

HUDSON, NH BOARD OF SELECTMEN**Minutes of the January 4, 2000 Public Hearing****on the Sewer Moratorium**

1. **CALL TO ORDER** by Chairman E. Lorraine Madison at 7:36 p.m.

2. **ATTENDANCE**

Selectmen: E. Lorraine Madison, Rhona Charbonneau, Ann Seabury & Terry Stewart. (Shawn Jasper was absent.)

Staff/Others: Paul D. Sharon, Town Administrator; Priscilla Boisvert, Executive Assistant; Attorney Brad Westgate; Attorney Andrew Prolman; Kevin Slattery; Rick Altrich; Terry McLlarky; Bill Tate; Lenny Smith; Coleman Kelly; and Tim, SUN

3. **PLEDGE OF ALLEGIANCE** was led by Selectman Terry Stewart.

4. **PUBLIC HEARING ON SEWER MORATORIUM**

Chairman Madison opened the public hearing at 7:40 p.m. and stated that it was to consider an amendment to the Town Sewer Ordinance, #77 Regulation of Sewer Use, pursuant to its authority under RSA 149-I and Hudson Town Code, §270. The amendment addresses the limitations on the sewer capacity available to the Town of Hudson through the Nashua Wastewater Treatment system, and is in conformity with the Sewer Master Plan Amendment, adopted by the Board of Selectmen at a public hearing held on November 9, 1999.

Continuing, Chairman Madison stated that neither Legal Counsel nor the Sewer Utility Consultant, whose wife recently passed away, was present, but the Board would receive comments. Also, if anyone wanted to submit anything in writing, they were encouraged to do so because the person that would be able to answer the questions wasn't here. This hearing would probably be continued until February 22. She asked if anyone wished to comment.

Bill Tate, 83 Wason Road, said this whole thing really bothers him because the Town seems to come in with everything at the 11th hour. He would think that this should have been known beforehand. He read in the paper that there may be more industrial and commercial land zoned for such for their tax base to be stable. He had some questions, but since Mr. Sommers was not present, he didn't ask them. Selectman Charbonneau said this moratorium was not last-minute, that Tom Sommers has been working on this for over a year, but he couldn't come forward with it until all of the information that needed to be gathered was complete, including the I & I study. Chairman Madison said people would be allowed to submit their questions in writing until the end of January, and then they will be forwarded to the Consultant and to Legal Counsel. This hearing will be reconvened on February 22nd, so he could come back to ask questions at that time.

Attorney Andrew Prolman, Prunier and Leonard, 20 Trafalgar Square, Nashua distributed a letter to the Board, saying he understands the Sewer Utility Committee is meeting on the 13th to address some of these issues. Chairman Madison said there is a meeting scheduled, but she didn't know what the agenda was. Decisions, however, would be made by the Board of Selectmen. Atty. Prolman said his firm represents developers and they have a lot of concerns about the impact the proposed amendment will have on land, land development, property value and property rights. He asked if the Town was looking to save with I & I recapture, if there was going to be any discussions with Nashua for negotiating for greater capacity, or if there was another plan. He's looked at Tom Sommers' material, and didn't see what might be considered the next step.

Chairman Madison said there isn't any chance of further capacity with Nashua, as they are in serious trouble. A new sewage treatment plant would cost about \$40 million, so that isn't viable. They are working on the I & I problem, but it has been a dry season, so they haven't gone anywhere with it. Atty. Prolman has talked with Rick Seamore, who said Nashua is bumping up to its capacity, but between the two communities, something has to give. A plan may slow things down, but there *will* be more sewer usage. Chairman Madison said there are some businesses who are not using the capacity they have, so they are looking into that, too.

Selectman Charbonneau said the government has clamped down on Nashua because of the drainage going into the sewerage. Atty. Prolman said Nashua is in the midst of their CSO program, which is slowly helping the problem, but they won't pick up an extra 10 million gallons a day. Selectman Charbonneau said Nashua thought they were going to get \$20-\$30 million Federal dollars, but it was less than \$10 million. Atty. Prolman said perhaps Mr. Streeter will be able to help with the problem.

Terry McLlarky said he was going to mention the CSO program that Atty. Prolman brought up. He applauded Tom Sommers for not crying wolf until he had solid information to work with. They should all recognize that the days of Open Sesame is over, that they do, in fact, need controls.

Attorney Brad Westgate, Winer & Bennett, 111 Concord Street, Nashua, extended condolences to Tom Sommers and his family. His firm represents Etchstone Properties, Inc., the developer at Lexington Place. Today, he had two letters delivered to Town Hall. One contained general comments on the ordinance and the second was particular to the Lexington Place project, with copies to the SUC, the Town Engineer and the Associate Town Planner.

He referred to his letter which addressed Ordinance #77 and said the more information the public has as to the ongoing investigation and work that is being undertaken in regard to I & I, etc, the better it is. He didn't think there were any concrete results or summaries of that investigation that they can react to. The Town also might want to consider the whole general enforcement concept. For example, discharge permits have gallonage elements to them. Because this becomes a scarce resource, it may make sense to beef up the enforcement capabilities to make sure people don't abuse the permits they are given. On the residential side, for example, compare check water usage records to permitting on the sewer side to see if someone is using far more water on the intake side than is permitted on the outgo side. He suggested that the ordinance consider the enforcement concept in more detail.

Atty. Westgate said this ordinance is like a zoning ordinance because it has the same impact on the density of what can be developed on parcels of real estate and, if it has that effect, then consideration should be given to whether this needs to be adopted in the manner of a zoning ordinance amendment, rather than a regulation. Of course, a zoning ordinance amendment is something that has to be put before the Town voters. Another area he hopes consideration will be given to is having the ordinance detail in a greater degree the concept of transfer of capacity. If someone is permitted for 3,000 gallons per day, but continually demonstrates they only use half of that, perhaps they should have the right to transfer the extra permitted gallonage to another party. If someone takes conservation measures to reduce the per-day gallonage to free up capacity, maybe they should have the right to transfer that, as well. He thinks more detailed mechanisms to permit the concept of transferring permitted gallonage is sensible because it can be a conservation device, as well.

The Town has a chart which doesn't as yet indicate the gallons-per-day component, listing forth different types of housing categories and anticipating what the allotted gallons per day for those categories should be. He suggests there are other categories that should be considered. His developer's project is an elderly housing project and they would suggest that that category be one of the enumerated categories. He's also noted that multi-family complexes, nursing homes and assisted living facilities are different than attached and detached dwellings. He thinks a little more thought, as to the nature of housing stock, is warranted.

The final comment area he has gets into a lot of detail about the actual drafting of certain provisions in the ordinance. He thinks an overview of a draft of the ordinance is necessary, and he went through Section 3 on a very detailed basis and tried to point out some areas that need to be addressed. His motivating factor is the desire to get an understandable ordinance, if one is to be enacted. For example, under Section 3, Exceptions to the Allocation System, reads, "Projects which are in design and which can be demonstrated by the applicant to be substantially complete, or in at least 50% design, as of the time the moratorium was established 8/17/99." If you dissect the grammar, the word 'projects' has two modifiers: "which are in design," and "which can be demonstrated to be substantially complete." The project can't be in design and be substantially complete; it's either being designed or being built, or it's complete. He thinks what it should say is, "Projects which are being designed, the design of which is at least 50% complete." Chairman Madison said he should have been around when this was being drafted. Atty. Westgate volunteered to provide any thoughts, comments, off-the-cuff ideas on the drafting side, if anyone wants to take him up on that, on a Pro Bono basis.

Atty. Westgate referred to the list of exceptions, saying the third bullet is not an exception, it's a criteria regarding an exception. It talks about the applicant shall show strong, tangible evidence of best management practices. He didn't think that should be an exception because if an applicant can show tangible evidence of best management practices, then that exception would be available to anybody at whatever stage of planning or approval they may be at. It's a criteria. He thinks an overall drafting analysis needs to be done. At the end of his letter, he's given his interpretation of how he'd write the exceptions.

The letter regarding Etchstone--Lexington Place--is addressed in the context of the proposed amendment, in the context of the moratorium and in the context of the second phase of the project, which they are pursuing. This project got a sewer discharge permit from the state DES in October 1998, which was for both Lexington Place and the then adjoining lot known as Berkley Estates, a 17-lot open space subdivision. The combined permit required offsite sewer installation along Derry Lane, from Webster Street to about 1,500' of lineal sewage. That entire offsite improvement was done in 1998. He said the Board accepted the offsite improvements, as well as the onsite improvements, for the existing project, all done in accordance with the facilities review plan submitted to the SUC, the board and to the Town Engineer. The exception in the moratorium, which calls for projects for which the facilities plan review has been issued, should include the second phase of Lexington Place, on the Berkley Estates land, from the moratorium and from the ordinance. The moratorium hearing was on November 9, 1999 and at that hearing, he asked Tom Sommers to comment on this project. Tom had a map of the Town with blue and green highlighting. One color was for projects under construction and the other color was projects with approvals. The Phase II phase of the project, the Berkley Estates lot, was shown as a permitted project. The Berkley Estates subdivision approval was issued on August 5, 1998. The moratorium went into place August 17, 1999 a little more than a year after Berkley Estates was approved. Feedback from Town staff indicates that because a year has passed since the Berkley Estates plan was approved, there are no rights associated with Berkley Estates to fit within the moratorium. He didn't believe that was the case. In addition to what he's already stated about the state permit, there is the action of the offsite improvements being completed, and an onsite connection running from the Lexington Place site to the Berkley Estates site to cross the brook between the two. Tom's report issued after August 17, 1999 shows the lot as permitted. It wouldn't have been sensible for Tom to have listed this project as permitted more than a year after it was first approved, if he didn't believe the permits, as they pertain to the sewer piece of it, were still in place. He doesn't believe the year's regulation pertains to the validity of the sewer discharge rights that Berkley Estates, now Lexington Place project has, which he has outlined in detail in the letter. When the 200,000 gallons of availability was calculated, Tom took out of that calculation the projects that were under construction and permitted. The gallonage associated with those projects is not part of the 200,000 gallons, so when computing the 200,000 gallons, he has already subtracted out all of the gallonage for this state permit for both projects--it's not in the allocation, so it doesn't make sense that they would take from that allocation gallonage which other properties would have the right to because they've already been accounted for before the calculation itself.

He thanked the Board, adding that he hoped the members would read in detail his two letters. Chairman Madison assured him they would, and will forward them to the Consultant and Legal Counsel so the Board can get him some answers. She asked if anyone else wished to speak; there was no response.

Motion by Selectman Stewart, seconded by Selectman Charbonneau, to continue the public hearing until February 22, at 7:00 p.m. carried 4-0.

Motion by Selectman Charbonneau, seconded by Selectman Stewart, to extend the sewer moratorium, pursuant to the Town's sewer ordinance, Chapter 270, 9-C, to extend the moratorium on the issuance of sewer permits which was put in place on August 17, 1999 and renew for an additional 60 day period on November 12, 1999 for an additional 60 days to allow the Board of Selectmen to amend the Town's sewer ordinance in accordance with Sewer Master Plan update, which was adopted by the Board of Selectmen on November 9, 1999 carried 4-0.

5. OTHER BUSINESS

Selectman Stewart announced that she heard the Town has a new Librarian. The Town Administrator said he found that out when she called over here and identified herself as such. Her name is Toni Weller.

6. ADJOURNMENT

Motion by Selectman Seabury, seconded by Selectman Stewart, to adjourn at 8:00 carried unanimously.

Recorded and Transcribed by Priscilla Boisvert

Executive Assistant to the Board of Selectmen

HUDSON BOARD OF SELECTMEN

Chairman E. Lorraine Madison

Rhona Charbonneau

Shawn N. Jasper

Ann Seabury Terry Stewart