

**EAST LYME WATER & SEWER COMMISSION
SPECIAL MEETING MINUTES
Monday, JANUARY 14th, 2019**

PRESENT: Mark Nickerson, Chairman, Dave Bond, Steve DiGiovanna, David Jacques, David Murphy, Carol Russell, Roger Spencer

ALSO PRESENT: Attorney Mark Zamarka, Town Counsel
Joe Bragaw, Public Works Director
Brad Kargl, Utility Engineer

FILED IN EAST LYME
CONNECTICUT
Jan 18, 2019 AT 9:55 AM/PM
Brian Randall ATC
EAST LYME TOWN CLERK

ABSENT: Joe Mingo, Dave Zoller

1. Call to Order

Chairman Nickerson called this Special Meeting of the Water & Sewer Commission to order at 7:00 PM and led the assembly in the Pledge of Allegiance.

2. Consider Adoption of Proposed Regulation Regarding Applications for Determination of Adequacy of Sewer Capacity

Mr. Nickerson asked Attorney Zamarka to bring them up to date from the last meeting.

Mr. Zamarka said that after last weeks comments from the public and commissioners that he had come up with the current changes which he passed out (copy attached). He recapped them noting that under Application that they had add the 'more than 20 residential units or more than 5,000 gpd of capacity' an application shall be made to the EL Water & Sewer Commission. An application fee was added; with regard to the application fee (\$250) – he said that it is arbitrary and as Attorney Heller had stated – it is not unusual to recap the administrative fees and staff costs to prepare the information. Under Duration – Regarding - if within the 12 months that the applicant has not applied for all necessary land use approvals or provided proof that they are in process then the capacity becomes null and void. The applicant would be notified of this in writing. He said that the reservation fee was eliminated from this area. They can discuss and make a decision regarding utilizing 4. a. or b.

He said that he had received an email from Attorney Hollister with a request that there was a letter (in addition to the comments that were submitted) that Attorney Ranelli had that was supposed to be part of the public record. He asked them about it.

Mr. Jacques recalled that it was not submitted during the public hearing or special meeting, but rather after the meeting was over.

Mr. Nickerson said that as it was not submitted during the public hearing that it could not at this time be included.

Mr. DiGiovanna asked if he understood correctly that they were to choose under Duration – Item 4. the a. or b. version.

Mr. Zamarka said that was correct as there was discussion and concern regarding the element of time.

Mr. DiGiovanna suggested that they leave it at 4.a. as what they had discussed was that they felt that 10 years was much too long of a time frame to tie up capacity.

Mr. Murphy said that he was prepared to make a motion that they accept the updated document with the 4.a. option.

****MOTION (1)**

Mr. Murphy moved to accept the modifications to the Regulation Regarding Applications for Determination of Adequacy of Sewer Capacity Pursuant to General Statutes §7-246a(a)(1) as presented and to accept under II. Duration - #4. (a). (see Attached)

Mr. DiGiovanna seconded the motion.

Ms. Russell said that with reference to the Shipman & Goodwin comments that perhaps they should state it as it is in the ordinance.

Mr. Zamarka said that there is nothing wrong with how it is because as the WPCA they can exercise this. He added that the responsibility is covered in the opening paragraph.

Mr. DiGiovanna asked Mr. Bragaw and Mr. Kargl if they were on board with the application fee as presented.

Mr. Kargl said that they did review the time that it would take to prepare the application information and the associated fees.

Mr. Bragaw said that they are thinking that it should be \$500 and that if a Public Hearing is required that it should be another \$500 to cover the associated advertising and preparation costs.

Mr. DiGiovanna suggested that the state that a Public Hearing fee would be charged if applicable.

Mr. Zamarka added that they will also do Notices of Decision which have an associated cost.

Mr. Nickerson noted that they would also have an Attorney present. He asked Mr. Zamarka if changing the \$250 would present a problem.

Mr. Zamarka said that the original 25% reservation fee would have been much more than the \$500, so there would not be a problem.

Mr. DiGiovanna suggested the non-refundable \$500 application fee and an additional \$450 Public Hearing fee if a Public Hearing is required.

Mr. Kargl noted that there would always be a Notice of Decision and that costs \$150.

Mr. Jacques asked that they add the words 'non-refundable' before the word fee.

Ms. Russell asked about the fruition of the project, a Certificate of Occupancy and how long they would hold the reserve allocation.

Mr. Bond said that the problem with a Certificate of Occupancy is that it has no relation to this and should not be tied to this.

Mr. Zamarka said that this Commission does not have any influence over how long a project takes.

Mr. Nickerson said that they are not going to be holding the capacity forever – if someone comes in at four (4) years time saying that they are just starting the process – we would not be holding it for them.

Mr. Zamarka said that in looking at other similar regulations in other Towns that we are more definitive than others.

Mr. Jacques noted that in order to do what Ms. Russell appears to be suggesting, that it is beyond what they are discussing here and they would also be talking about metering which they do not do.

Mr. Murphy said he would like to amend his MOTION (1).

****MOTION (1) amended**

Mr. Murphy moved to amend under I. Application - #4 – A non-refundable application fee of \$500 shall be paid by the applicant when submitting the application and should a Public Hearing be required there will be an additional \$450 due to cover the Public Hearing.

Mr. DiGiovanna seconded the amendment to MOTION (1).

Mr. Zamarka synopsisized that to be clear – the capacity allocation is good for 18 months after the last land use approval (if not appealed). The four (4) years kicks in only if there is an appeal.

Mr. Jacques suggested that some of them had thought that they were talking about four (4) years and suggested that they change the 18 months in 4. a. under Duration to 48 months.

Mr. Zamarka said that they would then remove the part of the sentence with the four years as that is in effect what they are saying with the 48 months rather than 18 months.

Mr. Murphy said that he would make a motion to further amend MOTION (1).

****MOTION (1) second amendment**

Mr. Murphy moved to amend under II. Duration - #4 (a) to delete the (a) and have the section read as follows: *'4. A capacity allocation shall be in effect for a period not to exceed 48 months from the expiration of the appeal period of the applicant's last land use approval with no appeal having been taken therefrom or an unappealed decision of a court of competent jurisdiction adjudicating such land use appeal. The Commission may extend an allocation of sewer capacity beyond 4 years if it determines, in its sole discretion, that good cause exists.*

Mr. DiGiovanna seconded the second amendment to MOTION (1)

Mr. Nickerson asked what would happen if people don't apply until the very end of the time frame.

Mr. Zamarka said that they have to get the approvals within 12 months.

Mr. Nickerson called for a vote on the amended motion.

Vote: 7 – 0 – 0. Motion passed.

3. ADJOURNMENT

Mr. Nickerson called for a motion to adjourn.

****MOTION (1)**

Mr. Murphy moved to adjourn this Special Meeting of the Water & Sewer Commission at 8:04 PM.

Mr. DiGiovanna seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

Regulation as amended attached

APPLICATIONS FOR DETERMINATION OF ADEQUACY OF
SEWER CAPACITY PURSUANT TO GENERAL STATUTES §7-246a(a)(1)

Sewage treatment for the Town of East Lyme is limited. Pursuant to an agreement with the City of New London and Town of Waterford, East Lyme is currently entitled to a maximum of 1.5 million gallons per day of sewer treatment capacity at the New London Regional Water Pollution Control Facility. In order to ensure that there is adequate capacity for all customers, the Commission adopts the following regulation for applications for sewer treatment capacity pursuant to General Statutes §7-246a(a)(1).

I. Application. For all development projects that either (a) request a connection for more than 20 residential units or (b) require more than 5,000 gallons per day of sewage treatment capacity, an application, pursuant to General Statutes §7-246a(a)(1), for determination of adequacy of sewer capacity related to a proposed use of land, shall be submitted to the East Lyme Water and Sewer Commission ("Commission") on a form satisfactory to the Commission, and shall include all of the following:

1. A class A-2 survey of the property to be developed, showing the general layout of the proposed use of land;
2. Proof that the applicant owns the property to be developed, or has the right to develop the property, and
3. Documentation supporting the amount of capacity being requested.
 - a. Documentation related to a proposed residential development shall include the number of residential units, the numbers of bedrooms per unit, and the methodology used in calculating the amount of capacity being requested.
 - b. Documentation related to a proposed non-residential or commercial development shall include the methodology used in calculating the amount of capacity being requested, and any special circumstances (i.e. the type of sewage being treated, design specifications, etc.) that would affect the amount of capacity being requested.
 - c. The Commission reserves the right to request from an applicant such other information that it deems necessary.

4. An application fee of ~~\$250.00~~ shall be paid when an application is submitted.

A non-refundable application fee of \$500.00 see motion

Final

Attachment

Was Spec. Nuts,

1/14/19

3pp.

II. Duration.

1. Within 12 months after the expiration of the appeal period of a capacity allocation, the applicant shall (1) apply for all necessary land use approvals for the proposed use of land, and (2) provide proof of all such applications to the Commission. If an applicant fails to apply for all necessary land use approvals, or fails to provide proof of such applications to the Commission within this 12-month period, the sewer capacity allocated to the applicant shall terminate and be considered null and void.
2. If the applicant fails to obtain all land use approvals required for the proposed use of land, the sewer capacity allocated to the applicant shall terminate and be considered null and void.
3. The Commission will notify an applicant in writing when an allocation has terminated. The failure of the Commission to provide written notice in a timely manner shall not constitute or be construed as a waiver of the Commission's right to declare a terminated allocation null and void.
4. A capacity allocation shall be in effect for a period not to exceed)

Use this ~~(a) 48 months from the expiration of the appeal period of the applicant's last land use approval with no appeal having been taken therefrom or an unappealed decision of a court of competent jurisdiction adjudicating such land use appeal; provided, however, that such period shall be not more than 4 years from the date of the allocation. The Commission may extend an allocation of sewer capacity beyond 4 years if it determines, in its sole discretion, that good cause exists.~~

OR

~~(b) 5 years from the date of site plan approval for projects less than 400 residential units or commercial or industrial projects of more than 400,000 square feet, and 10 years from the date of site plan approval for projects of 400 or more residential units. The Commission may, in its sole discretion, extend 5-year periods set forth above for good cause shown, but in no case shall an allocation of capacity be in effect for more than 10 years from the date of final site plan approval.~~

5. If the amount of sewer treatment capacity needed by an applicant decreases during the land use approval process, the applicant shall notify the Commission immediately.

III. Public Hearing. The Commission may, in its sole discretion, hold a public hearing on any application. Any such public hearing shall be in accordance with the provisions of General Statutes 8-7d.

IV. Criteria. In making a decision on an application the Commission may consider, without limitation, the following:

Need for service in the proposed development area

Other pending applications and areas in town designated for sewer service

Pollution abatement and public health

Limitations and policies for sewer service

Local and state Plans of Conservation and Development

Effect of inflow and infiltration on available capacity

Whether the proposed development area can be serviced by other means

Whether the proposed development area is within the East Lyme Sewer Service District

Size of property proposed to be developed

Remaining sewerred and unsewerred land area of town

Effect of the allocation on remaining capacity

Safe design standards of the East Lyme sewer system

V. Prior Regulation. This Regulation shall supersede the Interim Sewer Connection Procedure adopted by the Commission on September 25, 2018.