

Minutes of the November 19, 2013 Meeting
Warwick City Council Sewer Review Commission

Meeting was called to order by Councilman Ed Ladouceur, Chairman at 8:18 AM in the Lower Conference Room in City Hall.

Councilman Ladouceur welcomed the Commission members and roll call was taken. A quorum was not present.

Commission members present:

Councilman Ed Ladouceur, Chairman

Councilman Joe Gallucci, Vice Chairman

Angelo Liberti, RI Dept. of Environmental Management Appointment

Jane Austin, Save The Bay Appointment

Michelle Komar, Chairman's Citizen Appointment

Janine Burke, Executive Director of the Warwick Sewer Authority (WSA)

Members not present: David Picozzi, City of Warwick Dept. of Public Works Director and Doug Harris, Narragansett Indian Tribe, Representative Frank Ferri, District 22, Senator William Walaska, District 30 Ernie Zmyslinski, City of Warwick Finance Director Mark Carruolo, City of Warwick Mayor's Chief of Staff, Aaron Guckian, Warwick Sewer Authority Board, Chairman, James Boyd, RI Coastal Resources Management Council Appointment

Public comment was taken:

- It was observed that the City Council meeting of 11/9 provided a lot of information. Disappointment was expressed that more people did not attend. Wish expressed that Save The Bay and DEM to take a more comprehensive approach to addressing the many sources of pollution. Regarding the DEM mandated plant upgrades, continues to take issue with DEM and lack of data regarding sources of pollution. [Roy Dempsey]

The members present identified changes to the minutes for the November 7, 2013 minutes. The November 7 minutes as amended were held until next meeting when a quorum is present to approve. The minutes for the November 12 meeting were taken up. Komar distributed a set of revisions to members who had been present on the 12th for their review before the next meeting, when a quorum would be present. Komar said that at the November 12th meeting some members' verbal treatment towards her was rude and demeaning; she was asked at the meeting to explain the error in her vote, but was interrupted by others when speaking. Some members present disagreed. Councilman Ladouceur apologized that Komar felt that way.

The Commission members identified a set of future meeting dates:

Monday, November, 25, 8:00 – 10:00 AM, City Hall

Thursday, December 5, 8:00 – 10:00 AM, City Hall

Wednesday, December 11, 8:00 – 10:00 AM, WSA Building

Tuesday, December 17, 4:00 – 6:00 PM, City Hall

Wednesday, January 8, 4:00 – 6:00 PM, WSA Building

Austin left.

Councilman Ladouceur asked Janine Burke to go through the WSA's proposed changes to the WSA enabling legislation (as was previously before the City Council last June) to explain the reasoning or intent behind the changes as the City Council and SRC were not involved in that process.

Ms. Burke referred to the document previously provided to the SRC and available on the website. She said the WSA was open to any suggestions for improvements to the law.

Ms. Burke explained that the WSA was getting a lot of customer complaints, requests for abatements and deferments, and there was the issue of religious organization deferments reaching 30 years. As a result, the WSA Chair created a subcommittee headed by WSA Board member Gary Jarvis. The subcommittee also included WSA legal counsel, the Tax Collector, the WSA billing manager and staff. Ms. Burke mentioned that the WSA did ask the City Council President at the time for a representative from the Council to participate in the effort. She said the subcommittee met for over a year, identified a lot of issues, and kept coming back to the issue of assessment "equity". She said the end result was that the Subcommittee felt the enabling legislation needed to be changed to allow WSA the flexibility to do something different with assessments. That led to a suggested review of the entire enabling legislation. Ms. Burke said the subcommittee initially thought of combining a review of the enabling with a review of the WSA regulations but decided the two should be separate with regulations based on the enabling legislation to follow. The WSA put out a request for proposals for legal counsel and awarded the bid to Pannone, Lopes, Devereaux and West to review and revise the WSA administrative law. The bid was awarded in March of 2013, the changes were finalized in May and presented to the City Council in June.

Ms. Burke explained that the enabling legislation working group started the review by discussing what was working, what was not working, and what needed to be looked at for the future of the WSA. She mentioned that Ernie Zmyslinski, Mark Carruolo and others were involved at certain points in the process.

Ms. Burke reviewed the major changes which included updated definitions and added definitions for "connect capable" and a few other terms used; cleaning up the section about Board membership, adding a mission statement and voting procedures; deleting Mayoral approval in several sections related to planning and construction, procurement, and operations to facilitate approval for regular operations and maintenance activities with follow up reporting.

Ms. Burke said the major change to the document was in Section 2.9 (new Section 2.6) regarding sewer assessments. The changes included making the language for the assessment method more generic; eliminating frontage and area references, and making the assessments have a "reasonable relation to the cost of construction." Councilman Gallucci asked what that meant. Ms. Burke said the subcommittee had discussed many different possible methods but hadn't settled on any one in particular, just the concept that the assessments be fair and equitable. Ms. Burke said the change to Section 2.9 would allow flexibility but that the method of assessment would be defined in the Regulations.

Ms. Burke said the change to the language for the assessment method resulted in the elimination of other provisions of the law that had to do with corner lots, through lots, irregular-shaped lots and other frontage or area-related issues. Ms. Burke said the WSA was also suggesting changes

to the language regarding interest charged on sewer assessments, eliminating the specific numbers and making it related to the cost of borrowing the money.

There was some discussion about the role of the Sewer Board of Review (new Section 2.16, formerly Section 2.19) and the appeal process subsequent to that Board. Ms. Burke pointed out that minor changes were suggested for that section but it remains basically intact.

Ms. Burke reviewed the former Section 2.15 (new Section 2.12) which adds “quasi public agencies” to the list of entities the WSA can contract with. She said the thinking behind this change had to do with trends in the industry with respect to privatization and, specifically, the possibility of Narragansett Bay Commission taking over operations.

Councilman Ladouceur mentioned his interest in making changes to the current exemptions to paying sewer assessments including those for non-profits and religious organizations. Ms. Burke said the recommended change to the section of the enabling dealing with religious organizations eliminates the 30 year limit for assessment deferments so that if the property ends up being developed, the WSA could collect the assessment.

There was some discussion about whether the changes would be retroactive to previously assessed properties. There was general agreement that the changes could not be retroactive although Ms. Burke said they might be able to deal with the properties assessed on the acreage formula with the provision that the land be assessed upon development.

Councilman Ladouceur asked about procedures for cases of hardship. There was some discussion about this and Ms. Burke said the WSA follows the procedures the City has in place for the “Circuit Breaker” program.

Ms. Komar questioned how the WSA would determine the assessment rate given the deferrals, possible abatements and early payoffs. Ms. Burke said they would basically have to do a fiscal analysis of which properties might be eligible for deferments or abatements, including financial hardships, and factor that into the rate study. Mr. Liberti commented that it all came back to the quest for certainty which will never exist. He said the best the WSA can do is be transparent with their assumptions used in determining the rates.

Following a question from Ms. Komar, Ms. Burke reviewed the existing and proposed language in Section 2.6 (formerly Section 2.9) with respect to parcels served by septic systems. Ms. Burke said the old language (allowing for 7 years) was eliminated and new language (allowing for 20 years from the date of installation) added.

Councilman Ladouceur asked about the possibility of paying back the project loans in 30 years versus 20 years and Ms. Burke said she would inquire about that with the RI Clean Water Finance Agency.

Ms. Komar mentioned that the City Council Solicitor had previously commented that the WSA enabling legislation uses the term “the City” in reference to WSA and suggested those sections be reviewed to determine the intent of “the City” and eliminate confusion. Ms. Burke acknowledged that could be confusing as the WSA is authorized to operate and maintain the City’s sewer system.

Numerous other ideas were discussed with respect to reducing costs including having DPW do some of the sewer construction work. A discussion about recent DPW projects and status of the Mill Creek bridge project by DPW Director Dave Picozzi was added to the agenda for the next meeting.

Ms. Burke pointed to the section of the WSA enabling legislation regarding mandatory connections, Section 2.17 (new Section 2.14) for review and consideration by the group.

Councilman Ladouceur spoke to the ambiguity in the law and his desire to have more details spelled out in the law. Ms. Burke commented that was intentional to allow for future flexibility so the law would not have to be continually changed. She said the details are defined in the Regulations which are adopted in a public administrative process. Mr. Liberti commented that it was a balancing act – you don't want to get too specific in the law because it can limit efficiencies and can be difficult to change but if the group wanted to have some additional oversight, it should be included in the enabling legislation.

Ms. Burke discussed the current state of WSA regulations and that the plan was to re-do the regulations once the enabling legislation had been dealt with; possible that not all WSA regulations were consistent with the enabling act.

Councilman Ladouceur expressed his desire to have Council appointments to the WSA. There was a discussion about the make-up of the Board, the need for accountability versus the need to make decisions without political interference. Ms. Komar commented about possible different oversight methods for the WSA. She suggested inviting guest speakers from the PUC and, because there was a Council legislation in the pending file to have NBC take over WSA, NBC to a future SRC meeting.

Ms. Burke said the last point she wanted to make about the suggested changes to the enabling legislation was with respect to the last section. She said that change was to allow for additional WSA duties and that, specifically, establishing a wastewater management district was the thinking behind that change.

Finally, there was some discussion about the recommended role of the Mayor and where it makes sense to have Mayoral consent versus reporting functions.

Ms. Komar asked the Council representatives about the next steps including consideration of the enabling legislation and if there was still a need for a possible Memorandum of Agreement. Councilman Ladouceur asked the group to review the recommended enabling legislation changes and be ready to discuss them page-by-page at the next meeting. He thought the enabling legislation could supersede an MOA; MOA may not be needed. Councilman Gallucci said that at the December 9th City Council meeting, second passage of the revenue bond ordinances was on the docket and he said he also had pulled the enabling legislation proposal out of the pending file and it was back on the docket.

The Next Commission meeting date is scheduled for December 5th at 8 AM, Lower Conference Room at Warwick City Hall.

Councilman Ladouceur adjourned the meeting at approximately 10:30 AM.