

**EAST LYME WATER & SEWER COMMISSION
SPECIAL MEETING
Tuesday, MARCH 11th, 2014
MINUTES**

FILED IN EAST LYME
CONNECTICUT
May 17 2014 AT 10:00 AM/PM
Rosley Blair
EAST LYME TOWN CLERK

The East Lyme Water & Sewer Commission held a Special Meeting on March 11, 2014 at Town Hall, 108 Pennsylvania Avenue, Niantic, Connecticut.

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

ALSO PRESENT: Attorney Edward O'Connell, Town Counsel
Attorney Mark Zamarka, Town Counsel
Brad Kargl, Municipal Utility Engineer

ABSENT: Steve DiGiovanna, Dave Zoller

1. Call to Order

Chairman Formica called this Special Meeting to order at 6:01 PM and led the assembly in the Pledge of Allegiance. He noted that there was a quorum present and that Mr. Murphy would also be arriving shortly as he was delayed in traffic.

2. Approval of Meeting Minutes

▪ **Regular Meeting Minutes – February 25, 2014**

Mr. Formica called for a motion or any discussion or corrections to the Regular Meeting Minutes of February 25, 2014.

(Note: Mr. Murphy arrived and was seated – 6:04 PM)

Mr. Formica said that he had read a section from the appeal hearing record of 1/6/2014 after Mr. Russo spoke and that he would like that information inserted on Page 5 after Mr. Russo's comments. (Attorney O'Connell supplied a copy of the entire Appeal hearing record) He read the following from page 32 of the appeal hearing record dated 1/16/2014 for insertion on Page 5:

"THE COURT: I'm not telling them that they can change from the 130 to the 225 and say, oh, well now it's only a hundred thousand. We learned something yesterday that U.S. Corp of Engineers wants an extra capacity and so we're lopping it down to 100 to 200 - - 200 GPDs, or whatever it is. No, they're stuck with the 130 to 225, and you can claim your 400,000. Nobody's asking you to change that. What we want is, based on that 130 to 225 number, what does their expert say is available for Landmark."
(Page 32 of appeal hearing attached)

Ms. Russell said that she had said that if they were to look at the low end of 130,000 that the 13,000 would be 10% of that lower end figure – she asked that it be inserted on the top of Page 7 where she is speaking.

****MOTION (1)**

Mr. Spencer moved to approve the Regular Meeting Minutes of February 25, 2014 as amended.

Ms. Russell seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

3. Landmark Sewer Capacity Appeal – Amended and Clarified Resolution

Mr. Formica called upon Attorney Zamarka to go over the amended and clarified resolution.

Attorney Zamarka passed out copies of the amended and clarified resolution to everyone (Copy attached at end of Minutes). He explained that the resolution is the same through to the very last item on the bottom of Page 2 and that from that very last item on the bottom of Page 2 through all of Page 3 are the added and clarified items.

Ms. Russell asked about adding that they not exceed 10% of the low end as the 13,000 gpd equals 10% of the low end of the range (130,000).

Attorney Zamarka stated that they are bound by the items contained in the original hearing record only. He added that this is not the end point as the Court expects all of them to be back before them for further discussion on this.

Mr. Formica stated again that pages 1 and 2 to the very last WHEREAS on the bottom of Page 2 are the resolution as written the first time through and that the additions begin with the bottom of Page 2 and through all of page 3. Further, the resolution is saying that they are granting the 13,000 gpd based on the discussion to date.

Ms. Russell said that she looked at Figure V-15 and feels that the 13,000 is very fair.

Mr. Formica asked if they were ready to move the resolution –

****MOTION (2)**

Mr. Mingo moved the following resolution:

WHEREAS, on June 1, 2012, Landmark Development Group, LLC and Jarvis of Cheshire (“Applicant”) filed with the East Lyme Water and Sewer Commission (“Commission”), acting as the East Lyme Water Pollution Control Authority, an application “pursuant to §7-246a(1) of the General Statutes, seeking confirmation of the availability of 237,090 gallons per day of sewage disposal capacity in the Town’s sewer system to serve Landmark Development’s proposed residential development adjacent to Caulkins Road”; and

WHEREAS, at the public hearing on the application held on August 24, 2012, the Applicant amended its application to request availability of 118,000 gallons per day of sewage disposal capacity in the Town of East Lyme’s (“Town”) sewer system; and

WHEREAS pursuant to General Statutes §7-246a(1), the Commission is required to determine the adequacy of sewer capacity related to a proposed use of land; and

WHEREAS, the Commission held three public hearings on the application and listened to hours of testimony during those hearings. Numerous exhibits were submitted by the Applicant, the Commission, and individuals for consideration during the hearing process. In making its decision the Commission is considering and taking into account all of the testimony and exhibits submitted at the three hearings; and

WHEREAS, the Commission has wide discretion in connection with the decision to supply sewer service to particular properties; and

WHEREAS, the Commission finds that less than 60% of the Applicant’s proposed residential development is located within the Town’s sewer service district; and

WHEREAS, the Town’s Facilities Plan provides for sewers to be constructed in other areas of the Town which are wholly located within the Town’s sewer service district and upon which assessments have been levied; and

WHEREAS, the Town has supplied sewer service to areas of the Town where customers have the option to connect to the sewer system as a result of assessments levied on their properties but have not yet connected; and

WHEREAS, the Town's Facilities Plan provides for sewers to be constructed in other areas of the Town which are wholly located within the Town's sewer service district and to which sewers are not presently available; and

WHEREAS, the Town's Facilities Plan, as amended by a report prepared by Fuss & O'Neill, Inc., entitled "Wastewater Collection System Capacity Analysis Planning Report", dated September, 2007, estimates that a full build-out of all the areas designated for sewer service, including those to which sewer service is presently provided, will require approximately 3,645,000 gallons per day of sewage treatment capacity; and

WHEREAS, pursuant to an agreement with the Town of Waterford and the City of New London ("Agreement"), the Town is entitled to make use of 15% of the treatment capacity of the Piacenti Facility (the New London Waste Water Treatment Facility); and

WHEREAS, the current treatment capacity of the Piacenti Facility is 10,000,000 gallons per day; and

WHEREAS, pursuant to the Agreement, the Town is currently entitled to 1,500,000 gallons per day of sewage treatment capacity at the Piacenti Facility; and

WHEREAS, pursuant to orders from the Connecticut Department of Energy and Environmental Protection, the Town is required to reserve 478,000 gallons per day of its available sewage treatment capacity for the benefit of various state facilities located in the Town, and this amount is not available to the Town or any other customers of the Town; and

WHEREAS, the Commission finds that the Town has between 130,000 and 225,000 gallons per day of remaining sewage treatment capacity; and

WHEREAS, the 118,000 gallons per day of sewage capacity requested by the Applicant represents between 52% and 90% of the Town's remaining sewage treatment capacity; and

WHEREAS, the 118,000 gallons per day of sewage capacity requested by the Applicant represents more than 10% of the Town's current daily sewage flow; and

WHEREAS, the remaining sewage treatment capacity must be made available to the areas of the Town already designated to receive sewer service and to those customers who have the option to connect to the sewer system as a result of assessments levied on their properties; and

WHEREAS, the Commission finds that the capacity requested in the application is a disproportionately large allocation of the Town's remaining sewage treatment capacity, and that there is not adequate sewer capacity related to the proposed use of land; and

WHEREAS, the Applicant appealed the Commission's decision to the Superior Court; and

WHEREAS, at a hearing on said appeal, held on January 16, 2014, before the Honorable Henry S. Cohn of the New Britain Judicial district, the Court remanded the case to the Commission for clarification, and instructed the Commission to determine an amount of capacity it would be willing to grant to the Applicant based on evidence already in the record; and

WHEREAS, the Commission addressed the Court's remand order at its regular meeting held on February 25, 2014; and

WHEREAS, based on a review of all the evidence in the record, including but not limited to the following:

- Weston and Sampson reports and attachments (Exhibits 31 and 38);
- Fuss & O'Neill report, including executive summary and section 5, tables V-4, V-5, State capacity graph on p.40, Figure V-14 showing capacity breakdown, Figure V-15 Future Wastewater Flow Estimation for all areas of town, sewer and unsewered, Figure V-16 showing predicted expansion ranges of all parcels, and Figure V-17 bar graph of future flow projections (Exhibit 8);
- AECOM Report (Exhibit 3, Tab 5);
- New London municipal NPFES discharge permit (Exhibit 7);
- Memo from Commissioner Zoller (Exhibit 12) and follow up email that discusses the memo;
- East Lyme sewer flows history (Exhibit 12, Exhibit 3 Tab 2);
- Landmark reports and attachments (Exhibit 3, 30 and 39);
- 1985 Facilities Report, including Table 12 (p.82) chart of problem areas, Table 13 (p.84) problem area flow estimates, Figure 12 (following p.85) map of problem areas

The Commission finds that it is willing to grant to the Applicant 13,000 gallons per day of sewage treatment capacity; and

WHEREAS, nothing in this Amended and Clarified Resolution shall be construed as a waiver of the Commission's position that its initial resolution dated December 11, 2012 properly and accurately addressed the Application as submitted

BE IT THEREFORE RESOLVED, that the East Lyme Water and Sewer Commission, acting as the Town's Water Pollution Control Authority, pursuant to the Superior Court's remand order of January 16, 2014, based on a review of evidence in the record, hereby GRANTS to the Applicant 13,000 gallons per day of sewage treatment capacity pursuant to an application dated June 1, 2012 "seeking confirmation of the availability of 237,900 gallons per day of sewage disposal capacity in the Town's sewer system to serve Landmark Development's proposed residential development adjacent to Caulkins Road."

Mr. Bond seconded the motion.

Mr. Formica called for a vote on the motion.

Vote: 6 – 0 – 0. Motion passed.

Attorney Zamarka said that they were notified to file this with the Court prior to March 17, 2014 and that he would be doing so and the Court would then be back in touch with them.

4. Manwaring Water Main Bid Results

Mr. Formica asked Mr. Kargl to comment on this item.

Mr. Kargl said that they had a copy of the bid results in their packets and that he would like to move on this so that they can award the contract and get started on the project as soon as possible. Anello Bros. LLC came in with the low bid which has been found to be acceptable.

Mr. Murphy asked if they have any history with the Town.

Mr. Kargl said yes, they have worked on other Town Engineering projects in the past.

Mr. Spencer asked if they were satisfied with the scope review.

Mr. Kargl said yes.

Mr. Bond asked the time frame for this project.

Mr. Kargl said that it would take about a month.

****MOTION (3)**

Mr. Mingo moved that it be RESOLVED, that the East Lyme Water and Sewer Commission hereby accepts the bid submitted by Anello Bros., LLC in the amount of \$63,672.00 for the Manwaring Road Water Main Connection Project and to authorize the Chair to execute, in the name and on behalf of the Commission, a contract for such work with Anello Bros., LLC and to execute such other documents as may be necessary to implement the Project, upon submission of the required bonds and certificates by the contractor.

Mr. Murphy seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

5. Adjournment

Mr. Formica called for a motion to adjourn.

****MOTION (4)**

Mr. Murphy moved to adjourn this Special Meeting of the East Lyme Water & Sewer Commission at 6:30 PM.

Mr. Mingo seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

1 THE COURT: No.

2 ATTY. HOLLISTER: That's what I'm --

3 THE COURT: No, no, no. You're not doing
4 anything over again. The capacity amount stays the
5 same.

6 ATTY. HOLLISTER: But they already --

7 THE COURT: I'm not telling them that they can
8 change from the 130 to the 225 and say, oh, well now
9 it's only a hundred thousand. We learned something
10 yesterday that U.S. Corp of Engineers wants an extra
11 capacity and so we're lopping it down to 100 to 200
12 -- 200 GPDs, or whatever it is.

13 No, they're stuck with the 130 to 225, and you
14 can claim your 400,000. Nobody's asking you to
15 change that. What we want is, based on that 130 to
16 225 number, what does their expert say is available
17 for Landmark.

18 ATTY. HOLLISTER: Right.

19 THE COURT: And then the next question is if you
20 want to put somebody on to say that that figure is
21 wholly inappropriate, you can do that too.

22 ATTY. HOLLISTER: But then -- then the public is
23 going to demand a right to speak on those issue
24 because --

25 THE COURT: Why? I'm remanding it. It's not
26 for a public hearing. It's for determination of one
27 simple question, and that is what you say 3-09-55

**LANDMARK DEVELOPMENT GROUP, LLC
APPLICATION FOR DETERMINATION OF SEWER CAPACITY
AMENDED AND CLARIFIED RESOLUTION**

March 11, 2014

WHEREAS, on June 1, 2012, Landmark Development Group, LLC and Jarvis of Cheshire ("Applicant") filed with the East Lyme Water and Sewer Commission ("Commission"), acting as the East Lyme Water Pollution Control Authority, an application "pursuant to §7-246a(1) of the General Statutes, seeking confirmation of the availability of 237,090 gallons per day of sewage disposal capacity in the Town's sewer system to serve Landmark Development's proposed residential development adjacent to Caulkins Road"; and

WHEREAS, at the public hearing on the application held on August 24, 2012, the Applicant amended its application to request availability of 118,000 gallons per day of sewage disposal capacity in the Town of East Lyme's ("Town") sewer system; and

WHEREAS pursuant to General Statutes §7-246a(1), the Commission is required to determine the adequacy of sewer capacity related to a proposed use of land; and

WHEREAS, the Commission held three public hearings on the application and listened to hours of testimony during those hearings. Numerous exhibits were submitted by the Applicant, the Commission, and individuals for consideration during the hearing process. In making its decision the Commission is considering and taking into account all of the testimony and exhibits submitted at the three hearings; and

WHEREAS, the Commission has wide discretion in connection with the decision to supply sewer service to particular properties; and

WHEREAS, the Commission finds that less than 60% of the Applicant's proposed residential development is located within the Town's sewer service district; and

WHEREAS, the Town's Facilities Plan provides for sewers to be constructed in other areas of the Town which are wholly located within the Town's sewer service district and upon which assessments have been levied; and

WHEREAS, the Town has supplied sewer service to areas of the Town where customers have the option to connect to the sewer system as a result of assessments levied on their properties but have not yet connected; and

WHEREAS, the Town's Facilities Plan provides for sewers to be constructed in other areas of the Town which are wholly located within the Town's sewer service district and to which sewers are not presently available; and

Attachment WWS Spec. Mtg. 3/11/14 3 pp. submitted

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WHEREAS, the Commission finds that the Town has between 130,000 and 225,000 gallons per day of remaining sewage treatment capacity; and

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WHEREAS, the 118,000 gallons per day of sewage capacity requested by the Applicant represents more than 10% of the Town's current daily sewage flow; and

WHEREAS, the remaining sewage treatment capacity must be made available to the areas of the Town already designated to receive sewer service and to those customers who have the option to connect to the sewer system as a result of assessments levied on their properties; and

WHEREAS, the Commission finds that the capacity requested in the application is a disproportionately large allocation of the Town's remaining sewage treatment capacity, and that there is not adequate sewer capacity related to the proposed use of land; and

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