

**EAST LYME WATER & SEWER COMMISSION
REGULAR MEETING
TUESDAY, NOVEMBER 13th, 2018
MINUTES**

The East Lyme Water & Sewer Commission held a Regular Meeting on Tuesday, November 13, 2018 at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson called the Regular Meeting to order at 7:15 PM immediately following the previously scheduled Public Hearing.

PRESENT: Mark Nickerson, Chairman, Steve DiGiovanna, Dave Jacques, Dave Murphy, Joe Mingo, Carol Russell, Roger Spencer, Dave Zoller

ALSO PRESENT: Attorney Theodore Harris, Representing the Applicant
Attorney Edward O'Connell, Town Counsel
Attorney Mark Zamarka, Town Counsel
Joe Bragaw, Public Works Director
Brad Kargl, Municipal Utility Engineer
Anna Johnson, Finance Director

FILED IN EAST LYME
CONNECTICUT
NOV 20 2018 AT 10:03 AM PM
Bradley Thomas
EAST LYME TOWN CLERK

ABSENT: Dave Bond

1. Call to Order / Pledge of Allegiance

Chairman Nickerson called the Regular Meeting of the East Lyme Water & Sewer Commission to order at 7:15 PM immediately following the previously scheduled Public Hearing which was closed at 7:14 PM. The Pledge was previously observed.

2. Approval of Minutes

- Public Hearing Meeting Minutes – October 23, 2018
- Regular Meeting Minutes – October 23, 2018

Mr. Nickerson called for a motion or any discussion or corrections to the Public Hearing Meeting Minutes or Regular Meeting Minutes of October 23, 2018.

****MOTION (1)**

Mr. DiGiovanna moved to approve the Public Hearing Meeting Minutes and the Regular Meeting Minutes of October 23, 2018 as presented.

Mr. Zoller seconded the motion.

Vote: 6 – 0 – 2. Motion passed.

Abstained: Mr. Nickerson, Mr. Jacques

3. Delegations

Mr. Nickerson called for delegations.

There were no delegations.

4. Consider Allocation of Sewer Capacity for Costco

Mr. Mingo said that the 160,000 gpd that was approved for Gateway does not necessitate going any further as the Costco can get capacity from there.

Mr. Nickerson said that they should go through the process anyways – they are looking for 7,650 gpd from the approximate 262,000 gpd available.

Mr. Mingo asked for the Attorney to rule on it.

Attorney Zamarka, Town Counsel said that the 160,000 gpd is a court analysis. He noted that they are here by Resolution and added that Attorney Hollister is correct that Landmark does have an interest in the Costco application as the Landmark application is also out there for capacity. Costco does need to be analyzed for available capacity.

Mr. DiGiovanna asked if that isn't what Brad came up with in his analysis.

Mr. Kargl said that he would feel more comfortable with his analysis once he has conversation with the DEEP on it and receives their input.

Mr. Mingo asked if he would be correct that they should not put a motion on the floor and asked Counsel if that is within the parameters.

Attorney Zamarka said that it would not be out of order as long as it would not exceed the 118,000 gpd that Landmark is seeking.

****MOTION (2)**

Mr. Mingo moved to grant Costco sewer capacity in the amount of 7,650 GPD as requested.

Mr. DiGiovanna seconded the motion.

Ms. Russell said that she has a concern with going with an estimate on the 262,000 gpd rather than a more definitive number.

Mr. Nickerson said that he has enough confidence in Mr. Kargl that he is pretty accurate and further the Court is aware of the number of 160,000 gpd given to Gateway. Further, he added that he would love to pursue the State capacity that is sitting out there unused even though they claim that they will use it.

Ms. Russell said that she feels that it is difficult to wrap yourself around as the figures fluctuate.

Mr. Kargl said that is exactly why he took an average.

Mr. Mingo said that based on the new resolution that those below 5,000 gpd can just have it – two of those added together will have eaten up the 7,650 gpd and then some so it is a moot point.

Mr. Jacques asked Mr. Kargl what he would be asking the DEEP.

Mr. Kargl said that he would be asking what they would be looking at as it states that we have 15% of the 10M gpd but what is the metric that is being used and is that the starting number.

Mr. Mingo asked Mr. Kargl what the next step would be.

Mr. Kargl asked that he be allowed to complete the process that he has started.

Mr. Nickerson called for a vote on the motion.

Vote: 7 – 1 – 0. Motion passed.

Against: Ms. Russell

(Note: a brief break was taken here)

5. Set Public Hearing Dates for Sewer Capacity Applications

Mr. Nickerson asked Attorney Zamarka for input.

Attorney Zamarka said that in following the land use statutes for time frames that he would suggest that any new application public hearings are set towards the farther end.

Mr. Nickerson said that they would have to set more meetings as there are a number in the pipeline so the parameters will have to be set. They would have to determine if they would give sewer capacity 'tickets' and if they would have an expiration date. They have specific meeting dates to establish procedures.

Attorney Zamarka said that he is not aware of other applications that were specific to this and not a zoning application. He suggested that perhaps as of this date that they have 65 days to schedule.

Mr. Mingo asked for a legal opinion regarding what would stop the Old Lyme beaches from going to Waterford or New London for sewer capacity and bypassing us completely. Attorney O'Connell, Town Counsel said that the DEEP does not recognize beach communities as a WPCA agency. Those communities are a quasi-municipality and are communities that are set up by special act.

Mr. Nickerson suggested that they set the public hearing for JAG, Gateway II (120 apartments) and Pazzaglia for January before their regular meeting on that same evening as long as it falls within the 65 days. It was determined that they would have to hold that public hearing on January 8, 2019. Mr. Nickerson asked Mr. Kargl to have the capacity information for them for their December meeting.

6. Landmark Remand Hearing Procedure

Attorney Zamarka noted the current status of the case for Landmark and that it was remanded a number of times. The latest being that in August the Judge upheld the decision of Judge Cohen's ruling. They petitioned the Supreme Court and the Supreme Court denied their petition so Judge Cohen's decision stands. He explained that while the 14,000gpd figure was low that it does not mean that the 118,000gpd that they requested has to be granted. The Commission has to grant somewhere between the 14,000 gpd and 118,000 gpd while taking into consideration that they cannot deny use of the property or make it non-usable. He noted that the New Jersey case that was cited in Attorney Hollister's letter would not be relevant here. He added that Attorneys Hollister and Reynolds have requested to address the remand process in the Landmark case.

Mr. Nickerson asked if he would suggest how/when they should proceed. Should they set up special meetings.

Attorney Zamarka said that he feels that it would be in their best interest to reach a decision on the Landmark capacity prior to the other applications. They have more than sufficient information to work with on that and would concur that special meetings should be set.

Mr. Mingo said that he takes issue with listening to anymore attorneys this evening and that without the capacity figure that it is a waste of time.

Mr. Nickerson said that he would allow them only three (3) minutes each and asked that they focus on the remand issue.

Attorney Hollister said that he mostly agrees with Mr. Mingo especially on the capacity issue/DEEP as otherwise they are flying blind. He cautioned that their decision cannot be on controlling land use and that the decision is between 14,000 gpd and the new figure that they provided this evening of 100,000 gpd but should be no where near the 14,000 gpd. They need to get a fair number and that legally they should be granted the 100,000 gpd and then let the land use arena make their determination.

Attorney Reynolds said that Attorney Hollister has said that they have to allow the project to proceed but that is not what was said. While they cannot shut down the project, 814 units are not reasonable as there has not been an 800 unit project in this area. Gateway may in the end be 400 units but that would have been the maximum number so 814 units are just unreasonable. Further they haven't actually seen projects of more than 100 units so to do that size project would be far less than for the 800 that they are seeking.

Mr. Nickerson said that they would have their Regular Meeting on December 11, 2018 and a Special Meeting on December 18, 2018 for the Landmark remand.

Mr. Mingo noted that they need to remember that they are not a land use agency.

7. Waterford/Three Beaches Letter

Mr. Nickerson asked Attorney O'Connell to review this.

Attorney O'Connell explained that they had received a letter from Chairman Green of the Waterford Utility Commission stating that they object to East Lyme contracting with three (3) beach communities

(Old Lyme) to take their sewer flow as that flow will affect Waterford's sewer system infrastructure without Waterford approving the terms and conditions of use. Mr. Nickerson sent a letter in response stating that they could not find anything prohibiting it and that in fact they were ordered by the CT DEEP to accept sewage flow from the beach communities and to enter into an agreement with them. This was imposed upon East Lyme and the DEEP did not order Waterford to do anything. Also, East Lyme paid Waterford a substantial sum for the right to transmit sewage (up to 8M gpd) through Waterford's mains.

8. Billing Adjustments

There were none.

9. Approval of Bills

Mr. Nickerson called for a motion on the Niantic & Pattagansett Pump Station PER bill.

****MOTION (3)**

Mr. DiGiovanna moved to approve payment of the following Niantic & Pattagansett Pump Station PER bill: Weston & Sampson, Inv, #485250 in the amount of \$58,605.00.

Mr. Zoller seconded the motion.

Vote: 8 - 0 - 0. Motion passed.

Mr. Nickerson called for a motion on the Booster Station Upgrades bills.

****MOTION (4)**

Mr. DiGiovanna moved to approve payment of the following Booster Station Upgrades bills: Integrated Control Systems Inv. #3202 in the amount of \$5,700.00 and Integrated Control Systems Inv. #3203 in the amount of \$710.00.

Mr. Zoller seconded the motion.

Vote: 8 - 0 - 0. Motion passed.

Mr. Nickerson called for a motion on the Water Main Improvement bills.

****MOTION (5)**

Mr. DiGiovanna moved to approve payment of the following Water Main Improvement bills: B&L Construction Inv. #73558 in the amount of \$12,193.00 and B&L Construction Inv. #73559 in the amount of \$5,311.49.

Mr. Spencer seconded the motion.

Vote: 8 - 0 - 0. Motion passed.

10. Finance Director Report

Ms. Johnson said that she would get the information to them once all of it was entered into the system as it was not ready at this time. She recalled that she had requested the closing out of projects and that had been done along with another one that was completed.

11. Water & Sewer Operating Budget Status Reports

Mr. Bragaw noted that they had been provided with the spreadsheet as well as the assumptions that he had made with regard to the Well 1A and 6 upcoming projects. He noted that it assumes a 2.75% water budget increase each year over the next eight (8) years. There are anticipated increased revenues as well and with all of this in mind he said that he felt that they could reasonably afford going forward with the Well 1A and 6 projects while still being able to pay for and implement the meter replacement project. He also noted that they need to get out of the meter deposit business.

12. Water Project Updates

▪ Well 1A and 6 Treatment Plant Modifications and Upgrades – Discussion and Possible Project Authorization for Construction Phase

Mr. Kargl recalled that the issue here was affordability and that Mr. Bragaw was working on that aspect. Mr. Bragaw explained that they had a debt spike this year but then it goes way down so he felt for the reasons cited above that they could afford this project.

****MOTION (6)**

Mr. DiGiovanna moved to forward the Well 1A and Well 6 Water Treatment Project with an estimated cost of \$4,640,000 to the Board of Selectmen for approval and to begin the authorization process.

Mr. Zoller seconded the motion.

Vote: 8 – 0 – 0. Motion passed.

13. Correspondence Log

There were no comments.

14. Chairman's Report

Mr. Nickerson reported that he had held a meeting on a new Public Safety building going forward and that the proposed project is for \$6M for the current Honeywell building as they are leaving their building here and moving to another area in Connecticut. They have made a purchase and sales agreement that is contingent upon all approvals. They need to get the Police out of the downtown building which has a lot of issues not to mention space. He said that he would like to do this within 120 days and get it to referendum as it is a very important project and this building is well set up for this and for future expansion of the important emergency management system.

15. Appoint Water Regulations Subcommittee

Mr. Bragaw said that they are moving forward with the water regulations as this is necessary to support the meter replacement project.

Mr. Mingo said that the subcommittee that is for the sewer regulations serves for both – so they would also work on the water regulations.

Mr. Bragaw asked if Mr. Mingo, Mr. Zoller and Ms. Russell are still interested in serving on this subcommittee and if anyone else wishes to serve on it, they could let him know.

16. Assistant Utility Engineer Update

Mr. Bragaw said that they held interviews and that the skill set is a tough one. They have found that they need very strong water skills so they decided to go back out and advertise again for that certain type of person and skill set as he suspects that some of the people who may have been interested were very strong with the water side but did not apply due to how the description was worded. They will re-advertise and re-assess.

17. Staff Updates

a. Water Department Monthly Report

Mr. Murphy noted that there is still 31% that has to come from New London as we have only taken 69%. He asked if they are going to make it before they have to start pumping back.

Mr. Kargl said that they are using it to flush the hydrants in the north end of Town and that Well 1A will also go off for surging so that will mean that they will utilize more. He said that he is hoping that they will get close to the 100%.

b. Sewer Department Monthly Report

There were no comments.

18. Future Agenda Items

No comments.

19. ADJOURNMENT

Mr. Nickerson called for a motion to adjourn.

****MOTION (7)**

Mr. Murphy moved to adjourn this Regular Meeting of the East Lyme Water & Sewer Commission at 8:51 PM.

Mr. DiGiovanna seconded the motion.

Vote: 8 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary