

TOWN OF PROVINCETOWN - BOARD OF SELECTMEN

SPECIAL MEETING – WEDNESDAY, MARCH 22, 2006 - 5 PM

JUDGE WELSH HEARING ROOM

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

Other attendees: Town Manager Keith Bergman, DPW Director David Guertin, DPW Financial / Administrative Coordinator Dana Faris, Ron Adams, Project Manager - Metcalf & Eddy and Facilitator John Goodrich

Recorder: Sarah Peake and John Goodridge

The following are meeting minutes, in brief.

1A WASTEWATER FACILITATED MEETING

Led by 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 March 22nd Facilitated Meeting of the Board of Selectmen:

- Laundromat Extension Proposal
- Updates for the Manor, Pier and Red-Dot Delay construction in the streets
- Facilities Planning for Optimization and Expansion of the Sewer
- Sewer Bank Policy Review

The following notes summarize (i) the presentation of any new information not contained in either the Packet, the Addendum or the Handout for the March 22nd meeting, (ii) the discussion, including comments, questions and policy direction from the Board, and (iii) the action items and other information from the Wastewater Planning Team's follow-up discussions held on March 23rd. The formal Board votes are documented separately.

Laundromat Extension Proposal

The Facilitator summarized the important recent developments, starting with the agreement by Brian Dudley of the DEP to allow the Town to use wastewater flow numbers for the housing units for the Laundromat Extension Permit based upon actual historical flows provided by the DPW – the flow number for each bedroom will be 65% of the Title 5 design number. This agreement allows the total wastewater flow number for the permit to remain under 10,000 GPD as planned. This important agreement resulted from the many years of good working relationships between the Town and DEP, most recently reinforced by the submission of the detailed flow data that allowed the DEP to justify this decision.

In a follow-up conference call on March 23rd between DPW Director David Guertin, Rob Adams of M&E, and Brian Dudley of the DEP, the Town confirmed with Brian that (i) the permit can be submitted next week with the information that the Town and M&E have already prepared, (ii) additional information may be required, but that will not hold up DEP's review, (iii) DEP's regulations allow for them to have 90 days to review the information, followed by a 30 day public comment period, but Brian has committed to a shorter review period and will have the resources available to him to complete the review in a shorter time frame, and (iv) construction cannot begin during the review period. The Town and M&E will continue to work with Brian to make sure that he has all of the information that he needs to expedite the Laundromat Extension Permit.

The Board was very impressed with the new developments and results that the Staff had brought forward since the last meeting a month ago. In particular, the agreement of the DEP to the 65% flow number for the housing was seen as a very significant development.

Other important developments concerning the Laundromat Extension proposal were reviewed with the Board. These include the following:

- At a Hearing held on March 21st, the Conservation Commission approved the Town's application for a NOI for the small portion of the project that is subject to the Town's wetlands bylaw – no portion of the project falls under the jurisdiction of the State's wetlands regulations.
- M&E is on schedule with the engineering plans for the submission of the application for the Sewer Extension Permit, with an expected approval by the DEP in time for construction to occur before the 2006 peak season. The completed Plans included in the Board's Packet clearly demonstrate how much engineering design work has been accomplished in a short time period. The next critical path item that M&E will be addressing is scheduling with NSTAR for the necessary electrical connections.
- The Grand Union has provided the Town with a draft letter agreeing to the revised wastewater flow numbers required by the DEP and to the revised estimated Betterment. This is also a significant milestone. The Grand Union has subsequently informed the Town that their engineers will be visiting the site during the week of April 17th to discuss the switch over from the on-site septic system to the sewer connection, including the requirements for grease traps and other management issues.
- Based upon the new Title 5 flow estimates for the properties to be connected, the estimated engineering, permitting, legal, and construction costs for the proposed Sewer Extension are approximately the same as the total betterment amount that will be raised at the rate of \$39.08 included in the Memorandum of Agreement. Therefore, the Board's goal of "financial feasibility" will be met.
- The question of whether or not the 29th bedroom requested by Mr. Silva is legal will be brought to the Board of Health on Appeal on April 20th for a decision. If the 29th bedroom is approved, then Mr. Silva has agreed to increase the number of "affordable bedrooms" from 2 to 3. These bedrooms are to be designated "Middle Income" as defined by the Town's Zoning ByLaw.

Finally, the Board was informed that agreement has been reached between the Town and Mr. Silva on the proposed business terms of concern to the Board and the proposed revisions to the Agreement have been reviewed by Town Counsel.

The Wastewater Team provided clarifications in response to Board comments and questions on several topics including (i) the Business Terms contained in the Memorandum of Agreement and the Permits, and (ii) the "affordable housing" component of the proposal, as follows:

Discussion of the Business Terms:

The following item numbers refer to the Revised Draft Memorandum of Agreement attached to the March 21st Addendum to the Packet for the March 22nd Selectmen's Meeting. Each of these questions and requests for clarification will be reviewed with Town Counsel before a final MOU is prepared.

- No. 5- the Board asked that the language in this clause be edited to state "The Laundromat shall be open for at least twelve (12) hours each day at least (6) days of the week during the period of June 1 through September 1, and shall be open at least 8 hours per day, at least three days of the week (Friday, Saturday and Sunday) during the remaining times of the year."
- No. 5- In response to a Board comment that they would prefer to see the Laundromat open at least four days of the week during the off-season, the Water & Sewer Board's representative, Austin Knight, explained that (i) the Town's Request for Proposals did not specify the number of days for the off-season period, (ii) the Water & Sewer Board's review found that three days was a reasonable request, (iii) the actual market conditions may warrant additional days, and (iv) the Water & Sewer Board can revisit this condition during the annual review called for in the

Permit. The Board agreed with Austin Knight's explanation and the condition as written.

- No. 6- the Board asked that Town Counsel review and clarify the language as necessary in this clause to ensure that (i) the Middle Income units will need to comply with all of the provisions of the Zoning By-Law for such units, including quality of materials and so forth, and that (ii) the Middle Income units will need to be completed and made available at the same time as the market units. Staff will have Town Counsel review the language to ensure that it addresses the Board's concerns. In response to a question, Staff indicated that no timetable for the housing proposal has been established yet, but the MOU requires Mr. Silva to begin paying the Betterment for the housing at the same time as the Laundromat and other connections, so this provides an economic incentive for the early connection of the housing units to the sewer system.
- No. 18- in response to a question from the Board as to why Mr. Silva could not request an increase in the number of machines for at least one year, Austin Knight explained that (i) the WATER AND SEWER Board wants to have at least one year of actual use to verify the flow rates for the machines and (ii) Mr. Silva can use the WATER AND SEWER Board's appeal process to request an earlier review if he wishes to.
- No. 19- the Staff provided clarification to the Board that (i) Mr. Silva can increase the number of machines from 10 to 14 and – in order to encourage the public benefit that will result from a successful Laundromat operation – the Town will assess him only for the actual permitting, engineering and construction costs incurred to increase the number of machines, and (ii) he will pay the market rate Betterment for any increase in the number of machines beyond 14.
- No. 23- the Board asked for clarification that the Town's prohibition on issuing, soliciting, or entertaining any Requests for Proposal for Laundromats will end if Mr. Silva fails to comply with the terms of the Permit. Staff explained that the combination of this clause and the Permit language allowing the W & S Board to terminate the Permit if the conditions are not met addresses this issue.
- No. 26- in answer to a question from the Board, Staff confirmed that the MOU requires Mr. Silva or any future owner to continue to pay the betterments even if they terminate the permit under this clause. This will be confirmed with Town Counsel.
- Clarifications were also provided to the Board's satisfaction for several other clauses, including Nos. 21, 22 and 24. If the Laundromat operation is discontinued, then any new permit for the location will involve review by the Board through the Economic Development Permit process. The term "modifications" in no. 24 refers primarily to the addition of more machines.

Discussion of the "Affordable Housing" Component of the Proposal:

- Staff clarified that (i) Mr. Silva has voluntarily proposed 2 Middle Income bedrooms out of the approved total of 28, in response to a request for the inclusion of some affordable units by Austin Knight, the Water & Sewer Board's representative, (ii) Mr. Silva has further offered, voluntarily, to increase the number of Middle Income bedrooms to 3 if his request for the 29th bedroom is approved by the Town, and (iii) Mr. Silva will consider adding more affordable bedrooms in the future should he receive CPC funding and Growth Management approvals for the additional units.
- Staff also provided a clarification of the room layout of the floor of the building in question so that the Board could better understand the additional bedroom issue that the Health Agent and the Board of Health will need to resolve.
- Although in general the Board would prefer that the proposal provides for 26 market rate bedrooms and 3 "middle income" bedrooms (or 10% of the total bedrooms), a majority of the Board did not want to include this as a formal requirement since this might have the unintended consequence of placing a new condition on the agreement at the last minute, or otherwise delay the very tight timetable the Town is on to meet the summer opening date for the Laundromat.
- The Board acknowledged that if the Board of Health approves the 29th bedroom at their meeting on April 20th, then the project will include 26 market rate bedrooms and 3 Middle Income bedrooms – this decision is up to the Board of Health. If the Board of Health does not approve Mr. Silva's request, then some Board members encourage Mr. Silva

to apply for a Growth Management permit for the third Middle Income bedroom. Board members differed in their opinions as to which one of these processes would be easier for Mr. Silva to pursue.

- If the third Middle Income bedroom is not approved by either one of these means – or some other means – then, the Board acknowledged that the project will include 26 market rate bedrooms and 2 Middle Income bedrooms, for a total of 28 bedrooms, as confirmed by the Health Agent.
- No changes to the Permit application will be needed if the bedroom total is increased from 28 to 29. When this matter is resolved, the numbers in the MOU and Permit will be revised as necessary.

Following the discussion, the Board voted 5-0 to approve the Motion recommended by the Staff, with a small change in language for the last part of the sentence. The Wastewater Team will work with Mr. Silva, Town Counsel and others to implement the Board’s vote and policy direction immediately so as to meet the timetable that has been established for the Laundromat Extension.

Updates for the Manor, Pier and Red-Dot Delay construction in the streets

The Handout provided to the Board explained that M&E is on schedule with the preparation of the engineering plans for both the Manor Permit and the Pier connection, so that the end of fiscal year deadlines for each of these projects can be met. DPW Director David Guertin will confer with the Conservation Agent to confirm that no Conservation Commission review is required for either the Manor or the Pier projects.

The Board was informed that M&E’s contractor, Robert Orr, is on schedule to complete all of the construction work for the remaining work in the streets for the red-dot delay structures ahead of the May deadline.

The Facilitator explained that during a recent Wastewater Team review, Rob Adams of M&E pointed out that the Manor Connection Pump Station designed by M&E is capable of handling an additional 2,000 gpd of wastewater flows from properties in the neighborhood that would like to connect to the sewer if capacity is available. Therefore, the Staff and M&E requested guidance from the Board as to whether or not to include this additional capacity in the permit application – the specific properties do not need to be identified at this time.

Any additional properties to be served by the Manor Pump Station will need to be connected by gravity flow to the collection system that M&E has designed. The only additional costs will be (i) the collection system engineering and construction costs for each of the specific properties to be added, and (ii) the actual connection costs from the stubs in the street that each property owner will need to pay. Since construction of the Manor connection will not take place for some time, there is ample opportunity to determine through the facilities planning process which additional properties should be connected to the pump station.

Based upon Rob Adams’ suggestion and explanation, the Staff recommend that the Board authorize them to include an additional 2,000 gpd of capacity in the Manor permit application. Accordingly, the Board voted 5-0 on a Motion to provide policy direction to the Staff to add the 2,000 gpd to the Permit amount.

MOTION: Move that the Board of Selectmen vote to send a policy directive to staff that the Board of Selectmen supports and authorizes Staff to include an additional 2000 gpd of capacity in the Manor permit application.

Motion by: Cheryl Andrews Seconded by: Michele Couture Yea 5 Nay 0

Facilities Planning for Optimization and Expansion of the Sewer

The Wastewater Planning Team informed the Board that they plan to begin the “needs analysis” for the sewer system optimization and expansion planning based upon the study area and priorities already discussed with the Board and listed in the Board Packet. The Team will review the information and criteria that they will be using with the Board at the next facilitated meeting on May 1st.

The Team will also be prepared to review the critical milestones in the facilities planning, public involvement, engineering and design, State and local permitting, sewer district approval, financing, and construction steps for the Board, and to identify important policy decisions that will need to be made.

The Wastewater Planning Team also plans to begin a more formal outreach program that will (i) determine those

properties that would definitely like to be served by the sewer system and (ii) solicit public input through Public Meetings to be held by the Board. The proposed outreach program will be reviewed with the Board at the May 1st facilitated meeting.

For example, at the follow-up meeting on March 23rd, the Wastewater Team discussed that it may be a good idea at the first Public Meeting (scheduled for June 5th, as discussed below) to (i) review the overall facilities planning process, (ii) update the participants on all of the sewer optimization and extension steps that have already been taken, including the Laundromat Extension, Manor and Pier connections, completion of the red-dot delay street construction program, etc, (iii) discuss the “needs analysis” process and timetable, and to (iv) encourage neighborhood input and participation in the process.

During the discussion at the Facilitated Meeting on March 22nd, the Board recommended that (i) clear handouts describing the per bedroom betterment costs be available for the Public Meetings and that (ii) the Water & Sewer Board’s representative, Austin Knight, invite the other members of his Board to participate in the next series of meetings. Mr. Knight agreed, and informed the Board that the neighborhoods are ready to participate – representatives of the Court Street neighborhood came to the last WATER AND SEWER Board meeting to express their support for and interest in a sewer extension to serve their neighborhood.

The schedule of proposed meetings was reviewed with the Board for their approval. The schedule (i) establishes some aggressive milestones for the Wastewater Planning Team to meet and (ii) has been designed to develop the information needed for any Fall 2006 Town Meeting approval of construction funds for the next phase of the sewer system optimization and expansion.

Following discussion, a tentative schedule was agreed to:

Monday May 1st – Board Direction on Needs Analysis and Public Outreach

Monday May 15th – Staff Updates and preparation for Public Meeting

Monday June 5th – Public Meeting to obtain input for the facilities planning

Monday June 19th – Board Direction following Public Meeting

Monday July 17th – M&E Status Report

Monday August 14th – Brief M&E Status Report at regular Selectmen’s Meeting

Wednesday September 6th – M&E Presentation and Board Decisions

Monday September 18th – Public Hearing on proposed Sewer District plans

Monday October 2nd – Warrant Article for Fall Town Meeting

David Nicolau left the room.

Sewer Bank Policy Review

Several policy questions concerning the “sewer bank” were brought to the Board by the Staff in response to a request from a prospective property owner in the sewer district. The prospective buyer of the former “Tropical Joe’s Restaurant” space located at 135 Bradford Street would like to (i) release 3,440 gpd of the 4,640 gpd Title 5 flow assigned to the property, (ii) retain 555 gpd for the current residential and intended office uses for the condominium building, and (iii) retain an additional amount as a “reserve” for future commercial use of the space that he is purchasing. The estimated reserve amount is 645 gpd.

Staff recommended that this “red-dot delay” property be required to hook-up to the sewer immediately as a condition of any Water & Sewer Board release of the unused gallons (and associated reduction in the assessment), or any approval to retain some of the unused gallons in “reserve” for future commercial uses.

Staff requested that the Board (i) review the proposed procedures and conditions for the release of the 3,440 gpd, and (ii) establish a policy for how the retention of any “reserve” gpd will be approved, including any conditions to be specified for their future use. Staff provided the following clarification in response to Board comments and questions:

- DEP has said that they will not release a “red-dot delay” property from connecting to the sewer unless they can comply on site with no variances whatsoever – the Health Agent has determined that this property would need variances to comply on site – even with the reduced Title 5 amount – and, therefore, they must connect to the sewer.
- Staff would prefer that the Board establish a policy just for this property at this time, and not establish a general policy until there have been several more situations to review.
- The Town would like to provide incentives to property owners to either use the gallons they have or to release them, so that more users are connected to the sewer and paying the user fees. This will help to reduce the user fees that many existing users believe are too high.
- The upcoming Town Meeting warrant article will amend the language of the Category 5 Growth Management Zoning By-Law so that any gallons that go into the Surplus Gallonage Pool will be available immediately, rather than at the end of the calendar year. Once gallons are surrendered to the Pool, interested property owners can apply for those gallons.

Following a discussion of whether or not to establish some maximum percent limits for the amount of gallons a property owner could retain in “reserve” for a future use, the Board provided direction to the Staff and the Water & Sewer Board in the form of a Motion, which passed 4-0.

The Board recommended that the Water & Sewer Board allow this “red-dot delay” property to reduce its allocated flow from 4,640 to 3,440 gpd and to retain 555 gpd for office and residential use and 645 gpd as a reserve for no more than 5 years. In addition, the property should be required to hook up to the sewer within a reasonable time period following the closing on the property and the provision of the sewer connection – such reasonable time period to be determined by the Water & Sewer Board as is customary – and that the property should begin paying the betterment immediately upon connecting to the sewer.

The Board also began a more general discussion concerning overall policies involving both the “sewer bank” and the Category 5 Growth Management Economic Development Permit process, but it quickly became clear that the Wastewater Team needs to provide the Board with a clearer explanation of how these processes can and should work before any policy decisions can be made.

Similarly, no policy decisions can be made on how to re-use the specific 3,440 gpd to be released from 135 Bradford Street until these procedures have been reviewed and agreed to by the Board. The Staff will provide the Board with this information at the May 15th facilitated meeting.

As a part of the preliminary discussions on an overall policy and the priorities for re-using any gallons that become available, the Board offered the following comments and suggestions:

- The primary goals are to (i) maximize and optimize the sewer system and (ii) to help move economic development from one part of town to another through the reuse of released gallons.
- If gallons go into the Category 5 pool and they can’t be reused for an economic development purpose within a certain time period, then they could be released for other uses.
- A high priority should be given to reusing any released gallons as soon as possible so as to optimize the system and reduce the user fees. More winter economic development use is definitely needed – the wastewater flow was recently down to a low point of only 9% of capacity.

MOTION: Move that the Board of Selectmen vote relative to 135 Bradford Street, to allow the reduction of assigned

Title V flow from 4640 gallons/day to 3,440 gallons/day as follows: 555 for office and housing, 645 as a reserve. It is further the policy that the reserve gallons shall be retained for no more than five (5) years from hook up to the sewer. The hook up shall occur within a reasonable immediate time after title transfer. Betterment payments shall commence immediately upon hook up.

Motion by: Sarah Peake Seconded by: Michele Couture Yea 4 Nay 0

David Nicolau returned

Motion to adjourn by Michele Couture at 7:24 pm.

Minutes transcribed by: Vernon G. Porter
April 26, 2006