

WATER POLLUTION CONTROL AUTHORITY
Town of Trumbull
CONNECTICUT

TOWN HALL
(203) 452-5048



5866 MAIN STREET
TRUMBULL, CT 06611

MINUTES
Water Pollution Control Authority Meeting
Tuesday, May 28, 2013

The Trumbull Water Pollution Control Authority held their monthly meeting on Tuesday, May 28, 2013 at 7:00 p.m. in the Nichols Room, Town Hall, 5866 Main Street, Trumbull, Connecticut.

Members Present:

Karen Egri, Chairman
Laura Pulie, Vice Chairman
Ennio DeVita
Edna Colucci

Members Absent:

Timothy Hampford

Also Present:

Joseph Solemene, Assistant WPCA Administrator
Frank M. Smeriglio, PE, Town Engineer
Dennis Kokenos, Esq., Town Attorney
John Marsilio (7:30-9:10)
Fred Mascia, Tighe & Bond, Project Manager
Christine Kurtz, Wright-Pierce

PUBLIC HEARING

Pursuant to section 7-255 of the Connecticut General Statutes, the Trumbull Water Pollution Control Authority will hold a Public Hearing, on Tuesday, May 28, 2013 at 7:00 p.m., Trumbull Town Hall, 5866 Main Street, Trumbull, Connecticut in accordance with the provisions of an Ordinance of the Town entitled, "Sewer Ordinance of the Town of Trumbull" adopted by the Town Council of the Town of Trumbull effective July 1, 1969 and Section 7-249 and Section 7-249A of the Connecticut General Statutes, Revision of 1958 as amended. Notice is hereby given that a Sewer Assessment is proposed to be levied by the Town of Trumbull on the following property:

<u>NAME</u>	<u>LOCATION</u>	<u>NUMBER</u>	<u>MAP</u>	<u>PARCEL</u>
Lipnicki, Michael and Mary Ann (or current owner)	Fern Circle	131	I-09	00156

Chairman Egri called the public hearing to order at 7:03 p.m. and read the public hearing notice into the record. As there was no one in attendance to speak for or against assessing 131 Fern Circle, Chairman Egri asked Frank Smeriglio to summarize the request. He explained this is a property adjacent to the contract 4 project and they tied into a project that abuts contract 4. Joe Solemene explained 10 years ago the system was installed and we are going to be assessing them at the rate the customers paid when the manhole that they attached to was installed. Joe highlighted a prior meeting about this and explained they didn't know whether to go with the existing project or connect to the other system and pay out of pocket for the pumping system. They have decided to go out of pocket with the pumping system and connect to the older system. They were included in this contract and now we are taking them out and having a separate public hearing for this separate assessment under the old rate of the prior project. It was noted if they went with this contract the assessment would have been about \$10,000 more, but they would have gotten a pumping system included in that \$10,000.

There being no other questions or comments, the Chairman requested a motion to close the public hearing.

MOTION made Pulie seconded DeVito to close the public hearing at 7:10 p.m. No Discussion. MOTION CARRIED UNANIMOUSLY.

REGULAR MEETING

The Chairman opened the May 28, 2013 monthly meeting of the WPCA at 7:10 p.m.
The Chairman requested a motion to move an item out of order on the Agenda.

MOTION made Pulie seconded DeVito to move up Agenda item number 7 New Business, Tom Ferik, 85 Calhoun Avenue, requesting sewer usage bill exemption for 24,000 gallons of pool water. No Discussion. MOTION CARRIED UNANIMOUSLY.

7. New Business.

Tom Ferik, 58 Calhoun Avenue, requesting sewer usage bill exemption for 24,000 gallons of pool water. Tom Ferik was present. He explained he just had a new pool liner put in his pool and it was totally filled by his house water and there was no impact on the sewer system. He understands the contract with the City of Bridgeport goes by the water bill and that is how the Town does billing. In this case there was no water at all going down the sewer system. He said Frank Smeriglio had Mike Sliva go out to verify that the water went into the pool and he also said he has pictures showing the old pool liner and the pool with the new liner getting filled by hoses. He said trucked water for a pool is very expensive and it was the least expensive for him to use his house water instead of trucked water. He is requesting a one time exemption for filling his pool with 24,000 gallons of water that was not impacting the sewer system. Frank Smeriglio said he sent an inspector out to do some research on the calculations of the size of the pool and we were able to verify the 24,000 gallons. He noted we are able make a change to the adjust bills but we can't make a change to the billing on how Bridgeport charges us. Commissioner DeVita said the water is shown on the bill so we will have to pay for it. Mr. Ferik said in just 2 days he will be using double what his normal usage is. Commissioner Pulie noted we will be paying for that and Mr. Ferik said he will be paying usage for 24,000 that is not impacting the sewer system. The Commission also noted that is why the change was made to go to straight usage. Discussion included \$135 approximate charge to fill the pool, not being able to adjust what Bridgeport charges us, WPCA would have to absorb the cost, sprinkler systems and separate meters, WPCA still has to pay Bridgeport. Mr. Ferik said he went to Bridgeport WPCA and was told there was nothing they could do and he would have to go to Trumbull WPCA. Joe noted Bridgeport WPCA did not say to him that they will absolve that number of CCF's from his bill because we will have to pay for the water that is going into his pool. Joe said he usually advises homeowners to have pool water trucked in.

1. Minutes to previous meetings.

The following corrections and/or additions were discussed:

Page 4 – 4. Wright-Pierce Update: Christine “Pierce” should be Christine “Kurtz”

Page 4/5 – Discussion: WPCA procedures and policies. Commissioner Pulie questioned if the vote for 25 Garnet Road is in the appropriate place? Joe explained the Commission did not discuss it at any other time so before the commission closed the meeting it was discussed and voted on.

Page 5 – “with a limitation of the septic being affected” the commission is not clear on what this means.

Page 2 – Change Orders: “DeVita asks Kokenos” the commission is not clear on what this refers to.

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Discussion followed. The chairman noted if there are issues of things being incorrect in the minutes then they have to be corrected. The consensus was they are hard to follow but not incorrect.

Page 2 – Invoice Approval: Frank explained Tim's motion said minus \$19,200 and it was corrected to “subject to removal of item 68.”

The following correction was requested: remove “in the amount of \$19,200.”

MOTION made Egri seconded Pulie to approve the Minutes of the April 29, 2013 with the changes just discussed. MOTION FAILED. TWO ABSTENSIONS (Egri, Colucci). The Commission will vote later on the Minutes if Commissioner Hampford joins the meeting.

2. Tighe & Bond.

Progress report. Fred Mascia said since the last meeting:

The contractor has finished all the sewer related work, sewer related punch list items and restoration of the cross country easements. The work is completed with the exception of the drainage. Attorney Kokenos stated the Contract is not complete. It was noted that the other contractors doing the wetlands restoration have not finished and some easement work is ongoing. Mark IV completed the restoration that is in the contract to the lawn areas they disturbed.

Change Orders:

Fred Mascia summarized the following change order:

Fred passed out change order R165 - 5/03/2013 – \$1,631.00 for lawn restoration at 22 Dogwood Lane.

Previously the commission approved an alternative gravity system to 22 Dogwood Lane between 23 and 25 in lieu of a pump. That lateral is at the contract unit price because it was brought about after the contract was signed and the restoration for that area was not included. Mark IV is charging for 233 square yards of lawn restoration. Fred explained there was an area where we crossed the driveway and the commission approved the lateral provided the homeowner did the repair of the driveway. We only have to pay Mark IV for the lawn restoration and Fred recommended payment.

MOTION made Pulie seconded DeVita to approve change order R165 in the amount of \$1,631.00. Discussion. MOTION CARRIED UNANIMOUSLY.

3. Invoice Approval:

Fred Mascia provided the commission with a memo that addresses the ledge removal that was part of Invoice 43 that the commission voted to take out of that pay requisition. Frank asked him to go back through and evaluate how much. The meeting Minutes mention a miscalculation and the miscalculation was on Mark IV's part. Frank explained this relates to invoice 43 from last month's meeting regarding the removal of ledge item 68 or the \$19,200 that was just discussed a short time ago. There was a miscalculation in the ledge quantity that was presented on last month's invoice and the invoice was approved minus the ledge because he wanted Tighe and Bond to check the calculations. Fred summarized his findings which included verifying calculations, reviewing the detail, daily inspection reports, and verification with Kurt Goldbach. He confirmed it is material they actually removed and it is a legitimate claim. He said if it was done on a normal basis it probably would have been 2 to 3 yards of rock every pay requisition rather than 192 at the end of the project. The \$19,200.00 represents 192 cubic yards at \$100 per yard. The total amount of invoice 43 is \$35,993.60 and last month it was authorized to pay that amount minus the \$19,200.00.

MOTION made Egri seconded DeVita to authorize payment of \$19,200.00 for Mark IV Application 43. Discussion. ONE ABSTENSION (Colucci). MOTION CARRIED.

Mark IV Application 44 - \$17,508.50. Fred Mascia said the work done was a lateral for 22 Dogwood Lane and some final pavement repair, curb repair and the lawn restoration that was just approved as a change order. MOTION made Egri seconded DeVita to approve Application 44 in the amount of \$17,508.50. Discussion. ONE ABSTENSION (Colucci). MOTION CARRIED.

Guerrera Construction Company, Inc. Fred said he has an invoice Guerrera submitted to reduce their retainage down to zero, but he did not include it in the packet. There are some issues with lawn restoration and Guerrera went back last week to restore the areas. If it takes and the areas fill in he will present that invoice at the June meeting.

LJF Outdoor Maintenance – Application 9-1 - \$34,075.50. Frank said this is for various restoration work around the Dogwood Pond area for items that were not included as part of the Mark IV contract and we had our restoration contractor do the work. Frank explained as part of the easement agreement with the homeowner we were going to put a sand material adjacent to the pond so he could have a beach atmosphere. But, that was in conflict with inlands/wetlands and we had to eliminate that from his agreement and he asked for other items. The Chairman asked for a motion to approve the invoice. Commissioner Colucci inquired about pricing and procedures and Frank explained the process. Commissioner Pulie asked about the sump pipe discharge charge. Frank explained there was a sump pump discharge that went underground right across where the sewer was going so this was one of the compensation items in lieu of the beach we had agreed to 5 years ago. It was also noted it was reconnected because it was working prior to the sewers going in. MOTION made Egri seconded Pulie to pay LJF Outdoor Maintenance Application 9-1 in the amount of \$34,075.50. Discussion. MOTION CARRIED UNANIMOUSLY.

8. Executive Session.

MOTION made Egri seconded Pulie to move up Agenda item 8 Executive Session out of order and to move into executive session to discuss with the Town Attorney strategy and negotiations with respect to pending litigation as defined by 1-200(6) and/or to discuss attorney client-privileged information as set forth by 1-210 relating to the following:

- Mark IV – Contract 3 and Contract 4
- Regionalization and/or re-negotiation of Bridgeport Sewer Treatment Contract
- Mihaly vs. Town of Trumbull

Staying for the executive session will be the WPCA Commission, Frank Smeriglio, John Marsilio, Joe Solemene, Fred Mascia, Christine Kurtz and Attorney Dennis Kokenos. No Discussion. MOTION CARRIED UNANIMOUSLY.

At 7:40 p.m. the tape recorder was turned off, the clerk left the room and the commission went into executive session.

At 9:07 p.m. the clerk was called back into the room and the recorder was turned on.

MOTION made Egri seconded Pulie to come out of executive session and to state for the record that no vote was taken. No discussion. MOTION CARRIED UNANIMOUSLY.

MOTION made Egri seconded DeVita to reopen the May 28, 2013 WPCA meeting at 9:08 p.m. No discussion. MOTION CARRIED UNANIMOUSLY.

MOTION made Egri seconded Pulie to authorize town attorney Dennis Kokenos to set up a series of meetings with Mark IV to discuss drainage issues and change orders. If not resolved to the satisfaction of the town attorney and public works director, we authorize the town attorney to go into arbitration. Discussion. MOTION CARRIED UNANIMOUSLY.

Discussion: Attorney Kokenos gave the following timeline: The town engineer and Tighe & Bond sent a series of requests in February to Mark IV regarding drainage, remedy the defects and work to be done. No response was received from Mark IV. Notice of drainage work and defects the town wants finished and corrected was again sent to Mark IV. No response in March and April prompted a notice of default for Mark IV to do the work. There was a response to the default notice but the response offered no solution to the problems and they have not done the work that was requested in February. He also noted there is an arbitration provision in the contract.

MOTION made Egri seconded DeVita to authorize town attorney Dennis Kokenos to file an appeal of the Freedom of Information Commission ruling with regards to the WPCA customer list. Discussion. MOTION CARRIED UNANIMOUSLY.

Discussion: Attorney Kokenos stated for the record. The City of Bridgeport has filed a freedom of information request to receive a list of all Trumbull users. They have explained to us that they believe they should be direct billing our users and receive that customer list for that purpose. We brought all our objections to the Freedom of Information Commission. The FOI Commission decided that they did not want to look at the whole global issue which is the renegotiation of the contract and potential regionalization. But, rather decided to look at this issue in a vacuum as to whether or not the list themselves are disposable and ruled against us. The Commission felt as though it could protect the interest of this WPCA to bill its residents directly per the contract that we still have is paramount. To do that we feel an appeal of the FOI decision is prudent. Our office has set forth the post trial brief with the FOI Commission setting forth our position and our law to back up our position. We think all this information is related to negotiations and that it is trying to be obtained by the City of Bridgeport to gain leverage in negotiations. There are also other legal issues, but this is the reason this Commission has authorized him to go forward in this manner.

MOTION made Egri seconded DeVita to pay the WPCA for the City of Bridgeport \$394,435.42 less 13.5% discount for invoice 2013-08 for waste water treatment services. Discussion. MOTION CARRIED UNANIMOUSLY.

Discussion: Attorney Kokenos stated for the record. We have an arbitration that is pending. It is our position in the arbitration that we have a current contract. It is very clear in the contract that says if there is an arbitration dispute pending the parties are supposed to keep the status quo and send bills and receive bills and bill according to that contract. The decision of this Commission to do this regarding the 13.5% is consistent to what this contract says and unless the arbitrators tell us something differently or if there is other injunction relief that is how we are going to continue to move forward.

4. Wright-Pierce Update.

Phase 3 and Phase 4 status. Christine Kurtz said in phase 3 they are doing four phases of SSES work looking for excess water in the system. The work in phase 3 wound up being a bigger scope than anticipated when it began. She noted this project is being funded partially by a State of Connecticut 55% grant and the state agreed to shift some monies from phase 4 to phase 3. They have been finalizing the review of the CCTV work and invoices to make sure the invoices reflected the actual amount of what was taped. That was finished this week and they have a final amount of \$45,000 that needed to be shifted from phase 4 to phase 3. She wrote a letter to DEEP and they approved it in concept, but they need a letter from the town engineer agreeing to this concept.

She also said the same goals can still be achieved in phase 4 just by doing a reduced scope of work. They just received the flow meter data, analyzed it and have identified areas to study further to look for the excess flow. There will be house to house inspections, smoke testing, manhole inspections and CCTV work in some areas for this stage. She wants to set up a meeting to go over what they suggest, specifics and tasks and then they will start smoke testing this summer.

5. Billing Statements - Tighe & Bond and Wright-Pierce.

The commissioners reviewed the spreadsheets and there were no questions or comments.

6. Old Business.

Up-date: Audit of the 59 and 20 accounts. Chairman Egri had no update to report for this meeting.

Discussion WPCA procedures and policies. Frank Smeriglio informed the commissioners there is a binder with policies and procedures and they are welcome to come in and look through it and make comments. Commissioner Colucci questioned if there are some policies and procedures that there are already questions about that should be visited? Frank said the issues started as part of the Contract 4 assessments and it was suggested through the town council meetings that we need to look at our policies and as we are doing projects just keep in mind that if those policies need an update to keep doing that. Chairman Egri suggested the commissioners make time to look at it and then perhaps set up a work session for discussion in the up-coming months.

Discussion: Tax department billing system. Frank said there is no update at this time.

7. New Business.

Owens, Schine & Nicola.

Invoice #13251.

MOTION made Egri seconded Pulie to authorize payment in the amount of \$1,162.50 for Owens, Schine & Nicola invoice number 13251 regarding Mark IV Contract 4 litigation. No Discussion. MOTION CARRIED UNANIMOUSLY.

Ury & Moskow: Contract 3 litigation invoice.

Invoice #60655.

The invoice will be corrected to reflect Contract 3 litigation.

MOTION made Egri seconded Pulie to authorize invoice 60655 in the amount of \$4,189.50 for Town of Trumbull v Mark 4 Construction contract dispute. No Discussion. MOTION CARRIED UNANIMOUSLY

9. Any other business that may come before the Authority.

Chairman Egri introduced and welcomed Attorney Edna Colucci as a new member of the WPCA commission. On behalf of the commission and the department she thanked her for her commitment and willingness to serve on the Commission.

The Chairman asked if there was any other business.

AAA Invoice. Attorney Kokenos said he was sent an invoice by AAA on Friday, May 24th at 12:15 after the information had already been submitted for this meeting's agenda. Normally he would keep it for the next meeting, however as he said in the executive session there is a motion to dismiss that is going to be heard next Tuesday by the three arbitrators. He explained, when it became evident that we don't have a resolution and have to go forward with the motion to dismiss AAA sent an email saying each party is going to be billed \$7,837.50 to cover the time for this motion to dismiss and has to be paid prior to the hearing. He read the portion of the email relating to the payment and submitted the email into the record. He said he had to bring it to the commission at this point to get it approved so the motion to dismiss can be heard next week. When he gets the actual invoice he will give it to Frank.

MOTION made Egri seconded Pulie to authorize payment of \$7,837.50 to AAA to cover the invoice for which we are being billed for. Discussion. MOTION CARRIED UNANIMOUSLY.

Retainer Agreement. Attorney Kokenos said the second thing he needs to bring to the commission which was also discussed in executive session, is the potential that if the City of Bridgeport decides to direct bill us having a different avenue of pursuing a violation by the City of Bridgeport. The counsel that we are using in contract 3 litigation specializes in this area and they have had similar issues with the City of Bridgeport. Obviously this is good because we are trying to obtain the services of an attorney that will have to duplicate what they have already done. He also explained because he does not know the course of what is going to happen their involvement may need to come into gear quicker than the next time the commission meets. He requested and received the retainer

agreement and he reviewed it and has no issues with it. Attorney Kokenos summarized that he has been going against three attorneys, one of which is a national law firm, for three years and it is time for him to get some assistance on his side to help share the load. We do not have a clear avenue for resolution and it is prudent at this point to bring in help and that is what Ury and Moskow will help with the issue talked about in executive session. He provided the commission with a copy of the retainer agreement to review. He again noted he can't wait until the next meeting because he does not know the course of where this is going to go and it changes almost every week, so he would like to have him available as soon as possible. Discussion included formal retainer, rates, services and bill procedures, experts, professional services, assistance, negotiations, and budgeted funds. Chairman Egri requested an up to date summary report of all accounts for the next meeting. MOTION made Pulie seconded Egri to approve the Retainer Agreement for Ury & Moskow for the regionalization and renegotiation with the City of Bridgeport WPCA. Discussion. MOTION CARRIED UNANIMOUSLY.

Tom Ferik, 85 Calhoun Avenue - Discussion. The cost is approximately \$135.00 over the homeowner's normal usage charge. Many other people are also filling pools and either hire pool companies with trucked water or they just use their own hose to fill it. It was noted he is the first one to request an exemption for pool water. The commission does not want to set a precedent and this amount cannot be deducted from Bridgeport's billing. If a credit is given to him for 24,000 the town will not get a credit from Bridgeport. Frank said he checked with the tax office and they are able to modify homeowner's invoices, but are not able to make the change to get the credit from Bridgeport. Joe Solemene noted this has been addressed with many irrigators and other pool people on prior occasions. Commissioner Colucci commented on and had questions relating to policies, procedures, and adjustment requests. It was explained that prior to the change in the sewer usage billing the WPCA had to pay Bridgeport for the large amounts of water used for irrigation, swimming pools and watering lawns yards because the way we billed was not based on consumption. Commissioner DeVita said the commission has set a precedent that it does not want to do this. Commissioner Colucci asked if it a simple or complicated process. Commissioner Pulie said it has not been a simple process in the past. The current situation and relationship with Bridgeport was addressed. Joe pointed out that Bridgeport has not given us a break for water that does not get treated and our contract stipulates that the amount of water that goes through the water meter is the amount billed. It was also noted that prior to the change in the sewer usage billing the WPCA had to pay Bridgeport for the large amounts of water used for irrigation, swimming pools and watering lawns yards because the way we billed was not based on consumption. He also said we recently had a major policy change that ended up with a lot of the residents paying extra costs for this water that doesn't go down the system and Bridgeport was fine with that. He summarized the actions the WPCA took last year before implementing the policy change regarding the increase in sewer usage bills resulting from being billed for consumption. Discussion followed regarding prior requests to Bridgeport for credits. It was suggested this be readdressed in contract negotiations and the policy reviewed. MOTION made Egri seconded Pulie to deny Mr. Ferik's request for a usage bill exemption for 24,000 gallons of pool water. Discussion. ONE ABSTENSION (Colucci). MOTION CARRIED.

There being no other business before the Authority,
MOTION made Pulie seconded DeVita to adjourn the May 28, 2013 meeting of the WPCA at 9:40 p.m. No discussion. MOTION CARRIED UNANIMOUSLY.

Submitted by,

Joyce Augustinsky
Clerk of the Commission