

Minutes of the Board of Water/Sewer Commission
Wednesday, May 18, 2022 - 3:00 pm
16C Perry Way, Newburyport, MA 01950

Present Commissioners: Roger Jones, Owen Smith, William Creelman, Sandy Friede

Staff:

Director, Anthony Furnari
Business Manager, Julie Spurr Knight
Sewer Chief Operator, Chris Pratt
Assistant Chief Operator, James Moore
Water Superintendent, Thomas Cusick
Assistant Water Superintendent, Chris Hood
Water Distribution Superintendent, Jonathan Carey
Collection Systems Superintendent, David Shaw
City Engineer, Jon-Eric White

1. Mayor Reardon

Not in attendance

2. Appointments/Customer Inquires

- KP Law – 15 Charter Street. Both parties were invited and are not present. Commissioner Jones stated the issue was for about 8 years the gentleman who previously owned 15 Charter Street continued to pay the water bill. The new owner did not tell us. The prior owner did not notice and when it was discovered the previous owner is requesting that we compensate him for the money and interest on that money. Our attorney would say that we are not responsible and it is between the two parties. Is there any rebuttal or comments?

Commissioner Smith said he would like to make a motion to deny the request to repay or compensate Mr. Estep. Commissioner Jones asked if there was a second. Commissioner Creelman seconded.

Mark Reich, City Solicitor said we have reviewed the issue. Julie did send me quite a bit of information and we have had quite a bit of back and forth. My understanding is that the seller, the prior owner is suggesting that because the City did not shut off the automatic pay that the City has some responsibility. As you know the City offers automatic pay essentially as a courtesy to the customer. The customer has authority over their account. Julie informed me there was a change over in the system and this was caught at that change over. However, you must remember the City provided a service. The City provided the water. The individuals have not argued they didn't get the water. They are arguing that the wrong person paid for it. The City is entitled to be compensated for a service and/or a good that it provides. The City is not in a position to write checks and provide refunds unless there is a lawful mechanism. As you know, there is an abatement process for water for claims if there is overbilling or issues with respect to that billing. That is not what we are experiencing. What we are experiencing here is someone who is simply saying I got billed, the other person should have been billed, there was an account issue and the City should have done something about it. Municipal officials are deemed to be acting in good faith under their authority and there is a lengthy *inaudible* that backs up the discretion of the City officials. So, whether you erred in not shutting off that account or not and I'm not saying you did, that is still not an issue that makes the City liable. Certainly not for interest and in my opinion not for principal. I understand that the buyer, the subsequent owner offered or requested a payment plan so they could repay and suggested the City pay back the other individual. Again, as to the lawful mechanism there is simply no means by

which the City can write a check. We don't have a checkbook. So there has to be a legal process. In my opinion in sum, this is a dispute between a former owner and a current owner as to whether somebody paid somebody else's bill. I think anyone sitting at this table has watched their bills, you see what is going into your account and you notice if you are getting billed for something. I know when I get a bill for anything I check it to make sure I actually bought that good. In this case somebody failed to do that. It's not your fault. It's not your problem. It's not your issue.

Commissioner Smith said this Board has been discussing for months the abatement policy and what would be a reasonable request to meet the customer. A reasonable error would be you didn't shut it off I caught it after this billing, let's make me whole on that. That's a minimal amount of money, a minimal amount of effort for the City to collect. A reasonable person should be checking their account. Attorney Reich said he totally agreed.

Commission Jones. The motion has been made and seconded. Those in favor of the motion to deny the request from the gentleman.

Vote: Smith yes, Creelman yes, Jones yes, Friede yes

Commissioner Friede asked if the customer comes back to us what do we do? Send it to the Attorney? Attorney Reich said anything beyond this Julie will send to me. If necessary we can address it directly and take you out of the mix. If there is any litigation or any dispute that continues we will be the ones to handle that. I think you are done.

- 4 Congress Street. Jamie and Dante Chabot and their friend Thijs appeared before the Board to present their "I Am We" school project on improvements to March's Hill which is owned by the City and is part of the property is used by Parks and part by Water. Mr. Chabot indicated they are building a pump track. They are looking to get authorization to use the land. Mr. Chabot acknowledged the Water Department's possible use of that land as a landing spot, although it hasn't been used in years. He stated we would work with the Department if it ever needed to be used again, such as a big project that was important, because we are building trails with dirt and planting trees and grass. Dante spoke to the Board and described a pump track which is a set of rollers, berms and jumps where you can start at one point and without pedaling go in a circle over the rollers. Some of the benefits of building a pump track is low cost, all ages can use it, great exercise, won't disturb the neighbors and no pollution. Caleb Barton who appeared not as a person involved in the project but his child goes to March's Hill. He described other communities that had similar tracks, how popular they are and the benefits of it. He found that there is overwhelming support of the project from the community as well as the Parks Department.

Commissioner Friede asked Dante how he planned to keep walkers, dogs and the bicyclists from becoming a problem using that area together. Dante said the pump track would be away from any of the walkers. Mr. Chabot said the biking takes place at the bottom and not above near the walking trails. As the project progresses signage will be necessary. Commissioner Jones asked if the access road would be inhibited and was told it would not. The kids come in through the woods not through Coffin's Court. Mr. Carey wanted to make sure this wasn't a blanket approval and that we would have access to the road if we need it. He also was concerned about liability on City property. Commissioner Smith said he assumed we would be covered under the City's general liability insurance. The Parks Department probably has more expertise on this and we would have to have some agreement with the Parks Department. Ms. Knight said the Finance Department manages all liability. Commissioner Creelman asked if there is going to be any erosion control required. Mr. Chabot said they haven't gotten that far yet. This is just to get approval to move forward with using the land. Mr. Chabot answered the concern about trash. He said the kids have been responsible for that thus far. Commissioner Smith asked Mr. Chabot if during his conversations with the Parks Department did they mention entering into a use agreement or a license agreement. Mr. Chabot responded no. Commissioner Smith suggested the Board

piggy back off of what the Parks Department is doing as a secondary property owner since we abut you and you would be using a portion of our land. Commissioner Friede said we should make sure there are no liability problems and that we are covered properly.

Commissioner Smith made a motion to support the use of the land pending the license agreement and approval from the Parks Commission. Commissioner Friede seconded the motion.

Vote: Smith yes, Creelman yes, Jones yes, Friede yes

3. Approval of Minutes

Commissioner Smith had one comment on Section 6 which is Executive Session. Should there be a note on why we went into executive session. It doesn't have to be specific but something vague to discuss potential litigation. Ms. Bush read from the Procedures for Convening Executive Session provided by Kopelman and Paige PC stating the Chairperson announces the purpose of the executive session. Commissioner Jones directed that the addition of possible litigation be added after Executive Session. Karen Bush made the change as requested.

Commissioner Jones asked those in favor of the minutes as amended.

Vote: Smith yes, Creelman yes, Jones yes, Friede yes

4. Business Managers Report

- **FY23 Budget Process:** I included key budget dates in the report.
- **Procurement:** The drainage and water main upgrade was awarded to Tropeano.
- **Grants:** Received almost \$1,400 in standup desk stations. We are thinking about getting the rest of the crew some. I want to thank Adrienne, the Sewer Administrative Assistant. I started it and she got them all ordered, set up and submitted to MIAA. The other grant I wrote from the State of Massachusetts for the sewer relief fund we received \$2,406.
- **CIP Funding Recommendations:** Included in report on page 2. These are for the meeting at 6:00 pm. If anyone has any questions let me know. Commissioner Smith said he made some comments that he would like to discuss as a group before going into that meeting.
- **Budget Summary:** The water budget is 83% expended. I included an encumbered line because its construction season and we have a lot of funds encumbered. The water budget is right on target with revenue. We are right on the budget. We exceeded the revenue last year by 11% but that was due to the pandemic and more people being at home. The sewer budget is 87% expended. We put a half freeze on the purchase of services line. I received a \$32,000 invoice yesterday for emergency sewer work. We are having some escalating costs in electrical costs and we are trying to manage those. I have 70% of the solar credits going to sewer now and its still not covering it. I'm looking at the direct energy agreements with the sustainability manager to see if we can harness those escalating costs. On the sewer budget we are on target for revenue.

5. DPS Operations Report:

Jon-Eric White noted the following on the Engineering report;

Surface Water Supply Protection and Resiliency Project

- Received MEPA comments on the emergency spillway protection. Mr. White asked if there were any questions. There were none.

- Emergency interconnect update. We received questions from MADOT and they approved it for 75% submission. All that means is we are proceeding further into the design.
- Tighe and Bond is preparing a design fee proposal for redesigning the Lower Artichoke Dam which I still haven't received. That is the one for raising the dam that we submitted the grant application.
- The Indian Hill Raw Water Transmission designs came in. The RFPs came from three firms. Our goal is to discuss them at the June meeting. The packets will be available to the Commissioners to pick up at the Business Office. We would like the Commission to review the packages, have us go through a formal interview process with the three firms and have some ground rules on the length of their presentation. I can pass out some typical questions to you so we are all asking the same questions. Then we will have a Q & A. When you pick an engineering firm it's not legally binding. It doesn't have to go through any public bidding process. There is a lot of leeway for Towns to hire engineering firms. We are looking to the Commission to make the decision. We can do it at the next meeting or a separate meeting. The Board asked to have a separate meeting on June 2, 2022 at 4 pm. Ms. Knight said this work is contingent on approval of the CIP funds, correct? Mr. White said at the meeting held yesterday with the Mayor, Ethan said we have enough money with undesignated funds.
- Watershed Protection: We are requesting the Commission sign the Woodard & Curran proposal. We don't see being able to hire someone for watershed protection because the budget already went through so we should table that. Mr. Cusick is managing the watershed. Mr. Cusick said his job is not to manage the watershed it is to report to the DEP if he sees something wrong. There is more than one person that has talked about having another body to head this project up long term. It will be interesting to see what Woodard & Curran have to say about it. Commissioner Friede asked if you need a contractor, not the engineering firm to make the project successful rather than hiring a staff person. Mr. White said the proposal is for management training, management assistance and training us on watershed protection. If we need a watershed plan my understanding is they can produce one but as it stands right now they don't recommend doing it because it's not worth the money if you don't have to. We can do the work without creating a plan. Mr. Cusick said if you want the grants you have to have a watershed base plan. Because we don't know what we are doing yet we can't go after grant money. Woodard & Curran recommend doing the plan only when you need to request the money. Mr. Cusick said you have to put together the whole drainage for your watershed. That is the prerequisite to the grants. It was a recommendation out of the Tighe & Bond report. Commissioner Smith said we basically have to show the tributary areas of the reservoir and say this is our 30-year plan to protect the watershed. This sounds like something we should have anyway. Mr. Cusick said we already had one engineering firm say you need to hire someone to do it and Paul Colby in the past has said the same thing. Commissioner Smith asked if MVPC has data set up like this through MIMAP. Mr. Cusick said Amesbury created one and it gets filed with DEP and you can access it. We would have to talk with Rob over there in the Engineering Department to see how they created that. I'm pretty sure they did it in house. I don't know if they used MIMAP. I do know when we talked with Zach at Woodard & Curran he pulled up something in about five minutes. There is plenty of software to do it. Mr. Cusick feels we should have it. Commissioner Friede said if we want to plan, it is going to be about another \$37,000-\$40,000 on top of \$85,000. Mr. White said we would get back to the Commission on that. Commissioner Jones asked if the \$85,000 was for actual help. Mr. Cusick said we do not have the personnel to do what they are proposing. Commissioner Smith said in the past we talked about the watershed strategy which is to have the enforcement and people in the field, identifying parts to buy, what we should budget for, getting conservation restrictions put on the neighboring towns. I'm confused when they say the framework. I guess it's to have them write the policy about what exactly we desire to do. I feel like we already know where we need to go. It sounds like our problem is we don't have the staff or in some cases the authority to do what we need to do. Mr. Cusick said he thought Woodard & Curran would act as our liaison and come up with an inspectional plan, reports back to the City and that gets submitted to DEP. Then DEP figures out if it is in violation of 20.20B then they enforce. All we need to do is cover ourselves in saying we've done the inspections, we've identified the issues and DEP does the rest. Commissioner Friede said she is struggling because you talked a little bit about

training but we don't have a person or staff to learn. I'm not sure you have talked this through enough. Mr. Cusick asked Mr. White if Woodard & Curran are going to act as a liaison. Mr. White said this is a management contract that helps us with framework and teaches us what needs to be done for watershed protection rather than us learning on our own. For short change let's work with them. They have done this with other communities. They can go to the executive summary quickly, they know the hot spots. Commissioner Smith said if we investment money in framework and training I would like to see staffing plans so we can follow through on it. Mr. White said we could execute this agreement, get it started, listen to them, get the framework started and maybe at that point we could find out how many hours we would need. The internal issue is where is the person going to be and how many hours. I think we can keep someone busy on watershed protection. Not 40 hours per week but so many hours per week. Commissioner Friede asked if a line item could be added to the contract. As one of their tasks they identify and budget the ongoing personnel requirement. Rather than hoping for it there will be a fourth task stating we want them to tell us what department they go to, how much time it takes and help us write a more convincing argument next year so we are not having this conversation that it got kicked out of the budget. Mr. White said he thinks it fair to add to that because we didn't get this person. In the interim we can utilize the people we have while Woodard & Curran are getting this going. Mr. Cusick said we may want to contract Woodard & Curran on an annual basis. Commissioner Friede said to write the contract so if that person works out you can hire them without penalty. Commissioner Jones said to add that fourth task and come back to us.

WWTF Sidewall Flood Protection

- Borings will be done in early June.

Plummer Spring Bridge

- Commissioner Jones asked if the City is going to fund their portion of the project. Mr. White said they had a meeting with the Mayor this morning. We are officially proponents of the bridge. Any conversations of not funding it is past tense. It is a matter of how we are going to get the money. We are trying to get a stimulus package or some federal fund.

Dave Shaw noted the following on the Sewer Collections Report;

Lift Station/SLM Maintenance/Miscellaneous:

- As you can see downtown cleaning was completed last month. The company cleaned 5,000 LF. They removed 29 tons of grit and grease.
- April flushing – 4,413 LF
- New VFD installed at Scotland Road.
- Working on bids for Hilton's Wharf lift station upgrade.
- Getting bids to replace pumps at Savery lift station.

Plum Island Maintenance:

- Had to put in three new gates due to hot topping that Newbury is doing.

Commissioner Smith asked about grease issues and inspection. Are there policies in place right now and where do we stand with compliance? Mr. Shaw said we have a gentleman that works at the treatment plant that does that. I have gone out with him various times and inspected things with him. He does surprise checks on the restaurants. The fog program is doing a good thing. Commissioner Smith asked if we are seeing any systemic issues or any type of commonalities. Mr. Shaw said compliance is very good. He would like to see the cleaning of downtown done every 4-5 years.

Chris Pratt noted the following on the Wastewater Treatment Facility Report;

- We received from the insurance company for the emergency generator mechanical failure more than the \$273k. I submitted a couple of late invoices. We received every penny less the \$1,000 deductible.
- Emergency generator switchgear PLC failure. One of the two “hot sync” PLCs is dead. If one goes down the other kicks in and vice versa. They are obsolete and you cannot buy them anymore. It’s 11 years old. We are still in debate and discussion with Kraft as to how we are going to resolve it. The price that Kraft gave us was \$100,000 to replace it which I think is absurd. We are doing more research with Power Up and Joe Sullivan from Northeast Controls. If the other PLC goes down the generator will work in manual, not in automatic. It’s a critical piece of equipment.
- Changed vendors for our quarterly toxicity testing. ESI shuttered their doors. We are going to a lab in Connecticut, New England Bioassay Inc.
- We have two basins that are off line all the time. One is the digester and the other the aeration basin. We get a lot of algae issues in the summer time. We just purchased an ultrasonic alae control unit for the aeration basin and it was installed this week. It will kill and control the algae issue and will reduce our chlorine usage and electricity. They are used a lot of times in reservoirs, farm ponds and lagoons. They cover a huge area and plugs into a 110 and use about .4 amps.

Jon Carey noted the following on the Water Construction Division report;

- Hydrant flushing complete and there were no service interruptions or breaks.
- Wachs Water has started the valve turning and assessment.
- Two new gentlemen starting with us. Got a call from a resident singing their praises.

Commissioner Jones asked how many valves there are in the City. Mr. Carey said he will report back when the project is complete. Commissioner Smith asked if they were inventorying them on GIS. Mr. Carey said anything in the field is being inventoried on GIS and field logs are being kept by the project manager from EP.

Commissioner Friede asked if anyone called about the flushing in Moseley Woods and the wash out of the trail. Mr. Carey said he will check it out.

Tom Cusick noted the following on the Water Treatment report;

WTP Operations:

- Working on the Hach Wims program and finalizing the database. It should be implemented by next fiscal year. We’ve done some upgrades on both hardware and software.

Reservoir/GW Sources/Water System:

- DEP removed Well #2 from the PFAS testing because the data that we collected was below the MCL therefore it has been deemed cleaned. We will continue to test the plant for that point of entry and Well #1.

Commissioner Smith asked if we are checking Bartlett Spring for PFAS even though it is shut off. Mr. Cusick said all the PFAS testing we are doing outside of the DEP required testing is through AECOM’s efforts. I feel we have enough information to move forward with that pilot program the we discussed two months ago. The analyticals were \$15,000. It was going to be roughly \$3,000. We have it built into the budget to handle it. Commissioner Jones said we never acted on it.

Rate Presentation by Julie Spurr Knight, Business Manager

Ms. Knight made a power point presentation showing water and sewer retained earnings and how the revenue has been trending from December 2016 to November 2021.

Another chart was presented showing the rate changes from 2013 to 2022. The dotted line represents a rate study that was done by a firm back in 2013 and represents the projected rate for both water and sewer. The solid line represents the actual water and sewer rate. The chart shows that sewer did go up on a steady basis. However, water in 2016 stays the same and actually goes down in 2019 and doesn't come up very much through 2022. Commissioner Smith acknowledged that we set the table with the compounding pretty poorly for six years.

Ms. Knight presented another chart showing both water and sewer rate calculations with actual numbers for 2019 through 2022. FY23 is the recommended rate. For water the recommended rate shows an increase in C/S charges from \$25 to \$35 and uses \$100,000 in retained earnings. She stated she's not in favor of that and it is a 9% increase. She does not see it passing the Utility Committee and City Council. Commissioner Smith said we are already outlaying about \$500,000 from retained earnings for capital projects. Ms. Knight said those retained earnings are tax payer dollars and we brought them in through revenue. Commissioner Smith feels we should be entitled to ARPA funds and infrastructure funds. Property taxes are paying for a lot of the projects on the capital improvement plan. Federal funds are great because it doesn't go to people's property taxes. I feel us as a water commission get ignored a little bit in getting federal funds that come through City Council because they are insulated. It's a bit more expedient to stabilize property taxes and City Council wants to do that but it's the same consequences we're going to fight through.

For the sewer rate the budget didn't go up that much but it is still using \$200,000 in retained earnings because there aren't a lot of requests for projects coming from retained earnings. It increases C/S charges to \$35. Ms. Knight stated the reason she increased C/S charges is because it is a fixed cost whereas consumption is a variable. Commissioner Friede said the increase is because it costs that to provide and maintain. Commissioner Smith brought up the meter project with respect to the rates. Ms. Knight said the meter project isn't included in these numbers. She had a conversation with the Finance Director last night. The project is not going to be included because that will be a FY24 rate cost. By the time we get the spec written and put it out to bid and shop for bonds it will be FY24. What is causing this particular increase is the budget alone. For water, part of the increase is the Phillips Drive project with about \$200,000 in principal and interest added to debt service. ARPA funds is not covering the water main.

Ms. Knight presented another chart showing a deeper dive as to how the rate has evolved since 2019 through 2022 current rates. The chart also showed an FY23 Rate Analysis showing different scenarios:

Rate increase only, resulting in an 11% increase in water and 4.6% in sewer;

Rate increase with C/S increase, resulting in a 12% increase in water and a 5.1% increase in sewer;

Rate increase with rate stabilization (\$100,000 water, \$200,000 sewer), resulting in a 10% increase in water and 1.9% in sewer; and

The FY23 recommended rate was also presented showing a rate increase and C/S increase with \$300,000 rate stabilization (\$100,000 water, \$200,000 sewer) resulting in a 9% increase in water and a 2.3% increase in sewer.

Commissioner Friede wanted to know why the 9%/2.3% rate increase was recommended over the 10%/1.9%. Ms. Knight said the increase in C/S charges are a fixed. Historically we have been at the mercy of the rates. We are constantly making revenue projections that we are going to get "X" amount of consumption. We don't know how much

rain we are going to get and that is a huge factor. If we get the C/S charges, that is a fixed cost. Especially since we just bonded \$1.8 m and to effectively cover that cost you need fixed dollars coming in.

Commissioner Smith said let's look at retained earnings from a risk perspective where are we most vulnerable. Because we have rules and what we can use retained earnings for, you can't use water retained earnings to pay for sewer and vice versa. If we think about this strategically right now, our risk for the next fiscal year is going to be instability with water. Stabilize the sewer rate in lieu of the water rate because essentially everyone is going to be paying one for one. I know its an accounting trick but at the same time I'm more concerned about our retained earnings getting depleted significantly in a time where our state of good repair is more in sewer infrastructure. We need to think that our risk for catastrophic failure, where our vulnerability is would be potentially water. Cut back on our rate stabilization in water (higher risk) and increase sewer more (lower risk).

Ms. Knight said this would be largely contingent on how CIP is funded after this meeting tonight at City Council. If we could get some ARPA funds to cover some of the water that would make more sense. Mr. Furnari said he got a call from City Councilor Shrief Zeid who said they are going to ask what the priorities are for projects for ARPA money. I told him it was Indian Hill, plant upgrades and the interconnect. Commissioner Smith said if we get that stuff done we would be in a better state of good repair, our risk drops, we don't have to pay as much in insurance (retained earnings/savings account).

Ms. Knight said when you figure it out by month it is not a lot of money. Because we depict it by quarter and then you look at the percent its jumping off the page. Commissioner Smith said you package it as water plus sewer and blend the increase.

Ms. Knight said this is a starting point and she would rework the chart after the outcome of the City Council meeting tonight and include our discussions here at this meeting. After the Commission approves it goes to the Mayor, then Budget and Finance, Utility Committee and City Council.

6. Warrant and Contract Signing

Commissioner Smith made a motion to sign the warrant, Commissioner Friede seconded.

Vote: Smith yes, Creelman yes, Jones yes, Friede yes

7. Next Meeting

- Thursday, June 2, 2022 at 4:00 pm
- Wednesday, June 15, 2022 at 4:00 pm

Respectfully Submitted By: Karen Bush