



TOWN OF RYE SEWER COMMISSION

Mailing: 10 Central Road, Rye, NH 03870

Physical: 830 Central Road, Rye Beach, NH 03870

(603) 964-6815, Fax (603) 964-1516

SEWER COMMISSION MEETING MINUTES

Tuesday, February 11, 2020, 8:00 A.M.

Rye Beach Village District Building

830 Central Road, Rye Beach, NH

In attendance: David Kohlhase, Chairman; Peter Kasnet, Commissioner; David Adams, Commissioner and Lee Arthur, Administrator.

Guest: Corey Colwell, TF Moran and Byron Kalogerou, 5 Old Beach Road.

I. Call to Order and Pledge of Allegiance

The Rye Sewer Commission Meeting was called to order at 8:10 a.m.

II. Roll Call

III. Announcements

There were no announcements.

IV. Discussion Items

Public Hearing: Codification of Sewer Ordinances

A public hearing was posted for Tuesday, February 11, 2019 regarding the Codification of the Sewer Ordinances. The purpose of the public hearing is to hear public comment on the adoption of the codification of the Sewer Use Ordinance and the Sewer User Charge Ordinance. The two ordinances have not changed in substance but will be incorporated into the new user-friendly Town Code as Chapter 129 if the town voters adopt the new code at the March 10, 2020 town meeting. Copies of the ordinance adopting Chapter 129 are posted at the Rye Town Hall; at the Rye Village District Building; and on the town website. Copies of the complete Chapter 129 are available at the Selectmen's Office at the Rye Town Hall and at the Sewer Commission Office at the Village District Building.

*Motion was made by David Adams to open the Public Hearing on the Codification of Sewer Ordinances at 8:12 a.m. Seconded by Peter Kasnet.
Motion carried.*

The Sewer Commissioners reviewed the following:

The Adoption of Code Board of Sewer Commissioners

§ 1-16. Adoption of codified ordinances

The Sewer Use Ordinance and the Sewer User Charge Ordinance adopted July 15, 1993, as renumbered, revised and codified as Chapter 129, Sewers, Article, Sewer Use. And Article II, Sewer User Charges, of the Code of the Town of Rye, are hereby approved and adopted.

§ 1-17. Continuation of existing provisions.

The provisions of Chapter 129, insofar as they are substantively the same as those of the ordinances in force immediately prior to the enactment of Chapter 129 by this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances.

§ 1-18. Severability of Code provisions.

Each section of Chapter 129 and every part of each section is an independent section or part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof. If any provision of Chapter 129 or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to the other persons or circumstances shall not be affected thereby.

§ 1-19. Severability of ordinance provisions.

Each section of this ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.

§ 1-20. Changes in previously adopted ordinances.

- A. In compiling and preparing the ordinances for publication as Chapter 129 of the Code of the Town of Rye, no changes in the meaning or intent of such ordinances have been made, except as provided for in Subsection B hereof. Certain other minor nonsubstantive changes were made to correct spelling and grammatical errors. It is the intention of the Board of Sewer Commissioners that all such changes be adopted as part of Chapter 129 as if the ordinances had been previously formally amended to read as such.*
- B. The amendments and/or additions as set forth in Schedule B attached hereto and made a part hereof are made herewith, to become effective upon the effective date of this ordinance. (Chapter and section number references are to the ordinances as they have been renumbered and appear in the Code)*

§ 1-21. When effective.

This ordinance shall take effective upon passage and publication as required by law, provided the March 10, 2010 Town Meeting adopts the Code of the Town of Rye.

§ 1-22. Incorporation of provisions into the Code.

The provisions of this ordinance are hereby made part of Chapter 1 of the Code of the Town of Rye, to be titled "General Provisions, Article 11. Adoption of Code by Board of Sewer Commissioners."

Schedule B

(As Referenced in § 1-20B)

Note: Added text is underlined. Deleted text is struck out or in brackets

Chapter 129, Sewers.

The definition of "floatable oil" in § 129-2 is amended as follows: "A wastewater shall be considered free of floatable ~~fat~~ oil if it is properly pretreated and the wastewater does not interfere with the collection and/or treatment system."

The definition of "POTW or Publicly Owned Treatment Works: in § 129-2 is amended as follows "A wastewater treatment works which is ~~caused~~ owned by a state or municipality."

The definition of "properly shredded garbage" in § 129-2 is amended as follows: "Garbage that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than ½ inch (1.27 centimeters) in any dimension."

The definition of "Sewer Commission" in § 129-2 is amended to Sewer Commissioners."

Throughout Chapter 129 references to "NHWSPCD" are amended to "Water Division" and the definition of "NHWSPCD" in § 129-2 is amended to read as follows: "Water Division – The Water Division of the New Hampshire Department of Environmental Services, or its successor agency."

Section 129-4B(3)(b) is amended as follows: "In amplification of building and/or plumbing code provisions, the materials and procedures set forth in appropriate specifications of the American Society of ~~for~~ Testing and Materials (ASTM) and the ~~Water Pollution Control~~ Environment Federation (~~WPCF~~ WEF) Manual of Practice No. 9 shall apply."

Section 129-5F(1) is amended to change "floatable grease" to "floatable oil."

Section 129-6C(1)(b) is amended as follows: "Plans and specifications for sewerage consisting of more than a single building connection to an existing sewer or where a manhole is required at the sewer connection or where a pumping station serving more than a single dwelling and external to the building is required shall be submitted to the NHWSPCD for approval."

Section 129-8B(2) is amended to change "shall be fined in the amount not to exceed \$10,000 per day of such violation" to "shall be subject to a civil penalty not to exceed \$10,000 per day of such violation"

Section 129-8B (3) is amended to change "by release of such violation" to by reason of such violation."

Section 129-15C(1) is amended as follows: "The MORE charge shall recover the amount of revenue necessary to meet the expenses for operating, maintenance and replacement of wastewater facilities (including administrative expenses) which are appropriated in the sewer fund budget and which are not ~~derived~~ derived by revenue from other sources."

Section 129-15 E is amended to delete the following:

It is anticipated that the first live connection to the wastewater facilities constructed with funds appropriated at the November 1989 Special Town Meeting will occur in 1991. Accordingly, the first quarterly sewer bills will be assessed on or about ____ 1991. At that time all properties connected or planned to be connected to the portion of the wastewater facilities constructed pursuant to the 1989 appropriation will be assessed quarterly Capital Recovery and OMR Charges, even though some properties may not yet be connected.

Also included in the meeting packet was the final draft of Chapter 129 Sewers.

David Kohlhasse asked if there was any discussion and/or public comments. There was neither.

Motion was made by David Adams to adopt the codification of the Sewer Use Ordinance and the Sewer User Charge Ordinance as incorporated into the new Town Code as Chapter 129 if the town voters adopt the new code at the March 10, 2020 town meeting as presented. Seconded by Peter Kasnet. Motion carried.

Motion was made by David Adams to close the Public Hearing on the Codification of Sewer Ordinances at 8:21a.m. Seconded by David Kohlhasse. Motion carried.

Motion was made by David Kohlhasse to take under Old Business, 5 Old Beach Road, Map 8.4, Lot 151 out of order. Seconded by David Adams motion carried.

V. Old Business

5 Old Beach Road, Map 8.4, Lot 151

Included in the meeting packet were a letter and its attachments, to the Rye Sewer Commission from Byron and Kathryn Kalogerou. Byron Kalogerou mentioned that he has been a resident of Rye since 1992 and moved into the home at Old Beach Road 4-5 years ago. He requested permission to review a letter to the Rye Sewer Commission from his wife Kathryn Kalogerou and himself dated January 29, 2020.

He indicated that their property is 1.24 acres and located in Rye. He explained that when the home at 5 Old Beach Road was built, using the language of the ordinance he was advised by the builder that the then occupied building was in excess of 200 feet of the public sewer under Section 301.1 of the Sewer Use Ordinance and received a letter from the Sewer Commission noting that the property was not in the sewer service area. His understanding was that the interpretation was based on the fact that the occupied building was in excess of 200 feet of the public sewer located in Old Beach Road. The contractor, John Taylor confirmed that with them by taking measurements from the site of the existing home to the sewer cap that marks the end of the public sewer system in Old Beach Road. On those bases they went forward and constructed a septic system.

Byron Kalogerou mentioned that after further analyzes and looking at the proposed subdivision they concur that the existing home is outside the sewer service area because it was not within the 200 feet of the of the public sewer located in Old Beach Road. However, they did notice that the existing home was within 200 feet of the public sewer system in Foss Circle and in his eyes that would make it within the sewer service area. He noted that they are not challenging that decision from 2012. But based on the measurements that they have taken and a map provided as an attachment to the letter, the existing home is within 200 feet of the sewer in Foss Circle and by law they would have been required to connect.

Byron Kalogerou explained that the change in circumstances from the previously denied request is to enable the construction of a home on the southwestern portion of the subject property in compliance with applicable zoning regulations. Exhibit B, an attachment to the letter showed the location of the existing home and the proposed home.

The Sewer Commissioners reviewed the maps as provided as attachments and exhibits to the letter. It was pointed out that there was a house adjacent to the property that was not present on the map. There was a discussion that there was an extension of the pipe in the road to Old Town Way. Byron Kalogerou explained when they measured from the existing home to that manhole it was greater than 200 feet that is why they installed a septic system in 2012. He mentioned that they are contemplating a subdivision and building another home on the property. They consulted with Cory Colwell of TF Moran, who reviewed the sewer ordinance, prepared the attachments and placed the proposed home on the site in occurrence with the Town regulations. Under 301.1 they understand that any home abutting any street in which there is now located a public sanitary sewer of the Town is hereby required to install suitable toilet facilities and to connect such facilities directly with the proper public sewer, provided that the occupied building of said property is within 200 feet of the sewer. Based on that it is their belief that they are required by law to connect to the sewer system because the proposed home would abut Old Beach Road to the southeast in which there is now located a public sanitary sewer and would be located within 108 feet of the sewer service.

Byron Kalogerou mentioned that the proposed home meets the requirements of the ordinance as it abuts Foss Circle to the west in which there is now located a public sanitary sewer and the occupied building is within 132 feet of the public sewer on Foss Circle. He noted that they would be required to procure an easement from their neighbors. He believes on that basis by law they are required to connect. However, when they consider the grade of the property, it is more advantageous to connect on Old Beach Road. Peter Kasnet asked if an easement would be required in each case because the drawing Exhibit B shows the proposed connection traveling over another neighbor's property in order to connect to the manhole in Old Beach Road. Byron Kalogerou indicated that they would procure an easement or extend the connection in the street.

David Kohlhasse read part of section 301.1 "situated within the Town and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the Town". He indicated that in the past the property was considered outside the sewer service area because there is no sewer that abuts it or passes in front of the property. His understanding is that the reference to 200 feet was an exception and provided an example that if the sewer did go by or if the sewer was at the end of your road and you had a driveway that was 200 feet long and the house sat back in the woods you were still in the district. However, you did not have to connect because you were further than 200 feet away and could apply for a waiver. Byron Kalogerou mentioned that his understanding from the ordinance and looking back at the history including the decision to deny the Ferris's on Locke Road in 1999 was that they were beyond the 200 feet. His interpretation is that the new proposed home would be within

the sewer district because it is within 200 feet of the sewer. Peter Kasnet questioned whether the Ferris's were denied because they were beyond the 200 feet. He thought it was because they were determined to be outside the sewer service area.

The previous letter of denial sent to Byron Kalogerou was reviewed and David Kohlhas indicated that there was no reference made to 200 feet, it claimed that 5 Old Beach Road was not in the sewer service area and that an expansion would be required. Section 301 Mandatory Connection to Public Sewers in the Sewer Use Ordinance was reviewed.

Cory Colwell mentioned that for a point of clarification the house was within 200 feet of the sewer on Foss Circle, but it does not abut Foss Circle. Byron Kalogerou indicated that in 2012 because the language provides as long as the property abuts a road that there is sanitary sewer they would have had to get an easement and the interpretation was questionable. David Kohlhas asked if the point was that the pipe now is located up to Old Town Way and that they are not disputing the fact that this was out of the sewer service area. Byron Kalogerou did not think that the past was relevant but is a point of reference. Peter Kasnet mentioned that the Kalogeros are not an abutter to Foss Circle. Byron Kalogerou indicated that the fact is that their property abuts a road that has sewer and it doesn't have to be Foss Circle.

Peter Kasnet noted that the property does not abut Foss Circle, therefore, that access point is not relevant, although Old Beach Road may be questionable. He pointed out that John Taylor was told that the provisions of the Sewer Use Ordinance in regards to an expansion would need to be followed and it could not happen without town meeting approval. He mentioned that it is not that the Sewer Commissioners are opposed to providing sewer to more properties; it is that there is also a capacity issue and that is why there is a sewer service area.

The recent Pump Stations Capacity Report showed that Jenness Beach Station is at 97% capacity. Peter Kasnet pointed out that the Sewer Commission is exploring ways to improve capacity. Cory Colwell mentioned that after reading the report he was under the impression that there was a significant amount of infiltration in the sewer lines. The Sewer Commissioners agreed that infiltration is one of the issues in regards to the limited capacity. It was noted that manholes have been sealed and the sewer lines videoed.

David Kohlhas mentioned that his understanding is that the reference to 200 ft doesn't apply to 5 Old Beach Road because the property is not in the sewer service area. He felt that what needed to be clarified is in regards to the sewer line in the road abutting the property. He noted that if the sewer line had gone past the Kalogerou's property when sewer was installed they would have been required to connect. Byron Kalogerou mentioned as he understood it as if you are located within 200 feet of the sewer, not whether the sewer line passes by your house, that you are required to connect. It was discussed that many properties abut a street that has sewer and then clarified that the Sewer Ordinance indicates within 200 feet of an occupied building.

David Kohlhasse mentioned that a lot of good points were made; however, the Town of Rye Attorney needs to be consulted. It was discussed that providing sewer to a property does not make the lot buildable and that it must be deemed buildable prior to being granted a sewer connection. Peter Kasnet asked if the subdivision is granted is there a suitable spot for a septic system. Cory Colwell noted that they have not explored a shared septic and as of today they are not sure, because they have not done any test pits to see what the soil is like. It was determined that all the information needed to be reviewed with Town counsel. Byron Kalogerou offered to have a dialogue with Town counsel if that would be deemed helpful.

VI. O&M Report, February 11, 2020

Consideration of the O&M Report

The flow summary for Church Road Station in January 3,268,900 gallons and the rainfall amount was 2.17 inches. The pump data graphs for Church Road Pump Station, Jenness Beach Pump Station and Abenaqui Pump Station for August were reviewed. The check valves, plug valves and gaskets at Abenaqui Pump Station have been replaced.

VII. Approval of Minutes

Consideration of Previous Meeting Minutes of January 9, 2020 and January 14, 2020.

The sewer commissioners tabled the review of the meeting minutes of January 9, 2020 and January 14, 2020.

VIII. Signing of Bills and Correspondence

Sewer Department Financial Reports

It was noted that current year's expenditures to the end of January were \$29,038.25 of which \$24,661.15 was prior year's encumbrances and the Sewer Fund had a balance of \$554,075.23 on January 31, 2020.

Bills

A document was signed authorizing Jane Ireland, Treasure to pay Michael Donovan Law, PLLC in the amount of \$562.46 from the Route 1/Washington Road Sewer Expansion Escrow.

List of Sewer Charges and Fees Effective January 1-March 31, 2020

Included in the meeting packet were the List of Sewer Charges and Fees Effective January 1- March 31, 2020:

1. Hook-up Fee:
 - A. Front Footage Charge \$260.97/per foot
 - B. 50 Foot Front (minimum charge) \$13,048.50
 - 100 Foot Front \$26,097.00
 - 170 Foot Front (maximum charge) \$44,364.90
2. O.M.R. (Operating & Maintenance) Charge
Per Cubic Feet of H2O Consumption .075

Motion was made by David Adams to approve the List of Sewer Charges and Fees Effective January 1 – March 31, 2020 as presented. Seconded by Peter Kasnet. Motion carried.

Other

Warrant for the Collection of Sewer Operations & Maintenance Cost

Included in the meeting packet was the Warrant for the Collection of Sewer Operations & Maintenance Cost for \$60,652.50 dated January 31, 2020.

Rye Day

Included in the meeting packet was an invitation to participate in Rye Day, Sunday, September 27, 2020, 11:00 a.m.-3:00 p.m. It was discussed having a table at Parson's Field educating the public on Ryes sewer system and preventative measures in keeping hat system healthy.

IX. Old Business

10 Big Rock Road, Map 8.1, Lot 45

The Sewer Permit for 10 Big Rock Road was included in the meeting packet and it was noted that the hook-up fee in the amount of \$13,048.50 has been paid.

12 Big Rock Road, Map 5.2, Lot 80

The Sewer Permit for 12 Big Rock Road was included in the meeting packet and it was noted that the hook-up fee in the amount of \$13,570.44 has been paid

5 Old Beach Road, Map 8.4, Lot 151

This item was taken out of order and moved to the beginning of the meeting.

Route 1 Sewer Update

Peter Kasnet indicated that he ran into Tim Phoenix and they were still in discussions with the City of Portsmouth. However, no progress has been made.

X. New Business

Other

There was no New Business.

XI. Adjournment

*Motion was made by Peter Kasnet to adjourn the meeting at 8:56 a.m.
Seconded by David Adams. Motion carried.*

**These are draft minutes. Please refer to the minutes of the next meeting for approvals/corrections.*