

**EAST LYME WATER & SEWER COMMISSION
REGULAR MEETING
Tuesday, FEBRUARY, 25th, 2014
MINUTES**

FILED IN EAST LYME
CONNECTICUT
Mary 20 14 AT 10:00 AM/PM
Suzanne Blaw
EAST LYME TOWN CLERK

The East Lyme Water & Sewer Commission held a Regular Meeting on Tuesday, February 25, 2014 at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Formica called the Regular Meeting to order at 7 PM.

PRESENT: Paul Formica, Chairman, Dave Bond, Steve DiGiovanna, Dave Murphy, Joe Mingo, Carol Russell, Roger Spencer

ALSO PRESENT: Joe Bragaw, Public Works Director
Attorney Edward O'Connell, Town Counsel
Attorney Mark Zamarka, Town Counsel
Anna Johnson, Finance Director
Dave Kenney Interconnection Project Manager

ABSENT: Dave Zoller

1. Call to Order

Chairman Formica called the Regular Meeting of the East Lyme Water & Sewer Commission to order at 7:00 PM and led the assembly in the Pledge. He noted that Mr. Kargl was out due illness and that Mr. Zoller was travelling.

2. Approval of Minutes

▪ **Special Meeting Minutes – January 28, 2014**

Mr. Formica called for a motion or any discussion or corrections to the Special Meeting Minutes of January 28, 2014.

****MOTION (1)**

Mr. DiGiovanna moved to approve the Regular Meeting Minutes of January 28, 2014 as presented.

Mr. Spencer seconded the motion.

Vote: 5 – 0 – 2. Motion passed.

Abstained: Mr. Formica, Mr. Bond

▪ **Regular Meeting Minutes – January 28, 2014**

Mr. Formica called for a motion or any discussion or corrections to the Regular Meeting Minutes of January 28, 2014.

Ms. Russell asked that on Page 3 at the very bottom that the word individual before audits be changed to read: independent.

****MOTION (2)**

Mr. DiGiovanna moved to approve the Regular Meeting Minutes of January 28, 2014 as amended.

Mr. Spencer seconded the motion.

Vote: 5 – 0 – 2. Motion passed.

Abstained: Mr. Formica, Mr. Bond

3. Delegations

Mr. Formica called for anyone who wished to speak under Delegations.
There were no delegations.

4. Water & Sewer Billing Adjustment Requests

Mr. Bragaw said that there were none at this time.

5. Approval of Bills – from Attachment B

Mr. Formica called for a motion on the Regional Interconnection bills.

****MOTION (3)**

Mr. DiGiovanna moved to approve payment of the following Regional Interconnection bills:
Haluch Construction, Pay Appl. #7 in the amount of \$2,767.85 and Mid Atlantic Storage Systems,
Pay Appl. #5 in the amount of \$42,334.37.

Mr. Spencer seconded the motion.

Mr. Mingo asked if they were assessing the liquidated damage fees.

Mr. Kenney said yes, adding that they have amassed about \$75,000 so far.

Vote: 7 – 0 – 0. Motion passed.

****MOTION (4)**

Mr. DiGiovanna moved to approve payment of the following Regional Interconnection bill:
Tighe & Bond, Inv. #1406103 in the amount of \$23,195.30.

Mr. Mingo said that he has an issue with the pressure relief valves for the 63 homes. He believes that
Tighe & Bond missed this originally and that they owe us some money to cover it.

Mr. Kenney said that he would tend to agree with that.

Mr. Formica said that they would note it and follow up on it.

Mr. Spencer seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

****MOTION (5)**

Mr. DiGiovanna moved to approve payment of the following Emergency Power/Generator
Upgrade bill:

Kinsley Power Systems, Inv. #JC14937 in the amount of \$64,532.00.

Mr. Spencer seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

****MOTION (6)**

Mr. DiGiovanna moved to approve payment of the following Sewer Pump Station Upgrade bill:
Tighe & Bond, Inv. #1406104 in the amount of \$3,897.16.

Mr. Spencer seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

****MOTION (7)**

Mr. DiGiovanna moved to approve payment of the following Well Improvements bill:
S.B. Church Co., Inv. #750 in the amount of \$17,740.00 and WAJA Associates, Inv. #SRV0001032
in the amount of \$2,192.80.

Mr. Bragaw noted that Mr. Kargl was able to get S.B. Church to reduce their charge by \$1000.

Mr. Spencer seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

6. Budget Report – Finance Director

Mr. Formica called on Ms. Johnson for her report.

Ms. Johnson said that they had a copy of her report and noted that she has also provided them with a
copy of the audited financial statements that they requested.

Mr. Mingo asked that they have the chance to review it and bring any questions that they might have to their next meeting.

Ms. Russell asked who does the audit.

Ms. Johnson said that it is done by McGladrey Pullen.

Ms. Russell asked if they raised any concerns.

Ms. Johnson said no.

7. Water Operating Budget Appropriation – FY2014

Mr. Formica noted the memo from Mr. Kargl requesting a transfer of \$3900 to the Water Operating Budget. The money was reimbursement received for a claim the Water Department made regarding damage to its water main on West Main Street when a motor vehicle accident occurred there.

****MOTION (8)**

Mr. Murphy moved to approve the transfer of \$3900 to the Water Operating Budget Line Item, Maintenance of Transmission and Distribution, #4-07-01-300-670-673.

Mr. DiGiovanna seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

8. Niantic Pump Station Electrical Upgrades

Ms. Johnson said that Mr. Kargl would like a transfer of \$8,953 made from the Sewer Assessment fund to pay Tighe & Bond for the Engineering Report done relative to the Niantic Pump Station Electrical Upgrades.

****MOTION (9)**

Mr. Mingo moved to authorize the transfer of \$8,953 from the Sewer Assessment Fund to pay for the Tighe & Bond Engineering Report done for the Niantic Pump Station Electrical Upgrades.

Mr. DiGiovanna seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

9. Water Project Updates

▪ Regional Interconnection

Dave Kenney said that they have been provided with copies of the weekly report and that he would brief then on some of the highlights. He reported that CL&P provided power last week to the pump stations and that they have heaters to dry the concrete floors. They have contacted the 63 residents regarding the pressure relief valves and to date, 19 have replied back that they want them. They will work on follow-up with the rest. He passed out pictures of the progress on the tank for those who may not have seen it. He said that they are shooting for mid-April to start pumping water over to New London. He noted that weather is still a factor with the concrete and that they are trying to work with it.

Mr. Spencer asked about the liquidated damages and if they began assessing them on 2/27/2014 or if he meant it to read - 1/27/14 in the report.

Mr. Kenney said yes, and that the report should reflect the date of 1/27/2014 as the start of the assessment of the liquidated damages.

- Well 1A Pump Replacement;**
- Manwaring/Shore Road Water Main; and**
- Society Road Bridge Replacement**

Ms. Johnson recalled that at the last meeting Mr. Kargl had indicated that they do have remaining funds within the Water Capital Improvement budget from the unallocated portion (\$400,000) and that he would like varying amounts transferred for the above three items as indicated in his memo.

****MOTION (10)**

Mr. Mingo moved to authorize the re-allocation of funds within the Water Capital Improvement Budget from the unallocated portion to complete the following water projects: \$19,933.00 for pump replacement; surging of well and related work for Well 1A; \$48,000.00 to the Shore Road

Water Main Replacement Project to include water main work on Manwaring Road and \$9,200.00 for design and modification of CTDOT Society Road Bridge Replacement plans to incorporate and support future water main.

Mr. DiGiovanna seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

10. Communications

▪ **See Communications Log**

There were no comments.

11. Chairman's Report

Mr. Formica noted that there has been no report on the Old Lyme beaches and that it is still moving through the system.

Ms. Russell asked about adding fees from the Town for the hydrants and if they could incorporate that as a part of the budget and what the time frame would be on that.

Mr. Formica said that he wanted it noted that he is opposed to that as it just takes from one pocket to put into another. Also, he feels that it will be a difficult budget season trying to balance all the needs of the Town. They are proposing to hold a Special Meeting on March 11, 2014 for this Commission. The Board of Finance will get the budget from the Board of Selectmen on March 12, 2014 to start that process, so there is time.

12. Clarification of Landmark Sewer Capacity Request

Glenn Russo, Applicant was present for this discussion and Beth Critton who works with Attorney Hollister was also present.

Attorney Edward O'Connell, Town Counsel was also present.

Mr. Formica explained that this was brought up at the last meeting and that Judge Cone has made a ruling remanding this back to this Commission for a determination of capacity to be made more specific. He recalled that Landmark asked for 118,000 gpd and that this Commission did not provide a number. The Public Hearing is not to be re-opened; testimony already received and in the record is to be utilized in this determination. The range of 130,000 gpd – 225,000 gpd was mentioned in the previous record and the Judge has stated that they must consider a number in that range. As there is a deadline in which to file this; he asked that Attorney Zamarka further explain this to them.

Attorney Zamarka synopsis: that they have to report back on this and that on January 16, 2014 the appeal was heard and the reason for it was the request of 118,000 gpd capacity which this Commission stated was an unusually large request for capacity. Judge Cone ruled that if the Commission felt that 118,000 gpd was too large that they were to come up with some other number and because they did not – it was not seen as a final resolution. The Court is looking for a number and clarification and they are limited to what has been presented in the record; they cannot take any new information. They have an existing range of 130,000 gpd – 225,000 gpd or some number in between. While the Commission does have discretion to grant nothing – the Court does feel that would be an abuse.

Mr. Mingo asked if they are limited to numbers between 130,000 gpd – 225,000 gpd.

Attorney Zamarka said that when Dan Lawrence gave his report that he stated that it was between 130,000 gpd - 225,000 gpd that was available for the Town. The question is how much of that are they willing to allocate to what deals only with the area within the East Lyme sewer shed area boundaries for the Landmark property. They are to come up with a number for that area only. The January 16, 2014 appeal remand made it clear that the Commission must come up with a specific gallon or capacity amount.

He suggested that they may want to consider the following exhibits from the record when discussing a potential determination: #31 & #38 – Weston & Sampson reports and corresponding attachments; #42 – Dan Lawrence 9/25 Public Hearing testimony beginning on p.3; #8 – Fuss & O'Neill report - within the report, the following were also referenced: executive summary; Section 5; tables V-4, V-5, V-14, V-15,

V-16, V-17, and the State capacity breakdown on p.40; #3, TAB 5 – AECOM report; #7 – New London NPDES discharge permit; #12 – Commissioner Zoller's memo, and the attached chart of East Lyme sewer flows history; #3, #30 & #39 – Landmark reports and/or submissions; #9 – 1985 East Lyme Facilities Plan – Sections 4.81, 4.82 and 4.83, beginning on p.75; table 12 (p.82), table 13 (p.84) and figure 12.

He said that he understands that they have a couple of amounts to look at here and that it is based on the total Town capacity available and what they would allocate to Mr. Russo's piece of property that falls within the sewer shed area.

Glenn Russo, applicant said that he was also in attendance at the appeal hearing and said that they are to review the record only. However; figures referenced by Attorney Zamarka were ones that were given by the city experts only and not those of his experts. He said that he believes that the Judge did not limit the Commission only to their own experts but to all of the testimony that was given.

Mr. Formica said that he has read through the ruling and that they could consider information that is on the record. He then opened the discussion on this item to the Commissioners.

Mr. Mingo said that he has been reviewing all of the materials that they had received on this and that his thoughts are that the Water & Sewer Commission is not a land use agency or zoning, etc. and that it was the DEEP that mandated that they put in the sewers some time ago. He suggested that perhaps they could grant enough sewer capacity for the amount of property there to build it out based on current zoning however he is not sure if that is the correct way to proceed.

Attorney Zamarka said to Mr. Mingo that they are limited to the record and that the zoning regulations are not a part of the record.

Mr. Mingo withdrew his suggestion. He stated that he does feel that they deserve something but that he is not sure that he has the expertise to come up with a figure that is equitable. However; he does feel that there is a figure that they are entitled to.

Mr. Formica called for other comments.

Mr. DiGiovanna said that he does agree with Mr. Mingo that they are a ticket holder and should get something but he is not sure of what that amount would be.

Mr. Formica asked for the maps.

Attorney Zamarka provided them and Section 5 of the Fuss & O'Neill report.

Mr. Formica asked the pleasure of the Commission on how they would like to proceed regarding coming up with a number. He noted that the map shows the sewer shed area and indicates the area of the parcel that lies in the sewer shed – Map V-15.

Mr. Bragaw elaborated that they are looking at Figure V-15 – parcel 16 which has a developed portion in the Golden Spur area with 11,000 gpd allocated and that the undeveloped part of parcel 16 has 13,000 gpd allocated to it and the entire parcel was allocated 24,000 gpd.

Mr. Murphy asked what percentage of parcel 16 is Landmark's property.

Attorney Zamarka said that Exhibit 3 shows the map and how it relates to Landmark's property. (Figure 1.2 – Exhibit 3, Tab 7)

Mr. Murphy said that he is trying to equate and determine a percentage that is in the sewer shed that belongs to Landmark so that they know what part of the 13,000 gpd is in the sewer shed.

Attorney Zamarka said that according to Figure V-15 – 24,000 gpd is allocated to that parcel and suggested that they use the breakdown that was previously provided: 11,000 gpd to the developed area and 13,000 gpd to the undeveloped area.

Mr. Bond asked if the 13,000 gpd allocated to the parcel is based on the chart.

Attorney Zamarka said yes.

Mr. Murphy asked if for all practical purposes the 13,000 gpd is for the rest of the area.
Mr. DiGiovanna added to that if it is for the area that is within the sewer shed.
Attorney Zamarka said that was correct.
Mr. DiGiovanna asked when that was determined.
Attorney Zamarka said February of 2005.
Mr. DiGiovanna asked if it has been updated
Attorney Zamarka said that is what is in the record and what they must use.

Mr. Mingo said that he was ready to make a motion.
Mr. Formica asked that they give Mr. Murphy some time to review the information.
Attorney Zamarka said that figure V-15 sets out the 24,000 gpd for parcel 16 of the property that lies within the sewer shed and which for all practical purposes is the Landmark property.

Mr. Bond asked where this goes after they make a determination.
Attorney Zamarka said that they would direct Counsel to draft a new resolution and bring it back to them and then it must go to the Judge on March 17, 2014.

Mr. Murphy said that he is not sure that he is giving them a fair shake in only reviewing one exhibit here.
Mr. Formica suggested that they take the time to review some of the others as Attorney Zamarka has provided them with other information and the box of Exhibits. He suggested that Exhibit 3, Tab 7 is an indication of the sewer shed as it relates to the entire property.
Attorney Zamarka noted that Figure V-16 predicated the expansion map and the 1985 Facilities Plan on p. 75 discusses problem areas and how they would address them.

Mr. Mingo said that he is ready to put a motion on the floor for debate.
Mr. Formica asked that he hold that thought for a moment.
Mr. Murphy noted the time frame on how the sewers were planned – predicated in February 2005 based on the expansion – listing the Calkins Road property as being sewerred in 0 to 5 years and Landmark's area for being sewerred within 50 years.
Mr. Mingo said that he was still prepared to put a motion on the floor for debate.
Mr. Formica asked Ms. Russell if she was ready for a motion or had comments.
Ms. Russell said that she was looking for the time frame.

Attorney Zamarka said that the Judge was looking not only for a number but also for a basis for that number and suggested that they use as much as possible from within the record.
Mr. Murphy asked if this had to be done now or if they could do this on March 11, 2014 or if that would be too late.
Attorney Zamarka said that while they could perhaps do it then that he would not be able to get it back to them before the March 17, 2014 date.

Mr. Mingo said that based on the Fuss & O'Neill Report dated February 2005; Figure V-15 that 13,000 gpd was allocated to parcel 16 and that he would make a motion.

****MOTION (11)**

Mr. Mingo moved to allocate 13,000 gpd to this property based on the fact that they are entitled to capacity.

Mr. Murphy seconded the motion

Ms. Russell asked to look over Exhibit 12 – Mr. Zoller's memo with the latest email.
Attorney Zamarka submitted Mr. Zoller's Exhibit 12 and his comments in lieu of his absence this evening (to everyone). (Copy Attached)

Mr. Formica asked that they take a brief recess in order to review the information.
Once back from the recess he called for discussion on the motion.

Ms. Russell said that based on the instructions that they had received that Mr. Zoller in Exhibit 12 was looking at an available capacity under the 130,000 gpd however from what the Judge has said – they cannot entertain that?

Mr. Mingo asked if his motion is out of order.

Attorney Zamarka said that the charge was to use 130,000 gpd or 225,000 gpd or somewhere in between.

Mr. Mingo asked if they are to come up with a figure that they are willing to allocate.

Attorney Zamarka said yes.

Ms. Russell said that she is grappling with the issue that the 130,000 gpd is where she is leaning as the total available capacity for the Town. Figures V-15 and V-16 show that they have limited capacity and she grapples with how to allocate this and the needs of the Town as they are dealing with an undeveloped parcel versus developed areas that also have a need for capacity.

Attorney Zamarka said that if they feel that there is evidence in the record that there is 130,000 gpd available then she could make a motion to that effect.

Mr. Formica suggested that there is a motion on the floor with a second and that they see it through. He further suggested that as they are concerned with the figures of 130,000 gpd - 225,000 gpd that they take a number between those two; say – 177,000 gpd and if they take 7.25% of that it would come in just under the 13,000 gpd that Mr. Mingo has motioned and that they have been discussing.

Attorney O'Connell suggested that Mr. Mingo amend his motion to read that 'based on Exhibit #8 – the Fuss & O'Neill report, Table V-15 and the entirety of the record that they consider the 13,000 gpd be allocated to this property.'

Mr. Mingo amended his motion to read: moved to allocate 13,000 gpd to this property based on Exhibit #8 the Fuss & O'Neill Report, Table V-15 and the entirety of the record.

Mr. Murphy amended his second to accept this clarification.

Mr. Formica asked if there was any further discussion.

Mr. Bond said that he would agree with the figure and that they are all in the ball park percentage wise that 7.25% of the total available capacity is fair.

Mr. Mingo said that he put his motion together not with capacity in mind as he feels it is an irrelevant item.

Mr. DiGiovanna said that he feels that the 7% is a pretty good number of the average capacity.

Mr. Murphy said that he thinks that Map V-15 really projects what they have throughout the Town and this allows for the rights of the others throughout the Town. While they may not want to give this amount, he thinks it is what they have to give.

Mr. Formica called for a vote on the motion.

Vote: 7 – 0 – 0. Motion passed.

Mr. Formica directed Attorney Zamarka to draft the resolution indicating the allocation in the motion above. He further noted that they would hold a Special Meeting of the Water & Sewer Commission on March 11, 2014 at 6 PM to conduct this business.

13. Fluoride Update

Mr. Formica noted that they had received in their packets a report to read on Israel outlawing the use of fluoride in their water.

Ms. Russell reported that Ledge Light Health District (LLHD) has assigned an intern to update her research on fluoride and that she met with her last week Friday and lent her the binder of information that she has been gathering. The intern also requested that she be taken on a review of the treatment facility plant and that review will take place very soon.

14. Staff Updates

▪ Water Department Monthly Reports

Mr. Murphy noted that the water numbers are up.

Mr. Bragaw said that Mr. Kargl has an on-going leak detection project and that they have found and repaired a lot of leaks so this number should change.

▪ Sewer Department Monthly Reports

Mr. Bragaw reported that they have hired Tim Kruszewski as the Sewer Mechanic and that he will start next week. He is a Town resident and has served in the Marines.

15. ADJOURNMENT

Mr. Formica called for a motion to adjourn.

****MOTION (12)**

Mr. DiGiovanna moved to adjourn the February 25, 2014 Regular Meeting of the East Lyme Water & Sewer Commission at 8:55 PM.

Mr. Murphy seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

Brad Kargl

From: dzoller@aol.com
Sent: Sunday, February 09, 2014 1:44 PM
To: Brad Kargl
Subject: Application of Landmark Development for Confirmation of Sewer Capacity

Brad,

I understand that the court has asked us to provide one number to represent the estimated available capacity of the East Lyme Sewer System. I recall that the primary difference in the approaches to estimating this capacity was in the selection of a baseline average daily flow (ADF). Milone & MacBroom selected one baseline and Weston & Sampson selected two different baselines in an effort to bracket the solution. The Weston & Sampson estimates for available capacity were cited in the resolution of the Commission dated December 11, 2012.

I have reviewed the work that I did on available sewer capacity as presented in my memo dated September 9, 2012. As a baseline ADF, I selected a value that would not be exceeded 95% of the time. This was based on 60 months (5 years) of data and the assumption that the 60 data points were normally distributed. The resulting estimate of available capacity was 63,500 GPD. In the memo, I also included a value for a baseline ADF that would not be exceeded 90% of the time. If this 90% confidence level were used, the result would be an estimated available capacity of 100,000 GPD. I believe that we are on firm ground to use either of these estimates depending on the level of confidence the Commission wishes to adopt.

The pertinent state statute (Sec 22a-430-3(a)) cited in our NPDES Permit asserts that the "Average Monthly Discharge Limitation" means the highest allowable average of all daily discharges during any calendar month. We should use a baseline flow estimate that gives us reasonable expectation that we will not exceed our permitted NPDES limitation.

Regards,
David Zoller

2/14/2014

Attachment Was 2/25/14 Item #12