

TOWN OF PROVINCETOWN - BOARD OF SELECTMEN

SPECIAL MEETING WASTEWATER

MONDAY– DECEMBER 11, 2006 [4:00 PM]

JUDGE WELSH HEARING ROOM

Acting Chairman Sarah Peake convened this special meeting at 4:03 PM noting the following attendees: Board of Selectmen: Sarah Peake, Michele Couture, Richard Olson, David Nicolau

Excused Absence: Cheryl Andrews

Other attendees: Town Manager Keith Bergman, Town Counsel Jean McKnight, DPW Director David Guertin, DPW, Financial / Administrative Coordinator Dana Faris, Austin Knight Water & Sewer Board, Ron Adams of Metcalf & Eddy and Facilitator John Goodrich

Recorders: Vernon G. Porter and Facilitator John Goodrich

The following are minutes, in brief.

1. WASTEWATER FACILITATED MEETING

Led by Facilitator John Goodrich

Chairman Sarah Peake turned the agenda over to Facilitator John Goodrich.

Introduction

The December 11th Facilitated Meeting of the Board of Selectmen was designed to provide the Board with the information needed to move forward with the implementation of Phase 2 as authorized by the November 2006 Special Town Meeting voter approval of Article 1. The primary focus of the meeting was on the allocation of the available capacity for Phase 2 to both interested property owners and to the important Town priorities of affordable housing and year-round economic development.

In addition, Town Counsel Jeanne McKnight updated the Board on the legal and procedural issues raised by the Board at the October 10th meeting concerning (i) Phase 2 allowable flow and connection requirements, (ii) discontinued uses, and (iii) the “red-dot delay” properties. The Wastewater Team also provided the Board with a written update on the topics recommended for discussion at meetings to be held early in 2007.

The following notes summarize (i) the presentation of any new information not contained in the Packet, (ii) the discussion, including comments, questions, and policy direction from the Board, and (iii) the action items and other information from the Wastewater Team’s follow-up discussions held on December 12th.

Allocating the Available Capacity for Phase 2

The Wastewater Team provided the Board with an update on the outreach program and a review of the recommendations for allocating the Phase 2 capacity. At the conclusion of this discussion, the Board formalized their approval with two motions as follows:

- The Board voted 4-0 to endorse the recommendations for allocating the available Phase 2 capacity as presented in the Report for the December 11th meeting and as presented at the meeting.
- The Board also voted 4-0 to request that Metcalf & Eddy and the Wastewater Team proceed with the planning for the options for plant expansion and any Phase 3 and/or build-out sewer extensions, and to report back to the Board at a meeting early in 2007.

In response to questions and comments from the Board, the Wastewater Team provided the following clarifications:

- All Phase 2 properties connecting to the sewer will pay the same betterment rate regardless of where

they are located, the final betterment will be based upon the actual costs, and it will not exceed \$45 per GPD. Although some properties can be connected to the sewer at a relatively low incremental cost while others are more costly to serve, all properties will pay a betterment based upon the Title 5 design flow gallons that are assigned to their property for their intended use, as was the case with Phase 1.

- In order to ensure that the total betterments received from Phase 2 connections will cover the total costs for the Phase 2 construction, the Wastewater Team continues to look for those situations where additional properties can be served at a relatively low incremental cost. The area adjacent to the Seashore Point pump station has been identified as an area where additional properties can be connected at a relatively low incremental cost. In addition, some properties that are currently served by the vacuum system could increase their flows if they receive an Economic Development Permit and these additional flows could be served at a relatively low incremental cost.
- At a future meeting, Consultant Mark Abrahams and the Wastewater Team will provide the Board with a comprehensive financial analysis including future scenarios for both user fees and the WWF. Mr. Abraham's met with the Wastewater Team on December 13th to discuss the financial analysis that he is undertaking for the Town.

The following summarizes the current status of the recommended allocation of the Phase 2 capacity, including the action items from the Wastewater Team's follow-up Staff meeting held on December 12th:

Shank Painter Basin allocation – 100,000+/- GPD

A number of property owners who have previously said "yes" to a connection have not yet confirmed their intention to connect. The total gallons for the properties that have not yet confirmed is approximately 20,000 GPD, or 20% of the total. DPW Staff will initiate a special outreach program to these properties that will combine personal contact, telephone contact, and additional formal letters to confirm their intentions. At the same time, Metcalf & Eddy will contact the DEP to understand how any "late comers" can be added to the permit after the January 15th submission date. The Board will be updated on these efforts at the January 22nd meeting.

Seashore Point Pump Station allocation – 5,000+ GPD

Metcalf & Eddy has conducted a field visit of the area and identified cost-effective ways of connecting properties with a total Title 5 design flow of at least 5,000 GPD, including several ACOs and the Pilgrim Monument. Outreach by DPW Staff to these properties will continue over the next several weeks. Again, Metcalf & Eddy will contact the DEP to understand how these properties can be added to the already-approved DEP permit, and the Board will be updated on these efforts at the January 22nd meeting.

Affordable Housing – Shank Painter Basin Placeholder – 20,000 GPD

As a result of the discussions at the Wastewater Team's follow-up Staff meeting held on December 12th, the Team recommends the following, which will be discussed with the Board at the January 22nd meeting:

- A request should be made to the CPC for CPA funds – to be authorized by the April 2007 Town Meeting – that can cover the estimated betterment for a two-year time period for this housing placeholder. This will allow sufficient time for the housing proposals to be firmed up and to go forward, and will also ensure that there are sufficient revenues from betterments to cover the costs of the Shank Painter construction, since this sewer extension will create the sewer capacity that can make these housing projects a reality. It is estimated that the funds needed to cover two years of betterment for this 20,000 GPD placeholder will be no more than \$100,000. Depending upon how the betterment is funded for each specific housing proposal, the CPA funds that are advanced could be repaid into a revolving fund so that they are available for this purpose for another housing proposal in the future.
- If the Board approves of this approach, then the "decision window" for the affordable housing

placeholder can be 2 years. If the Board does not approve of this approach, or Town Meeting does not approve this use of CPA funds, then the “decision window” will need to be June 30th, 2007 so that there is ample time to allocate these gallons to properties that are ready to pay for the betterment.

Affordable Housing – Area E-10 – 15,000 GPD

The affordable housing placeholder assigned to Area E-10, as discussed with the Board, is 15,000 GPD. No “decision window” has been determined as of yet, because there has been no approval to spend funds on final design and construction. An allocation of the gallons to a project that will pay the betterment does not need to occur until a commitment to construct is made.

There are two proposals in the “E-10 corridor” that could make use of the placeholder gallons: the DPW Garage Site and Mr. Malone’s Nelson Avenue housing project. Very positive discussions continue with the National Park Service for the joint maintenance facility that would free up the DPW Garage site for affordable housing. Should the NPS make a decision to go forward, the site could be available as early as sometime in 2008. No formal proposal has been developed yet for this site; the Draft Housing Summit Report listed this site as a “High Priority” for the development of 40 units, which would have a Title 5 design flow of approximately 10,000 GPD.

On December 13th, DPW Director David Guertin, his Staff, and Health Agent Jane Evans met with Mr. Malone to discuss the Nelson Road proposal. The proposed housing consists of about 20 units (approximately 50 bedrooms) with a Title 5 design flow of about 5,000 GPD. The timeframe includes going through the regulatory process this winter, beginning construction sometime in 2007, and being ready for a sewer connection either late in 2008 or early in 2009. Both the number of gallons and the hook-up timeframe could be accommodated by the proposed E-10 sewer extension should Mr. Malone decide to formally request a sewer connection. The Wastewater Team has provided him with all of the financial information so that he can make a detailed analysis for comparison with the option of providing an on-site septic system for the proposed housing.

Once firm plans that include a request for a sewer connection have been developed for either or both the DPW Garage Site and Mr. Malone’s Nelson Avenue proposal, then the Wastewater Team and Metcalf & Eddy can prepare a preliminary design and cost estimate – including the timetable for permitting and construction – for a sewer extension to serve this area. As previously discussed with the Board, Phase 2 plant capacity equivalent to 15,000 GPD of Title 5 design flow has been reserved for a sewer extension in this area to serve one or more affordable housing proposals, and SRF funds have been designated by the DEP for this purpose.

Downtown Vacuum System allocation – 5,000+ gallons plus discontinued uses.

As discussed in the following section, the Board has endorsed the recommendation that the Building Commissioner send a letter to those property owners who fall under the Growth Management By-Law amendment that applies to discontinued uses. Depending upon which properties actually use their assigned gallons by the November 2007 deadline and which properties are required to release gallons, there may be as much as 9,000 GPD of flow available along the East Main in Phase 2, and 3,500 GPD of flow available along the West Main – from these discontinued uses. Because any discontinued use gallons will come from plant capacity that has already been allocated for Phase 1, they will not count against the plant capacity that is available for Phase 2.

And, as already reviewed with the Board, at least 5,000 GPD of flow can be made available along the West Main as a part of the re-direction of properties that will occur with the construction of the Shank Painter sewer extension. This is in addition to any flow from discontinued uses. Once this capacity on the West Main has been freed up by the construction of the Shank Painter sewer extension, any or all of the Growth Management Category 5 “Initial Deposit” gallons approved by the November 2006 Town Meeting can be allocated to additional EDP flows along the West Main if the Board wishes to do so.

Therefore, in summary, if all of the estimated 12,500 discontinued use gallons become available and are used, and all of the 5,000 Initial Deposit Category 5 gallons are also used, then the Board will be able to allocate up to 17,500 EDP gallons to year-round business uses located along the downtown vacuum system – both along the

West Main and along the East Main. No “decision window” needs to be established at this time. Once the Board has developed its policies regarding the allocation of the EDP gallons, then the Wastewater Team can meet with the Board and discuss (i) the available gallons, (ii) the Board’s allocation procedures, and (iii) the timeline for reaching any policy decisions so as to serve these additional EDP flows.

After all of the above allocations have been made, if the Wastewater Team determines that (i) there is any remaining Phase 2 capacity, and that (ii) additional revenues are needed in order to cover the Phase 2 construction costs, then the Wastewater Team will recommend that the Board consider allocating capacity to other properties located along the West Main that have expressed an interest in connecting to the sewer as a result of the two town-wide mailings. Such a decision would not need to happen before mid-2007.

Legal and Procedural Questions

Three separate topics were discussed under the legal and procedural agenda item and the Board provided guidance on each of these topics. In general, during the discussion of each of the legal and procedural questions, the Board reiterated the following guideline: The Town should not be punitive when we are trying to encourage property and business owners to be entrepreneurial.

Allowable flows and connection requirements.

The Board was satisfied with the proposed timeframes recommended by the Building Commissioner and the Wastewater Team in the Report for the December 11th meeting for both allowable flow use and connection requirements. In response to questions from the Board, Town Counsel Jeanne McKnight, Water & Sewer Board representative Austin Knight, and the Wastewater Team provided the following clarifications as to the process for determining what happens if someone does not use their gallons within the required timeframe:

- The proposed allowable flow and connection requirements contained in the Report to the Selectmen for the December 11th meeting apply only to the properties that will be connected during Phase 2. These procedures are proposed to address situations that were not adequately addressed in Phase 1; however, they cannot apply retroactively to Phase 1 properties.
- Each property owner will have two opportunities to lock in the allowable flow that they would like to use and pay a betterment on: (i) at the time they sign up for a connection, and at the time that final assessments are set. If they want to make a change after that date, then the only way to do that would be to use a process similar to the Water & Sewer Board regulatory process that is currently in place to allow for the granting of credits to properties that give up gallons through the Growth Management By-Law process.

Following the discussion and the clarifications, the Board provided the following guidance: If the situation for a property owner changes and they will no longer be able to or be allowed to use gallons assigned to them, then it is only fair that adjustments should be made in what they pay going forward. Accordingly, Town Counsel Jeanne McKnight will work with the Water & Sewer Board to ensure that the proper regulations and procedures will be in place for Phase 2 so as to implement this policy for allowable flows and connection requirements.

Discontinued Uses

The procedures described above for Phase 2 are designed to avoid the problems with the so-called “discontinued uses” and unused flows that have occurred for Phase 1.

Building Commissioner Douglas Taylor and Town Counsel Jeanne McKnight reviewed the situation for each of the properties that may fall under the “discontinued use” designation in the Growth Management By-Law as amended in November 2005. Town Counsel clarified several questions for the Board having to do with (i) giving due notice, (ii) subdivision of parcels, and (iii) “as of right use” – the law is quite clear on each of these issues.

The Board provided the following guidance: (i) The Board concurs that as far as discontinued use properties are concerned, they need to use the gallons by the date specified by Town Counsel or lose the gallons, per the

Growth Management By-Law as amended in November 2005, and (ii) a letter should go out to any property affected by the Growth Management Zoning By-Law stating the facts, the effect of the November 2005 amendment, and a reminder that they need to do the following by a specified date or they will lose a certain number of gallons.

The Board then formalized their guidance by voting 4-0 to endorse the idea that the Building Commissioner should send a letter to all property owners who will be affected by the amendments to the Growth Management Zoning By-Law.

Red-Dot Delay Properties

In response to a request made by the Board at an earlier meeting, Town Counsel Jeanne McKnight prepared a review of the options available to the Town concerning the Red-Dot Delay properties.

After reviewing the Report contained in the Selectmen's Packet for the December 11th meeting, the Board stated that the letters that were originally sent to the Phase 1 Red-Dot Delay properties indicated that there was no timeline for when they had to connect and that they could delay connecting until their current system failed. Therefore, the Board was not interested in discussing a change in that procedure.

During the discussion, the following comments and suggestions were offered:

- By the Board: if a Red-Dot Delay property were to request an Economic Development Permit, then the Board should consider having a policy requiring hook up to the sewer as a condition of obtaining the EDP from the Board.
- By Austin Knight from the Water & Sewer Board: Red-Dot Delay properties should be required to hook-up at time of property sale and transfer. Town Counsel indicated that the Water & Sewer Board does have the authority under the Special Legislation to make a regulation that would require connections under such circumstances. The Board suggested that the Water & Sewer Board could choose to vote on such a recommendation and then bring a motion to the Board of Selectmen for their consideration.

The following motions were made during this meeting.

MOTION: Move that the Board of Selectmen vote to approve the gallonage as presented to them by the Sewer Team this evening (80K in W1 plus Housing and Manor)

Motion by: David Nicolau Secoded by: Richard Olson Yes 4 No 0

MOTION: Move that the Board of Selectmen vote to approve that the Sewer Team move forward with Phase III and to further to optimize use of the Sewer Plant.

Motion by: Michele Couture Secoded by: David Nicolau Yes 4 No 0

MOTION: Move that the Board of Selectmen vote to endorse the Building Commissioner's send a letter to all property owners who should be connected to the sewer and that will be effected by the Growth Amendment By-Law.

Motion by: Sarah Peake Secoded by: David Nicolau Yes 4 No 0

Motion to adjourn by Michele Couture at 5:47 pm.

Minutes transcribed by: Vernon G. Porter and John Goodrich
December 13, 2006