

TOWN OF PROVINCETOWN - BOARD OF SELECTMEN

SPECIAL MEETING – MONDAY – MAY 22, 2006

JUDGE WELSH HEARING ROOM

Chairman Cheryl Andrews convened this special meeting at 5:00 PM noting the following attendees: Board of Selectmen: Cheryl Andrews, Michele Couture, Richard Olson, David Nicolau, Sarah Peake

Other attendees: Town Manager Keith Bergman, DPW Director David Guertin, DPW Financial/Administrative Coordinator Dana Faris, DPW Wastewater Administrative Assistant Ron Gamella, Facilitator John Goodrich and Water & Sewer Board Member Austin Knight.

Recorders: Vernon Porter and Facilitator John Goodrich

The following are minutes, in brief.

1. WASTEWATER FACILITATED MEETING

Led by Facilitator John Goodrich

Chairman Cheryl Andrews turned the agenda over to Facilitator John Goodrich.

The following are notes from Facilitator John Goodrich:

Introduction

The following topics were discussed at the May 22nd Special Meeting of the Board of Selectmen on the Sewer System Optimization and Expansion:

- Status of the Neighborhood Outreach Pilot Program
- Preparation for the June 5th Public Hearing
- Other Updates

The following notes summarize (i) the presentation of information not contained in the Packet for the meeting, (ii) the discussion, including comments and suggestions from the Board, and (iii) the action items and other information from the Wastewater Planning Team's follow-up discussions held on May 23rd.

Status of the Neighborhood Outreach Pilot Program

The Wastewater Team provided the Board with a verbal update concerning the Neighborhood Pilot Outreach Program. To date, three mailings have been sent out to the Court Street, Annex, Holway Avenue, Franklin Street, and Brown Street neighborhood areas. Preliminary responses have included 11 properties that would like to connect to the sewer and 4 properties that are not interested in connecting because they have new code Title 5 septic systems. This is consistent with what the Wastewater Team hoped to learn from the pilot program. The explanatory letter and response form have been well received, no changes to the outreach program appear to be necessary, and the Wastewater Team will continue to expand and speed up the outreach program, and will report further on the results at the June 5th Public Hearing.

The Board commented that the positive response from those who would like to connect to the sewer shows what an excellent job the Town has done implementing Phase 1 and demonstrating that the sewer is a benefit to the town.

Preparation for the June 5th Public Hearing

The Wastewater Team asked for input from the Board in preparation for the planning of the June 5th Public Hearing. The Board provided the following comments and suggestions:

- The June 5th Public Hearing will be a Joint Hearing of the Board of Selectmen and the Water & Sewer Board.

- The focus at this Public Hearing should be on those neighborhoods and property owners that want to connect to the sewer. The message should be: if you want to have your neighborhood connected to the sewer, encourage your neighbors to sign up. Future sewer extensions are most likely to happen where people want to connect, and, therefore, where the economics are favorable.
- Future uses can be addressed at upcoming meetings. In particular, questions related to Economic Development Permits and guidelines will be addressed at the Public Hearing scheduled by the Board for June 14th.
- Explain that property owners in areas to be served by a sewer extension will be able to choose whether they want to connect or not – they will not be required to connect unless mandated by the Board of Health, as would be the case with properties under Administrative Consent Orders (ACOs). As requested, the Wastewater Team will contact the Board of Health to determine what situations would require mandatory connections. Property owners who do want to connect will need to hook up immediately when the sewer is available – there will be no “delayed connections” in the sewer extension areas.
- Explain that the same procedures for determining allowable flow will be used as for Phase 1: existing flow or allowable Title 5 flow, whichever is greater. In addition, increases in flows are allowed for municipal buildings and public service uses approved by Town Meeting, which includes those properties that receive Economic Development Permits.
- Explain the process that a property owner will go through if they decide to connect and explain the numbers in the handouts. Include the Barnstable County loan program information – eligible property owners can use the Kendall Ayers program for septic system repairs or for the cost of connecting to the sewer.
- Explain that the Wastewater Team is evaluating the most cost effective and simplest approaches for connecting each building to the sewer pipe in the street – much simpler engineering approaches than those required for the Phase 1 area can be used in most cases because of the types of properties and lots to be served. Fewer pumps, ganged connections, or other complex engineering solutions will be needed. In addition, the Wastewater Team now has an excellent database of (i) the range of typical connection costs, (ii) the contractors who are qualified to make the building connections, (iii) the engineering oversight that is required and, (iv) the potential cost saving to property owners by having private contractors, rather than the Town, oversee the building connection. No policy decisions on the approaches to be used will be made until the Boards have had an opportunity to review all of the engineering options and the public comments.
- Avoid the use of abbreviations and provide a glossary of important terms.

The Wastewater Team met on May 23rd to prepare a list of handout materials that will address the comments and suggestions made by the Board. A brief PowerPoint presentation of 8-10 slides will be made at the Public Hearing.

Other Updates

The Board was provided with a summary of the information in the Packet concerning the review of legal issues for sewer extension districts, and a brief financial update. All of the Board’s comments on these updates have been included under the above discussion of the preparation for the Public Hearing since questions concerning these issues may come up at the Hearing.

Town Counsel has provided the Town with clarifications concerning the Growth Management Category 5 Surplus Gallonage Pool status report attached to the Packet for the May 22nd Special Meeting of the Board. The status report with these clarifications is included as an Attachment to these meeting notes. Town Counsel’s clarifications were reviewed with Douglas Taylor, the Building Commissioner, staff of the Department of Community Development, and the Wastewater Team at a follow-up meeting held on May 23rd, and this information will be incorporated into the proposed Permit Guidelines to be presented to the Board on June 14th prior to the Public Hearing that night.

As reported in the written updates for the Packet, several properties in the Court Street neighborhood experienced severe flooding of their septic systems in the recent storm. The Health Agent reviewed the situation regarding three of these properties with the Board of Health at their meeting on May 18th, and it is likely that the Board will take a formal vote to issue ACOs for at least two of these properties at their next meeting on June 1st.

At the follow-up meeting held on May 23rd, the Wastewater Team also identified and assigned any other action items

needed to implement the outstanding tasks already identified in the written updates in the Packet concerning the Laundromat Extension and the on-going Facilities Planning work. In particular, the Water & Sewer Board will be holding a formal Public Hearing on June 8th to amend the Area of Concern and their Regulations to include the Laundromat Extension. Town Counsel has provided the Water & Sewer Board with the necessary language for this Public Hearing.

The Wastewater Team will continue to contact interested property owners in the sewer system optimization and expansion study areas and to provide Metcalf & Eddy with all of the responses that they receive. The Wastewater Team will be meeting with Metcalf & Eddy on either June 5th or 6th to review the status of the Facilities Planning effort and to determine when M&E will be ready to present the results of the Needs Analysis effort to the Board, and to receive direction from the Board concerning the engineering options to be pursued. A tentative date of June 19th has been suggested for this review, but it may be delayed until July.

The Board will be kept informed of any new developments in all of these areas.

**Attachment: Surplus Gallonage Pool status –
Including Clarifications from Town Counsel, May 22, 2006**

At the present time, the Wastewater Team has determined that there are no gallons currently deposited into the Growth Management Category 5 Surplus Gallonage Pool. Both the DPW and the Health Agent are continuing to monitor any situations that may result in opportunities to deposit gallons into the Surplus Gallonage Pool and will keep the Board informed of any new developments.

In particular, the owners of the red-dot delay property located at 135 Bradford Street have not yet decided how they would like to proceed with their wastewater needs – one of the owners has indicated informally that they still intend to release some gallons when they connect to the sewer, but they have not decided on how many gallons to release. The Board has already approved a specific policy for this property should the new property owners decide to formally ask for a reduction in use. This is the only opportunity for a Category 5 use reduction that has been identified to date.

On the other hand, the Health Agent and the Building Commissioner have received a number of inquiries from property owners who would like to apply for Economic Development Permits and to use any available gallons in the Category 5 Surplus Gallonage Pool. Therefore, the Wastewater Team has provided the appropriate town departments with the following draft of a summary of how the Growth Management Category 5 process is likely to work, particularly for properties that are connected to the sewer system.

The Wastewater Team – including the Facilitator – will be meeting with the Building Commissioner and the Health Agent on May 23rd to discuss the Permit Guidelines and other administrative procedures that will be needed in order to implement the Economic Development Permit and Category 5 Surplus Gallonage Pool process. Following these discussions, the Staff will prepare their recommendations to bring to the Board for approval at a future meeting. These recommendations will include all the steps that an applicant will need to take, including review by the Economic Development Council and by any boards that have regulatory jurisdiction. The recommended procedures will be reviewed by Town Counsel prior to review with the Board, to ensure complete consistency with the provisions of the Growth Management Zoning By-laws as amended.

Overview of Growth Management Category 5 and the Surplus Gallonage Pool

At the November 2005 Special Town Meeting, the Growth Management Zoning By-law was amended to add a Category 5 which:

- Creates a “pool” of available growth management “surplus gallons” (the Surplus Gallonage Pool) from property conversions or other reductions in economic use, and
- Provides for Economic Development Permits that can be used to re-allocate the reductions in use to proposed increases in year-round economic use at another location in town.

A major goal of this new Growth Management category is to promote a “sustainable year round economy” as much as possible, and in particular to promote more year-round economic development by being able to more easily move economic uses from one part of town to another. Before Category 5 was created, the town was experiencing losses in

economic use at some locations, while at the same time, the Growth Management approval process made it more difficult to add year-round economic uses at other locations.

During a multi-board discussion in July 2005, the Board of Selectmen indicated a preference for giving priority to “in-kind” year-round economic development: restaurant seats for restaurant seats, and guest-house rooms for guest-house rooms.

The April 2006 Town Meeting passed a clarifying Amendment to ensure that any gallons that are deposited into the Surplus Gallonage Pool are available for re-use immediately, as intended. Town Counsel had stated that the language in the November 2005 Amendment did not make the gallons available until the end of the calendar year. This clarifying amendment has not yet been approved by the Attorney General, who has until July 11th to do so.

Procedures

Title 5 “gallons,” the “Surplus Gallonage Pool” and the Economic Development Permit are the primary tools used to administer the Growth Management Bylaw Category 5 Permit process. The “accounting unit” used to measure the reduction in use is the Title 5 design flow associated with the specific use, such as the number of restaurant seats or the number of guest-house bedrooms. Similarly, the Title 5 design flow for the proposed increase in year-round economic use is the “accounting unit” used for properties that have obtained an Economic Development Permit and are thus eligible for a Growth Management Allocation Permit. This is the same accounting unit used for all Growth Management calculations.

Growth Management Category 5 provides for formal procedures whereby property conversions or changes in use that result in reductions in the Title 5 design flow result in the proper amount of gallons being “deposited” into a Surplus Gallonage Pool. An example cited prior to the passage of the Zoning By-law Amendment was the proposed conversion of the former Flagship Restaurant to a single family home – a reduction in use that, had it happened after the passage of the Zoning By-law amendment, could have resulted in over 4,700 gpd of Title 5 design flow being deposited into the Surplus Gallonage Pool.

Properties that are interested in applying for an Economic Development Permit for an increase in year-round economic development are required to formally apply to the Town. The Board of Selectmen, with the advice of the Economic Development Council, is responsible for establishing the Permit Guidelines and other procedures for approving the Economic Development Permit that allows the property to increase its year-round economic use. The Board has appointed members to the newly formed Economic Development Council that is charged with making recommendations to the Board.

The Surplus Gallonage Pool credits are deposited immediately from properties that abandon a prior use having a higher Title 5 flow or two years after a change of use where the prior use has not been formally abandoned. The Town’s Health Agent is charged with implementing these credits. Once the 2006 amendment is approved by the Attorney General, such credits may be used immediately.

Relationship of Growth Management Category 5 to the Sewer System.

Growth Management Category 5 was designed to be a town-wide program so that economic uses could be “moved” from where they were no longer needed to where they are needed in the future - anywhere in the town. Some of the reductions in use will involve properties that are currently served by the sewer, while others will involve properties that use an on-site septic system. Similarly, some of the properties that want to increase their use will be located on the sewer while others will be located in other parts of town not served by the sewer.

Growth Management Category 5 allows the unused gallons that are deposited in the Surplus Gallonage Pool to be used anywhere in town – on or off the sewer system – regardless of where they came from – on or off the sewer system.

However, if a property that is involved in a Surplus Gallonage Pool transaction – either as a “depositor” (reduction in use) or a “withdrawer” (additional economic use) – is connected to the sewer, then some additional steps are involved in the process, as explained in steps 3 and 4 below.

If neither the depositor nor the withdrawer is located in the sewer service area, then only steps 1 and 2 would need to be followed for the Growth Management Category 5 process.

Draft Recommended Steps for the Category 5 Surplus Gallonage Pool Process.

1. Identify any reduced economic use gallons that should be deposited into the Growth Management Category 5 Surplus Gallonage Pool, regardless of where they are located in town.
2. Identify candidate year-round economic development re-use situations that can draw upon the gallons in the Surplus Gallonage Pool, regardless of where the re-uses are located in town, and have the Board establish priorities for the re-use of the available gallons.
3. If a particular re-use location is inside the existing Phase 1 collection system area, then the procedures for optimizing the Phase 1 collection system must be followed as set out in Water and Sewer Board Regulations that define the terms Receiving Property and Sending Property and authorize the Water and Sewer Board to allow connection on a prioritized basis to those properties designated a Receiving Property, including properties that have obtained either an Economic Development Permit or an Affordable Housing Permit or Community Housing Permit, and a Growth Management Allocation Permit. Sufficient sewage treatment plant capacity must exist, as determined by DEP, and sufficient sewer collection system capacity must exist at the Receiving Property location, which should involve M&E review of available vacuum capacity in that location. If M&E finds that the gallons cannot be re-used in this particular location, then the Water and Sewer Board may deny connection and the Board may wish to identify another candidate to apply for an Economic Development Permit and attain Receiving Property status under the sewer system regulations, or a property able to use the Surplus Gallonage assigned to Category 5 by means of an on-site disposal system might be awarded these gallons.
4. Maintain a separate accounting of any net reductions and additions in planned-for Title 5 design flow for the Phase 1 collection system solely for the purpose of M&E's facilities planning for optimization of the sewer system. Such net reductions or additions may come not only from Growth Management Category 5 situations but also from other changes, such as reductions in use for town buildings or other non-economic uses. Any future additions will need to be approved as a part of the overall facilities planning policy decisions.

Reductions or Additions in Flow in the Phase 1 Sewer Service Area.

The four recommended steps listed above have been designed to focus on (i) the Economic Development Permit and the Surplus Gallonage Pool decisions first, and (ii) any Phase 1 collection system changes in flow second. In addition, the procedures take advantage of the fact that the Town is now able to focus on the bigger picture optimization issues for the Phase 1 collection system – including re-directing of flows to new sewer extensions and other system enhancements – rather than focusing only on the accounting mechanisms needed to track reductions and additions in actual flows in the Phase 1 area.

Since the facilities planning process is now moving forward, the optimization planning for the Phase 1 area can take the place of the more formal “Sewer Bank” approach proposed last year to track changes in actual sewer flow, as long as we keep DEP informed of any net changes that are made within the existing Phase 1 collection system area, and any implications for available capacity.

The procedures that have already been developed by Town Counsel – including the “Order Assessing Sewer Use Surcharge” and the “Order Granting Sewer Use Credit” are the legal tools that will be used in the Phase 1 collection system area any time that either a reduction or an addition in actual sewer flow is approved by the Water & Sewer Board. Presumably, the motivation for an owner of Sending Property to voluntarily relinquish assigned Title 5 flow and make it available for a Receiving Property is to obtain an Order Granting Sewer Use Credit.

The Special Act that governs Provincetown's sewer system provided that any changes in flow must be “growth neutral” unless they are specifically exempted from this requirement. Since the exemptions include any “public service uses approved by Town Meeting” – and the November Zoning By-law amendment classified properties that receive an Economic Development Permit as “public service uses” – the Town can approve additional flows to the sewer for a property that receives an Economic Development Permit, subject to the M&E review of the available capacity in the specific portion of the vacuum system.

Motion to adjourn by Michele Couture at 5:55 pm.

Minutes transcribed by: Vernon G. Porter and John Goodrich
May 23, 2006