:55 p.m. All were in favor and motion carried.