

**BOARD OF SELECTMEN  
WATER & SEWER COMMISSIONERS MEETING MINUTES  
May 14, 2007**

**CALL TO ORDER:** The meeting was called to order at 7:28 p.m. The following persons were present: Chair Julie Woods, Vice Chair Arthur DuBois, Clerk Dan Stack, Sel. Kevin Kuros, Sel. Jim Dwyer, Town Manager Jill Myers and BOS Assistant Tracy Leavitt.

**MSDV by Sel. Dwyer, seconded by Sel. Stack, to enter into a Water & Sewer Commissioners meeting. The passed unanimously.**

**OLD BUSINESS:**

**Sewer Privilege Fee:** The Town Manager reminded the Commission that they have been discussing the privilege fees since September when they voted to discontinue the fee. Since that time, staff has been going through records and debt schedules and discovered a sludge landfill which was part of the original 1980 sewer project with a useful life of twenty years. In 2003, the Town borrowed \$900,000.00 to cap it and now the sludge is transported out of town. Ms. Myers stated that Finance Director David Genereux and DPW Superintendent Larry Bombara have come this evening to answer any questions. Ms. Myers noted the recommendation is that the Commission continues to assess the \$831.00 privilege fee until all costs associated with the plant, including this new amount, are recovered.

Ms. Myers stated that in December there was some discussion about possibly filing for special legislation to look at having a new fee implemented when the current fee successfully recaptures the debt or the future debt. Sel. Dwyer stated that the sludge landfill is a benefit for all users. Sel. Dwyer stated that under the current privilege fee bylaw, any assessment under the bylaw would be to any/all properties that benefit. Mr. Genereux reminded the Commission that when the fee was established originally, the Town borrowed \$1,833,910.00 for the original plan. At that time, the Commission voted to recapture all the principal borrowing of that amount, which has been done. The Treatment Plant benefited the users at that time when the footprint was established. Mr. Genereux said we have charged the fee all along for every new user and yet again we have another continuation. He expressed uncertainty over what makes the \$900,000.00 different from the \$1,833,910.00. Sel. Dwyer stated the fee should have been charged originally. Mr. Genereux said it could not have been because the fee did not come in place until 2003. Sel. Dwyer stated that this is not a particular benefit which the sewer privilege bylaw was created to address: this is a benefit to everyone on the system rather than a benefit to a particular user.

Mr. Bombara presented an opinion from Town Counsel dated September 7, 2006. Mr. Bombara quoted Town Counsel, "In my opinion, the full net cost of the construction and development of the sludge landfill, after deducting federal and state grants in aid, including interest on borrowing, may be added to the cost of the 1979 project, in determining the total amount that may be assessed by privilege fees. The cost of the sewer line extension, however, may only be assessed upon those property owners who benefit from that extension." Mr. Bombara reminded the Commission that no federal or state grants were received.

Sel. Kuros stated the last time the topic was discussed, he brought up the concept of derived benefit. Sel. Kuros said the turning point for him this time around was during the last discussion it was told any future monies recovered could not be channeled into the enterprise funds: now there is a written legal opinion in front of us that has been changed. Sel. Kuros said with this information, he now feels comfortable supporting the Finance Director's recommendation. Mr. Bombara said by no means will

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this be the last discussion of sewer privilege fees: in the next 6 months or sooner we will have to adopt a method for new connections. Sel. Dwyer stated his argument has been that people on Douglas Street were not reimbursing the Town for any expense. Mr. Bombara said if we stay with a zero privilege fee, we will lose hundreds of thousands of dollars. Mr. Bombara went on to say we have an opportunity right now to miss a lot of revenue coming in that will help offset the debt. Chm. Woods noted that we now have the legal basis on which to continue assessing the fee. Mr. Genereux said that under the \$831.00 we still would have a long way to go to get the debt paid off and that will go into the enterprise fund: this will buy us the time we need to establish a hook-up fee that meets the law after this is collected.

Sel. Dwyer stated that he does not feel the Commission should vote this tonight. He feels they should review the "Validity of Sewer Privilege Fee as Applied to Davis Property" before voting. Sel Dwyer read aloud, "I further advised Mr. Genereux that the Town may charge the privilege fee notwithstanding that the sewer main to which the Davis property has access was installed not at Town expense, but by a developer, if the Town is collecting the privilege fee to recover capital costs of other parts of the system (the treatment plant and sludge landfill, pump stations, other mains into which this one flows, upgrades to the same, and other capital projects) from which the Davis property obtains benefit now that it is able to connect to the system. I further discussed this opinion with Mr. Genereux and the Town Manager, Ms. Jill R. Myers, on August 28, 2006. They asked me to formalize that opinion and to advise particularly as to the applicability of the Emerson College test to the privilege fee." Sel. Dwyer finished by saying, "It is not a recovery by the Town."

**MSDV by Sel. Dwyer to get a study instituted very quickly to establish a foundation for assessment benefit for hook-ups to the sewer system. There was no second.**

**MSDV by Sel. Dwyer to adopt a method of assessing benefits on new connections to the sewer system. There was no second.**

Chm. Woods said over the last two years we have looked at almost every method of assessing fees. The only option she has heard from the Commission is special legislation.

**MSDV by Sel. Dwyer, seconded by Sel. Stack, that we look at available methods valid under M.G.L. to institute a process through, if necessary, special legislation to assess benefits upon new connections to our sewer system.**

Before calling for the vote, Chm. Woods asked Mr. Genereux and Mr. Bombara if they feel the problem is bigger than just connection fees. Mr. Genereux feels it is bigger than just connection fees. Chm. Woods asked if the Commission moves forward with maintaining the sewer privilege fee with the legal basis we have established and asking our staff to move forward on special legislation, is Sel. Dwyer's motion comprehensive enough that the special legislation would be looking directly at connection fee. Mr. Bombara feels the motion needs to be somewhat ambiguous and look at everything. Mr. Bombara feels we should continue the \$831.00 until such time a new method is adopted by the Town. Chm. Woods asked if the Commission should amend Sel. Dwyer's motion. Mr. Genereux and Mr. Bombara agreed the motion should be amended. Chm. Woods asked Sel. Dwyer to amend his motion so it is not limited to look just at connection fees but at all methods of revenue. Sel. Dwyer suggested that one member of the Commission prepare a motion to present at the next Water & Sewer Commissioners meeting. The Commission agreed that Sel. Dwyer would prepare the motion.

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Chm. Woods asked the Commission if they are comfortable to put a motion forward to re-establish the \$831.00 sewer privilege fee on the basis that has been provided to us by the September 7, 2006 memo from Kopelman & Paige and reaffirmed by the Finance Director and the DPW Supt., that the outstanding sums on the sludge landfill provide us the legal basis to continue the fee until those sums have been recovered. Sel. Dwyer said that according to M.G. L. and everything from Kopelman & Paige, the sewer enterprise is separate and distinct from the Town. Mr. Bombara said he is confused by what Sel. Dwyer is saying: when we took over the debt of the Town we also kept the revenue stream to pay off that debt. He stated that the Town is not paying off the debt, the sewer enterprise is. Sel. Dwyer agreed and stated that since the Town is not paying then they are also not recovering anything with these fees. Sel. Dwyer said it is all about the enterprise fund gaining a new source of revenue. Sel. Dwyer stated once the enterprise fund took over the system from the Town, all the revenues go to the enterprise fund. Mr. Bombara ended by saying the previous Commission made decisions, whether right or wrong, and feels the current Commission should follow Town Counsel's opinion. Sel. Dwyer said the Town has nothing to recover because the enterprise funds get all the revenues.

**MSDV by Sel. DuBois, seconded by Sel. Stack, to reinstitute the sewer privilege fee of \$831.00 for all new hook-ups. The motion passed 4-1-0 (Sel. Dwyer voted in the negative).**

**ADJOURNMENT:** At 8:15 p.m.,

**MSDV by Sel. Dwyer, seconded by Sel. Stack, to adjourn the Water & Sewer Commissioners Meeting. The motion passed unanimously.**

*Minutes respectfully submitted by,  
Tracy Leavitt, Assistant to the Board of Selectmen*

Minutes approved by Board of Selectmen:

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Chairman Julie A. Woods

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Sel. James F. Dwyer

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V. Chairman Arthur O. DuBois

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Sel. Kevin J. Kuros

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Clerk Daniel P. Stack

MSDV: Moved, Seconded, Discussed & Voted  
RCV: Roll Call Vote