

EAST LYME WATER & SEWER COMMISSION
REGULAR MEETING
TUESDAY, AUGUST 27, 2019
MINUTES



The East Lyme Water & Sewer Commission held a Regular Meeting on Tuesday, August 27, 2019 at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson called the Regular Meeting to order at 7:21 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 Harry Heller, representing the applicant
Attorney Mark Zamarka, Town Counsel
Attorney Timothy Hollister, Glenn Russo, Landmark
Joe Bragaw, Public Works Director
Brad Kargl, Municipal Utility Engineer
Ben North, Municipal Utility Engineer
Kevin Seery, Deputy First Selectman

ABSENT: Dave Bond

FILED

Sept 3 2019 AT 1:40 AM/PM
Kenneth M. ...
EAST LYME TOWN CLERK

1. Call to Order / Pledge of Allegiance

Chairman Nickerson called the Regular Meeting of the East Lyme Water & Sewer Commission to order at 7:21 PM immediately following the previously scheduled Public Hearing. The Pledge was previously observed.

2. Approval of Minutes

▪ **Public Hearing Minutes – July 23, 2019**

Ms. Russell read a typed paragraph regarding where she was speaking on capacity that she wanted put into the record.

The Commissioners did not approve the change.

****MOTION (1)**

Mr. DiGiovanna moved to approve the Public Hearing Minutes of July 23, 2019 as presented.

Mr. Murphy seconded the motion.

Vote: 6 – 0 – 2. Motion passed.

Abstained: Mr. Nickerson, Mr. Zoller

▪ **Regular Meeting Minutes – July 23, 2019**

Mr. Nickerson called for a motion or any discussion or corrections to the Regular Meeting Minutes of June 25, 2019.

****MOTION (2)**

Mr. DiGiovanna moved to approve the Regular Meeting Minutes of July 23, 2019 as presented.

Mr. Murphy seconded the motion.

Vote: 6 – 0 – 2. Motion passed.

Abstained: Mr. Nickerson, Mr. Zoller

3. Delegations

Mr. Nickerson called for delegations.

Cynthia Trocki, 22 Blue Heron, Niantic, CT said that she wanted complete information on the new Black Point sewer system from inception.

4. Consider Allocation of Sewer Capacity for Pazz & Construction

Mr. Nickerson noted that they had two previous evenings of Public Hearings.

Ms. Russell explained her analysis of annual average of remaining capacities for the years 2012-2018 noting that they started at remaining flow of 380,000 at the end of FY2019 and do not have current figures.

Mr. Mingo said that is not what this is about.

Mr. Nickerson said that they are to determine if there is capacity for this application and our Utility engineer has said that there is.

Attorney Zamarka said that he agrees with the Chairman in that this is not the arena to set policy going forward. To recap – the Commission purview is to determine if there is capacity for this development.

Ms. Russell cited other

Mr. Mingo called Point of Order and said that he would make a motion –

****MOTION (3)**

Mr. Mingo moved to grant the applicant Pazz & Construction the 35,400gpd sewer capacity that they have requested.

Mr. DiGiovanna seconded the motion.

Attorney Zamarka said that they would have to substantiate the motion with reasons for it.

Mr. Mingo said that they are ticket holders who originally paid the fee assessment for sewers on this property which covered the entire area. Further there is enough capacity to cover this.

Attorney Zamarka said that he has a draft resolution for the motion.

Mr. Mingo and Mr. DiGiovanna rescinded their Motion (3).

Ms. Russell said that while a ticket holder is allowed capacity she thinks they need a more reasonable analysis to get to it.

It was determined that was a discussion for another time and not here.

****MOTION (4)**

Mr. Mingo moved that Whereas, on May 28, 2019 Pazz & construction, LLC (“Applicant”) filed with the East Lyme Water & Sewer Commission (“Commission”) an application for determination of sewer capacity pursuant to General Statutes §7-246a(a)(1), seeking confirmation of 35,400 gpd (gallons per day) of sewer capacity for Phase 1 of a multi-family residential housing development project to be located on its property at 90 North Bridebrook Rd (“Application”); and

Whereas, on January 4, 2019, the Commission adopted a regulation entitled “Applications for Determination of Adequacy of Sewer Capacity Pursuant to General Statutes §7-246a(a)(1)” (“Regulation”); and Whereas, prior to the enactment of the Regulation the Applicant submitted an earlier application for determination of sewer capacity and by agreement held that application in abeyance, and that application has never been withdrawn; and

Whereas, the Regulation is now on appeal in the Superior Court for the Judicial District of Hartford; and Whereas, the Applicant has requested that the Commission decide on its Application under both the Regulation and the pre-Regulation standards, in the event that the Regulation is overturned by a court of competent jurisdiction; and

Whereas, the Regulation sets forth the information that must be included in an application for determination of sewer capacity, as well as the duration of a capacity allocation and the factors that the Commission may consider in reaching a decision on such an application; and

Whereas; the application contains the information required by the Regulation; and

Whereas, pursuant to General Statutes §7-246a(a)(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 the testimony and exhibits submitted at the public hearings; and

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

Whereas, pursuant to the Agreement, the Town is currently entitled to 1,500,000 gpd of sewerage treatment capacity at the Piacenti Facility; and

Whereas, pursuant to orders from the CT Department of Energy and Environmental Protection, the Town is required to reserve 478,000 gpd 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, based on the evidence in the record, the Commission finds that the Town has sufficient remaining unallocated sewage treatment capacity; and

Whereas, the property has been a ticket holder for some time and has paid a sewer assessment; and there is sufficient capacity to support this request -

BE IT THEREFORE RESOLVED, that the East Lyme Water & Sewer Commission, acting as the Town's Water Pollution Control Authority, pursuant to the Regulation and based on a review of evidence in the record, hereby GRANTS to the Applicant 35,400 gallons per day (gpd) of sewage treatment capacity pursuant to an application dated May 28, 2019 seeking 35,400 gpd of sewage capacity for Phase 1 of a multi-family residential housing development project to be located on its property at 90 North Bride Brook Rd. The duration of said grant shall be as set forth in Section II of the Regulation.

Mr. DiGiovanna seconded the motion as amended.

Mr. Murphy suggested stating inside of the 'line'.

Mr. Mingo said that they are not a land use agency and we do not determine how many units or people or kids, etc.

Vote: 8 – 0 – 0. Motion passed.

Mr. Nickerson noted that it is appropriate to determine the line going forward here as long ago they used a magic market and when the map was enlarged the line was also enlarged and there is no 50' wide boundary line.

****MOTION (5)**

Mr. Murphy moved that the determination on the sewer shed means inside the border of the line.

There was No Second –

****MOTION (6)**

Mr. Mingo moved that the line be determined as the middle of any line.

Mr. Spencer seconded the motion.

Vote: 7 – 1 – 0. Motion passed.

Against: Mr. Murphy

5. Application for Sewer Capacity Determination for Rocky Neck Village (formerly JAG Capital Drive, LLC)

Ronald Penton, Sr. Project Mgr. said that they are requesting a hearing on capacity for Rocky Neck Village a 60 unit Affordable Housing project formerly known as JAG Capital Drive.

Attorney Zamarka noted that start date for this application is today – August 27, 2019 and that they have 65 days in which to make a decision. The decision must be made by October 31, 2019.

****MOTION (7)**

Mr. Murphy moved to schedule the Rocky Neck Village Public Hearing for 7 PM on September 24, 2019.

Mr. Zoller seconded the motion.

Vote: 8 – 0 – 0. Motion passed.

6. Landmark Development Group, LLC BPR Sewer Extension

- Attorney Hollister Letter dated July 25, 2019

Attorney Hollister noted for the record his letter dated July 25, 2019. (Attached)

- Commission Response

Mr. Nickerson said that they would have the discussion at another time.

7. Billing Adjustments

Mr. Kargl noted that four (4) had been approved as they all fell within the parameters of the '1 in 10' policy. He said that he provided them with the information.

8. Approval of Bills

Mr. Nickerson called for a motion on the Booster station Upgrade bill.

****MOTION (8)**

Mr. DiGiovanna moved to approve payment of the following Booster Station Upgrade bill:

Hungerfords Inc., Inv. #85397 in the amount of \$22,000.

Mr. Zoller seconded the motion.

Vote: 8 - 0 – 0. Motion passed.

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

****MOTION (9)**

Mr. DiGiovanna moved to approve payment of the following Water Main Improvement bill: B & L Construction Inc., Inv. #74955 in the amount of 24,312.28.

Mr. Zoller seconded the motion.

Mr. Jacques asked how this came in with what was budgeted.

Mr. Kargl said that it was around \$3000 under.

Vote: 8 - 0 – 0. Motion passed.

9. Request for Authorization of funds from Sewer Benefit Assessment Fund for Pattagansett Pump Station Generator Upgrades

Mr. Kargl said that the generator is 25 years old and the transfer switch is a stand alone and not part of the generator.

****MOTION (10)**

Mr. Murphy moved to transfer \$9,600 from the Sewer Benefit Assessment Fund to the Sewer Operating Fund Account #06-01-300-610-215 for the replacement of the generator transfer switch at the Pattagansett Sewer Pump Station.

Mr. Zoller seconded the motion.

Vote: 8 – 0 – 0. Motion passed.

10. Meter Deposits – Discussion and Possible Action

Mr. Bragaw said that they have approx. \$433,000 in meter deposits and are not in a position to pay out everything to everyone all at once. They have stopped taking meter deposits and the proposal is to pay out \$25/year with interest at \$12.50 per billing period. The only piece of the information that they do not have is the interest rate or calculation as it is the last payment where the interest should be paid out. It also fluctuates per person based on the time factor that we have held the deposit – a person who has paid three years ago would not be entitled to the same rate as someone who has had the deposit held by us for 20 or 40 years.

Mr. Nickerson suggested a round figure – perhaps \$1 per year.

Attorney Zamarka noted that it is a good idea to be out of the meter deposit business.

Ms. Johnson said that she thinks that they need more time to determine the payback interest.

Mr. Bragaw said that he would like to bring this back in September and have a conversation with the Attorney once he has more information.

As an update on the new meter project he said that the meter company does not want to get started until the radio towers are ready as they want to test the meters as they go.

11. Tri-Town Sewer Agreement

▪ **Appointment of Agreement Review Committee**

Mr. Nickerson said that he would be on this Committee and also Mr. DiGiovanna, Mr. Jacques and Mr. Mingo.

12. Finance Director Report

Ms. Johnson synopsised her report which everyone received in their packets. She noted that water operations cash was getting low.

13. Water Project Updates

▪ **Well 1A and 6 Treatment Plan Modifications and Upgrades – Schedule for re-bid**

Mr. Kargl reported that the DPH had approved the revised project with the \$28,000 more and that the bid will have a different look to it – there will be two alternates to it. The DPH has also requested a letter on the alternates.

14. Correspondence Log

There were no comments.

15. Chairman's Report

Mr. Nickerson noted that the elementary school projects are 98% complete; Silver Petrucelli is moving along on the Public Safety building and the Costco building and road work are also moving along. Additionally, Old Lyme passed the sewer project at referendum so they will be coming over and through in accordance with the agreement that we have.

16. Staff Updates

a. **Water Department Monthly Report**

Mr. Kargl noted that we are doing well with the take back from New London.

b. **Sewer Department Monthly Report**

There were no comments.

17. Future Agenda Items

Mr. Murphy asked that at some point they have a capacity data review.

18. ADJOURNMENT

Mr. Nickerson called for a motion to adjourn.

****MOTION (11)**

Mr. DiGiovanna moved to adjourn this Regular Meeting of the East Lyme Water & Sewer Commission at 8:42 PM.

Mr. Murphy seconded the motion.

Vote: 8 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary



EAST LYME
WATER & SEWER COMMISSION
AUG 27 2019
AGENDA # 6a

Timothy S. Hollister
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July 25, 2019

VIA PDF TO MARK S. ZAMARKA

Mr. Mark Nickerson, Chair,
and Commission Members
Water and Sewer Commission
Town of East Lyme
108 Pennsylvania Avenue
P. O. Box 519
Niantic, CT 06357-0519

Mark S. Zamarka, Esq.
Waller Smith & Palmer, P.C.
52 Eugene O'Neill Drive
P. O. Box 88
New London, CT 06320

Re: Landmark Development Group LLC: Sewer Allocation

Dear Chair Nickerson, Commission Members, and Attorney Zamarka:

We are writing to request further confirmation of the 118,000 gallons of sewer capacity that the Water and Sewer Commission ("WSC") granted to Landmark in December 2018.

In a Brief dated May 24, 2019, filed by Attorney Zamarka in Landmark's appeal of the East Lyme Zoning Commission's 2015 action on Landmark's Rezoning and Preliminary Site Plan application, the Zoning Commission told the Court:

Currently municipal water and sewer service is not available to the [Landmark] development area. A sewer extension along Boston Post Road, on which the plaintiff has frontage, has been approved by the East Lyme Water and Sewer Commission ("WSC") but has never been built and the WSC has no plans to build one in the near future.

Brief, p. 3. Later in the same Brief, the Zoning Commission states: "[Although] Landmark now has its conditional sewer capacity, that grant is more symbolic than practice at the present time."

Landmark requests that the WSC disavow these positions taken by the Zoning Commission and confirm Landmark's right to construct the Boston Post Road sewer extension, at its expense, subject only to the normal engineering review stated in the WSC's Regulations. If this confirmation is not provided, Landmark will raise this issue with Judge Cohn. (In doing so, Landmark will also apprise the Court of the spreadsheet regarding available sewer capacity that

7831434 v2

Attachment was Reg. Mtg. 8/27/19

2 pp.

July 25, 2019

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was distributed at the July 23, 2019 hearing on Pazz & Construction, which proves, once and for all, six years of misrepresentations to the Court about the Town's available sewer capacity.)

First, a private developer (Konover) was always going to pay for and construct the extension. The extension was never contingent or reliant on the Town building the extension. Landmark is simply stepping into the role of the prior developer.

Second, the Boston Post Road plans are not only approved, but they are fully engineered, and show sewer lateral connections from the extension onto Calkins Road and River Road, on which Landmark has existing frontage, as well as running along Landmark's frontage on Boston Post Road.

Third, in 2012, Landmark applied to this Commission under General Statutes § 7-246(a) for a determination of sewer capacity *available* to Landmark's property. A prominent exhibit throughout the six year appeal from the WSC's denial of sewer capacity was the approved Boston Post Road sewer extension. At no time during those six years did the WSC ever take the position that the sewer capacity sought by Landmark was dependent on the Town deciding *whether* to construct the extended sewer line. Such a position is now foreclosed due to not having ever been raised in the 2012-2018 litigation.

Fourth, the WSC's Sewer Use and Sewage Disposal Ordinance, as in effect in December 2018 and applicable to Landmark's 118,000 gallons, is replete with references to the right of an owner of land within the Town's Sewer District to construct an approved sewer, at its expense. *See*, for example, §§ 2.3, 2.4, 3.6, 3.9, 3.13, and 5.3.

In summary, Landmark requests written confirmation that it has the right, just as the previous developer had (Konover), at its own expense, subject only to normal engineering review, to construct the approved Boston Post Road sewer extension from the sewer line's present terminus at the Waterford / East Lyme town line, to Landmark's frontage on the Boston Post Road.

Thank you.

Very truly yours,



Timothy S. Hollister

TSH:ekf

c: Glenn Russo, Landmark Development Group LLC (via pdf)
F.A. Hesketh & Associates, Inc. (via pdf)