



Town of Provincetown
Meeting of the
WATER & SEWER BOARD

Thursday, June 5, 2012

Veterans Memorial Community Center, Art Room (Rm. 93)
2 Mayflower Street, Provincetown, MA

Board Members Present: Jonathan Sinaiko (Chair), Mark Collins, Moe Van Dereck, Sasha Richter Shannon Corea (arrived late)

Board Members Absent: Kathleen Meads, Kevin Kuechler, Bill Worthington

Other attendees: DPW Staff: Rich Waldo, Cody Salisbury, Water Superintendent, Sherry Prada, Anna Michaud and members of the public.

Recorder: Susan Leonard

Call to Order: Mr. Sinaiko, acting as chair, called the meeting to order at 3:00 p.m.

Agenda Item 1 – Water & Sewer Abatement Requests [Board as it applies to subject matter]

Sewer Abatements

Ms. Michaud: We have enough for a quorum to consider sewer issues. I would like to wait for Shannon to arrive to consider the water issues.

We have four requests for abatements. The first is for 6 Center Street. This person appealed to the appellate tax board. We took another look at what happened to him. This was due to contractor error; however the water did not enter the sewer. We made a settlement that we would reimburse the owner back to what his average usage is.

The second one is for 394 Commercial Street. She had a hot water tank leak in the basement. This is also a situation where we doubt that the water went into the sewer.

The next is for the 15 Commercial Street, The Red Inn. They had a leak in the crawl space that they spent months trying to find. It was repaired within 15 minutes once it was found.

The last one is for another cubic meter that we found at 280 Commercial Street #2. A reimbursement for overpayment from 2003 to Spring 2014 has been calculated based on the different rates for the different years. These are my recommendations.

Mr. Sinaiko: Does the Board have any issues with this?

Motion: I make a motion that we accept these abatements as recommended by staff.

Motion: Jonathan Sinaiko Seconded: Mark Collins Vote: 4 – 0 - 0

The Board agreed on changing the order of Agenda Items while waiting for another Board member to arrive in order to have a quorum for discussion of water related issues.

Agenda Item 5 – Approval of Minutes

Ms. Michaud: We have two sets of minutes; one for January 30, 2014 and the other for February 24, 2014.

Motion: I make a motion that we approve the minutes of January 30, 2014 and February 24, 2014

Motion: Moe Van Dereck Seconded: Jonathan Sinaiko Vote: 4 – 0 - 0

Agenda Item 9 – Request For Reconsideration of Sewer Betterment Schedule for 4 Kiley Court. (Zach Luster)

Sherry Prada: Zach Luster, one of the owners of Ciro & Sal’s Restaurant which is a Phase I “Red Dot Delay” property, has not been paying on his betterment as of yet. He is here to get his loan recalculated. His loan started eleven years ago. He is eleven years into a loan that he has not paid. The total amount is due in nine years. He is asking to have his loan begin the twenty year period start fresh now.

Zach Luster: Thank you for meeting with me today. I am here on behalf of Ciro & Sal’s Restaurant. Ciro & Sal’s would like to hookup to the sewer and start payment on the loan as soon as possible. However, we are simply unable to afford the yearly payments that are now due. I was completely unaware of the existence of the \$203,000 loan until a few days ago. I was unaware of the pending payments on this loan when I took over as general manger four year ago. Moreover, I was not only shocked by the loan but by having to pay it off in the remaining nine years. We understand that the loan has to be paid. We are more than willing to comply. On the other hand, our restaurant can not afford to pay the full length of the loan in only nine years. We respectfully ask the Town and the Water and Sewer Department to

understand our situation and help us in this matter. In conclusion, we are asking for 20 years so we can spread the payments out to make it possible and affordable for us to pay the loan. Without your help it would be very difficult for this town and family restaurant to stay above water.

Mr.: Sinaiko: Can we do that?

Ms. Prada: No, sadly you can't. While I am glad that Zach was able to come before you today, sadly the Town will not recommend this. There are a couple of good reasons why. First, to give some history which is no fault of Zach's at all ... his family was sent letters on July 12, 2005 which granted a delay in connecting to July 15, 2008. At that time, they were told they had to connect and the price per gallon would go from \$33.68 to \$39.08. On July 29, 2005 the Town sent another letter stating that the price was going up and this was the last opportunity to start paying this mortgage of theirs. This was sent by certified mail/ return receipt. The Town also sent a letter August 29, 2007 stating that they should be connected and that the price was going from \$39.08 to \$45.00 per gallon and they should begin paying at the lower rate.

In addition to all the notifications, as some of you know, when the Town borrowed the money to do all the work it was borrowed for 20 years. The Town has been paying the loan all along. The Wastewater Enterprise Fund had to pick up the missing money for those individuals who chose not to start paying at the beginning of the loan period. At the end of 20 years, the Town of Provincetown has to have the loan paid in full and we need to have the funds to do it with without taking it from the Wastewater Enterprise Fund. It needs to come from the Phase 1 Red Dot Delay properties. Fortunately for Zach, he has another 9 years in which to pay the loan. If we were to do this we would be setting a precedent.

Sasha Richter: This has not ever been done for anyone else?

Ms. Prada: This has not been done and has never been requested.

Mr.: Sinaiko: How many other people are there?

Ms. Prada: There have been two or three who have gone on the nine year payment plan this year. There could be three or four who have not yet started paying.

Mr.: Sinaiko: If we did this then those people who have legitimately begun to pay on the nine year plan could come forward and request this?

Ms. Prada: Yes, And the Town would still need the payment in full at the end of the 20 years, which is in nine years.

Sasha Richter: Is there any wiggle room in the financing of this loan? Can this person hook on and then do a balloon payment in three or four years from now?

Ms. Prada: I think probably not because his loan is with the Town of Provincetown; once it is calculated and amortized for 20 years that is your payment. It is not flexible.

Mr. Collins: What interest rate is this loan at?

Ms. Prada: The interest rate is 2.25% of the \$45.00 per gallon.

Mr. Luster: It does not make any sense not to sign up for it. The people who were in charge then are no longer in charge. I was not aware of it whatsoever until recently. No information was passed along from the previous manager.

Ms. Prada: We have come to this point now because Zach is planning on doing some renovation work and has hired Brian Alexander. The Sewer Department can deny or delay a building permit for a Red Dot Delay property. This is first time I have seen this.

Mr. Collins: We are not just talking about the people who are in that Phase of development, but future phases as well?

Ms. Prada: No, the Phase 1 properties had a different set of rules than the later phases. There were delays in connections allowed. They could delay connection and start paying their betterment, delay the connection and not pay the betterment or connect and pay the betterment. At the end of 20 years we send them a bill for the total due. Phase 2, 3, 4 we send a notice and the property owners have 60 days to connect. If not connected within 60 days the Town starts issuing a fine.

Mr. Collins: I would recommend that we contact those people in Phase 1 who have not connected and not begun to pay so we can avoid this happening again.

Mr. Van Dereck: Wouldn't the bank that has the mortgage on the property be interested in protecting it mortgage?

Mr. Luster: We just re-mortgaged last year and nothing came up regarding this. I don't think they are even aware of it.

Ms. Prada: I don't think the bank would recognize anything because we haven't assessed you anything yet. Nothing has been to Land Court yet. The lien would happen when one of the Phase 1 people came forward and we send in the paper work. Banks are not that concerned about municipal liens because it goes with the property and goes from owner to owner.

Mr. Sinaiko: It doesn't make me feel good to be in this position. Ciro & Sal's is an institution in this town.

Mr. Collins: Would the Town be amenable paying the rate now with a balloon payment at the end? We don't even know if they want to do this.

Ms. Prada: I am not in a position to make that decision. It would be a discussion with the Assessor, Tax Collector and Town Counsel.

Mr. Sinaiko: Can we explore that for them? In a way it wouldn't open up a can of worms.

Ms. Prada: I can find out the legality of it. You may be opening yourself to issues with Phases 2, 3 or 4. If you stop paying it winds up on your tax bill and pursue it.

Brian Alexander: Is it possible that we postpone to the next meeting to allow us to explore a few possibilities. There is a possibility that a unit might sell soon and at that point there could be a payment to catch up. Then there would be no pressure on the Board.

Ms. Prada: I can tell you right now that Mr. Luster has authorized and agreed to start paying. The lien will be at the Registry of Deeds soon. It will be on the October tax bill. If there are any changes in the number of seats it could be recalculated by the end of August at the latest.

Mr. Sinaiko: The bottom line is there is nothing that we can do.

Agenda Item 1 – Water & Sewer Abatement Requests

Water Abatements

Ms. Michaud: We have four recommendations as you can see. The first was a clerical error for 25 Court Street. We recommend an abatement of \$100. The next one was a bad meter head at 155 Bradford Street. The abatement is for \$602.00. The next one was a frozen pipe at 21 Dewey Ave #8. We applied the 500% Rule and are recommending an abatement of \$218.00. Once again, this is for the cubic meter we found at 280 Commercial Street for the water portion of the bill. The abatement is for \$738.50. The last one we denied for 15 Commercial Street, The Red Inn because it did not meet the 500% Rule. They did get the sewer abatement.

Motion: I make a motion that we accept these abatements as recommended by staff.

Motion: Jonathan Sinaiko

Seconded: Sasha Richter

Vote: 5 – 0 - 0

Agenda Item 2 – Discussion of draft of proposed clarification of several Water & Sewer Rules and Regulations. [Full Board]

Agenda Item 3 – Discussion of proposed changes to miscellaneous water-related fee schedule. This discussion is not related to water & sewer rates. [Full Board]

Cody Salisbury: I would suggest that it would just take some time in a working session, perhaps. Has everyone reviewed what I sent? Obviously, Shannon hasn't.

Jonathan Sinaiko: Does anyone want to review them now and listen to what he has to say?

Ms. Prada: I know Kathy Meads would like to discuss it and she is not present. She has some historical perspective she would like to share that I think is important.

Mr. Van Dereck: I have read it, but I know she has been an important contributor in the past. It would be a shame if she is not part of the discussion.

Motion: *To postpone the discussion of Agenda Item 2 and Agenda Item 3 to a working session.*

Motion: Jonathan Sinaiko

Seconded: Mark Collins

Vote: 5 – 0 - 0

Agenda Item 4 –Unanticipated business that may legally come before the Board and that requires immediate action:

There was no unanticipated business raised.

Agenda Item 6 - Statements from the Board. [Board as it applies to subject matter]

There were no statements made by Board members.

Agenda Item 8 - Phase 4 Sewer Betterment Commitment [Provincetown Board]

Ms. Prada: The Phase 4 sewer betterment commitment has already been signed by you in my office. That was the paperwork to be sent to land court and Koppelman and

Paige. We need an official vote by you that approve the Phase 4 work is moving forward.

Motion: *I make the motion that we approve the Phase 4 betterment commitment.*

Motion: Jonathan Sinaiko **Seconded:** Mr. Van Dereck **Vote:** 5 – 0 - 0

Mr. Collins: When is Phase 4 going to be begun?

Ms. Prada: I am hoping that everything can be ready to move forward by the end of June. I will be sending out the letters to the property owners. There will be the possibility of an extension on a case by case basis. The installers are very backed up.

Shannon Corea left the meeting at this point.

Agenda Item 7 - Sewer Flow Revisions [Provincetown Board]

Ms. Prada: We have two flow revisions. The Aquarium Mall has requested an increase of 1,120 gallons through an EDP permit for seats on the back deck. They need to do structure upgrades to their patio first. We are going to approve their gallons, but they will not use their seats until the upgrades are done.

Motion: *I make a motion that we approve this as requested by staff.*

Motion: Jonathan Sinaiko **Seconded:** Mr. Van Dereck **Vote:** 4 – 0 - 0

Ms. Prada: The second request is a bit more convoluted and complicated. I expected Rick Murray here to discuss it, but he is not here. He also requested additional gallons for additional seats. He needed vacuum structure upgrades to accommodate the additional gallons. He notified us that we had been charging him for bedrooms that he did not have. We did a bedroom count and determined that we have been overcharging him for 11 years of the Phase 1 sewer betterment. He has been paying for bedroom counts and seat counts from prior to the fire. We met and decided that we are deducting 5,009 gallons to accommodate the new bedroom count. Then we will give him back 1,050 gallons for his new seating request. This means that he will have 4,000 gallons less on his total and this means that he will not need to do the structural upgrades on the street. Also, because we have overcharged him, his additional new gallons will be put in at the old \$33.09 rate per gallon interest free as in the beginning of Phase 1. He has already been paying for it.

So there are two flow revisions for you to approve. The first is giving him the credit of the 5,009 gallons that we have overcharged him for all this time.

Motion: I make a motion that we accept this as recommended by staff.

Motion: Jonathan Sinaiko Seconded: Mr. Van Dereck Vote: 4 – 0 - 0

Ms. Prada: The second part is the request for 1,050 gallons for additional seats as approved by EDP.

Motion: I make a motion that we accept this as recommended by staff.

Motion: Jonathan Sinaiko Seconded: Mr. Van Dereck Vote: 4 – 0 - 0

Adjournment:

Mr. Sinaiko adjourned the meeting at 3:51 pm.

A handwritten signature in black ink, appearing to read "Jonathan Sinaiko". The signature is written in a cursive style with a large, sweeping initial "J".