

**MINUTES
UTILITIES COMMISSION MEETING
SEPTEMBER 16, 2002**

Mayor Margo G. Bailey called the meeting to order at 7:30 p.m. In attendance were Councilmembers Harrison C. Bristoll, Jr., Whaland Clark, Mabel Mumford-Pautz, and J. Brian Kirby, Medford Capel, Utilities Manager, W. S. Ingersoll, Town Manager, Jennifer Stead, Stenographer, and guests.

Mayor Bailey asked if there were any additions or corrections to the minutes of the previous meeting. Mr. Clark moved that the minutes of the previous meeting be approved as submitted, was seconded by Mr. Kirby and carried unanimously.

Mayor Bailey announced that the Utilities Commission has cash on hand and in banks of \$920,590.78.

Mayor Bailey called on Mr. Capel for his report. Mr. Capel said he did not think people in Town have really cut down on water use according to the figures from the meters. He said normally the use was about 700,000 gallons of water and now we are using over 800,000 gallons. He said the State has sent forms that must be filled out each day for water use and the average weekly use. Mr. Capel said the State would send a geologist to check on the level of our wells. He said we are in the process of getting a new well but it will be years before it will be in operation.

Mr. Ingersoll said Dr. Birkmire was present and asked him to answer. Dr. Birkmire said he thought the matter of enforcement was local. He said some jurisdictions are issuing warnings and he thought fines were \$100.00 if there was a repeat offense. Mayor Bailey said she would find out between meetings what the Town must do as far as enforcement.

Mrs. Mumford-Pautz asked for more information about the new well. Mr. Ingersoll said it should not take much longer, as bond counsel has been selected and the bond rate will be 1.9%. He said the engineer was the holdup. He said we could take the well drilling out of the contract and start that as well as the facility connected with it. Mr. Capel said we could not use the well until we get the filters in. Mr. Ingersoll said we could have it ready in case there were problems with other wells.

Mr. Ingersoll said he felt the geologist should also check into the hospital's well situation. He said they were taking a million gallons a day out of the aquifer from under the hospital to make sure that the oil did not come down gradient towards the other town wells. He said he was wondering if there was a way to curtail that process without jeopardizing the community. He said it had been about five years since we checked and we do not know how far along they are with their cleanup.

Mr. Bristoll said if the engineers are behind in presenting plans we should check on their contract to see if there was anything we can do. Mr. Ingersoll said he did not think there were provisions for liquidated damages in that engineering contract. He said the

engineers told us 18 months ago they would get the plans done. He said the bid documents are ready. He said through the emails he was making sure that all agencies are aware of the holdup and hopefully that will speed up the process.

Mayor Bailey asked Mr. Ingersoll to address the next agenda item.

Mr. Bristoll said he would like to comment on the agenda matter of new sewer hookups. He said several years ago the Town agreed it would not provide any additional sewer hookups to anyone outside the Town limits. We have supplied a limited number of sewer hookups to the County originating because people had failing sewer systems. He said he did not think it was the business of the Utilities Commission to allocate those hookups since they were in the County. He said he thought the Council was wasting its time.

Mayor Bailey asked the rest of the Council for comments. Mr. Clark said the hookups were allocated to the County. Mayor Bailey said the Town asked the County to tell us exactly how many they needed to relieve properties with failing septic systems.

Mr. Ingersoll said in 1996, after years of being asked by the County for more hookups, the Town asked the County how many they needed and where they were needed. Mr. Bristoll said the Town has never had the authority to tell them where the hookups would go so why was the Council meeting on this topic to determine where sewer hookups will go.

He said that was what Mr. Lawrence wanted but that determination was not the Town's right or responsibility.

Mr. Capel said when that sewer line was first put in, it was only for Quaker Estates and the people in Country Club estates who had failing septic systems.

Mrs. Mumford-Pautz said when she first took office she was approached by people in Country Club estates to be assured they would not be annexed. She said she explained the benefits of being in Town limits with the services offered. She said we are back to who wants to be annexed into the Town limits to have the services offered.

Mayor Bailey said the Charter states that the Town will not extend water and sewer beyond the Town limits. Further, the sewer line in question was built to relieve the failing septic systems.

Mr. Bristoll said there are two points. The first is that there are a limited number of sewer hookups for which we are currently obligated to the County and that is very few. The second point, regardless of how many hookups there are, we are giving those to the County, not to the individuals. It is not up to the Town to say who has the problem and who gets the hookups.

Mayor Bailey asked Mr. Ingersoll to state how many hookups the County has left. Mr. Ingersoll said he was asked by the Council to find out what, if any, was left in that service

area in the way of hookups. He said the Town allocated 236 units in the service area. He said the County's count showed that 9 units were uncommitted in the whole service area. He said he had met with them and had reviewed the tax records and he was satisfied that there were not more than 9 and maybe as few as 3-4 depending on what was defined as a vacant lot. He said there were some he would call vacant lots along the line that were not being counted. He said there are ones that have been paying vacant lot fees for 20 years. He said they have paid a vacant lot fee to the County.

Mayor Bailey asked what happens next. Mr. Ingersoll said, as Mr. Bristoll stated, that is the County's line, not the Town's, and we service their area. He said his research was done. He said he appeared before the County Commissioners and he had given the Council their minutes before the meeting. He said he basically told them that any further expansion of the Service District would be a dialogue involving the County, the Town, and the Health Department.

Mayor Bailey asked Dr. Birkmire if he wished to add anything. Dr. Birkmire said he was only there in case the Council had some questions about the history or what lines of authority would be in place.

Mayor Bailey said it appeared that there was no real question for the Council on the hookups. Mr. Kirby said he had read all the minutes and letters going back to 1983. He said he thought the way it had been allocated may not have been the way they were originally supposed to be, as it seemed to be originally for failed septic systems and somehow it became a much larger thing and others hooked on for whatever reasons. He said he did not think it was done in the beginning for development and there are issues raised now because there are people on Lover's Lane who have a valid point that they had never been given the opportunity to hook up. He said now you have someone who was developing property and wants the rights to the remaining hookups. He said it appears that it has been piecemeal the way the allocations have been made by the County and now the Town has been asked to make a decision on something that was not our decision to make. He said if the question became a court issue and a court determined that the Town had to make the decision or had to allocate more hookups, and then the Town would have to address the issue. He said he agreed with Mr. Bristoll that it was not a determination for the Town.

Mrs. Mumford-Pautz said she also agreed. Mayor Bailey said she also felt this was a County issue. She asked for a motion so a letter may be sent to the County Commissioners.

Mr. Bristoll moved that the Mayor and Council advise the County Commissioners that the decision on the remaining hookups was theirs, we can tell them what we show as the number left, but the assignment was theirs. Mrs. Mumford-Pautz seconded the motion and it carried by unanimous vote.

Mr. Ingersoll said the issue began with an April 30, 2002 letter from the County Commissioners which stated they requested consideration be given to purchasing

approximately 20 additional allocations, 12 for Mr. Lawrence's project, and 8 for future additional use along Maryland Rt. 289. He said the Council needed to answer the question of whether the Town would allow the County to purchase additional allocations. Mayor Bailey said the Town has to follow the Charter, which prohibits additional service outside of Town and asked for a second motion about the additional allocations.

Mr. Ingersoll said for the record, the original 150 lots were for failing septic systems, but within a year or two the Council authorized hookups for the 25 lots in the LaMotte subdivision and the 12 in the Anthony subdivision. He said there were vacant lots around the Country Club and that area was part of the original failing septic systems included with Quaker Estates. Mr. Kirby said that was still only comes to 187 and they have given out 191. Mr. Ingersoll said four years ago the Town agreed to give the Sanitary District at total of 236 units when they gave us a chart of everything they needed. He said there are about 36 that are obligated by vacant lot fees. Mr. Ingersoll said that he did not know why the County turned down the 12 Anthony lots in 1989.

Mr. Lawrence asked if the Council was going to rule on his request. Mayor Bailey asked for a motion to turn down Mr. Lawrence's request that the Town honor it's previous commitment that the Anthony property was entitled to 12 sewer allocations. Mrs. Mumford-Pautz said she would make that motion. Mr. Ingersoll asked if that was getting back into the County's determination. Mrs. Mumford-Pautz withdrew the motion.

Mr. Lawrence said the record seems to indicate that there had been a cooperative agreement between the Town and County where the allocations would go. He said the Town has in its possession a map that indicates those locations. He said in the beginning of the process the Town did not give the County unbridled right to give those allocations where they wanted to, but the Town negotiated with the County and they signed the agreement. He said the only group that reneged on that agreement was the Sanitary District. He said the Town never gave notice to property owners that they were withdrawing that commitment.

Mr. Bristoll said the commitment was made legally by the County, the Town did not have the right to allocate hookups outside of the limits of the Town and it still doesn't. He said Mr. Lawrence's issue is with the County. Mr. Lawrence asked if the County had refused to give those allocations to Quaker Estates after the agreement was signed, what would the Town's position have been. Mr. Bristoll said he did not have the slightest idea.

Mr. Ingersoll said when the Sanitary District asked for 48 more units, the Town was very reluctant to do it because they thought they had given enough to cure the need. The Town asked the County to identify where the need was. At that time, they drew a map, which showed their service area. He said Mr. Lawrence was correct that the Anthony's were granted a letter by the Town that was never withdrawn, and was reiterated in 1992 that there were 12 units committed to the Anthony property. Those units were used by the Sanitary District somewhere else and they were ignored in the Sanitary Commission's version of the 1996 agreement where the Town gave them 48 more units. He said

Anthony was written on the map but was outside the service area. Mr. Kirby said he understood that those 12 lots never paid the vacant lot fees that others had been paying.

Mr. Ingersoll said he had not reviewed the minutes of the Sanitary District but the real question was "why" the Anthony's had never paid a vacant lot fee, since the vacant lot fees started three years before the Sanitary District terminated the Anthony's. Either the Anthony's were not offered it or did not feel like paying a fee on the lots.

Mr. Lawrence said the Sanitary District took the units away for third parties and the reason he was taking up the Town's time was the basic issue of fairness. He said the Town did give them and agreed with the Sanitary District to let the Anthony property have allocations. They reaffirmed that in a letter at a later date. Mr. Lawrence said a commitment was made, maybe in error but it was made and he was asking the Town to confirm that. Mr. Ingersoll said it was true, even though the Anthony's tried to get a total of 48 units because the economics of building a small subdivision were overwhelming. He said when they came back to the Town Council for 36 extra units, they were turned down but they still had the 12.

Mr. Ingersoll said any further discussion of the need for sewer allocations has to be by the Town, County Commissioners and the Health Department. He said he asked Dr. Birkmire to come to clarify issues of legality. He said the Health Department could legally tell the Town there are areas that have to be hooked up and the Town might have to do so. He said at the time the original allocations were granted by the Town it had the sewer capacity.

Mayor Bailey said one of the reasons the Charter states that water and sewer service will not be extended out of Town is because without annexation the Town loses control. Dr. Birkmire said without annexation the Town does not increase their tax base. Mr. Ingersoll asked Dr. Birkmire about failing septic systems that are far removed from the Town. He asked if the Health Department approved alternative systems for existing homes with problems. Dr. Birkmire said there are systems but they are so expensive, \$30-\$40,000 each and impractical. He said it depends on the site, but the sand mound was an experimental system in Maryland and they have now come down in cost to about the cost of a normal drainfield. He said there are options now that were not present in the 1980's.

Mr. Capel said in Maine there are small systems, which are aerated and chlorinates and de-chlorinates the water and they work for a single home. He said he did not know what the cost was. Dr. Birkmire said the problem with wastewater disposal was not treatment but was disposal into a river. You do not want a little pipe from every home going into the river. He said under Maryland law all water used has to be treated. He said individuals would have the same problem the Town has, to get a discharge permit, to monitor it daily, and to do all the tests. Homeowners just cannot do that.

Mr. Lawrence asked if the Town Council was saying they did not feel any moral obligation to be bound by previous Council's commitment. Mr. Bristoll said he did not

know how binding that commitment was. Mr. Clark said the Town had honored their commitment of the 12 allocations; it was the County that had allowed them somewhere else. Mr. Lawrence said there was no third party to whom he could go to rectify their mistake since there were no allocations available at this time. He said the Town was the only body with the capacity to right a wrong. Mr. Bristoll said it was against the Town's Charter to do that.

Mr. Kirby said a legal question might be did the Anthony's give up their rights to the allocations by not paying the vacant lots fees. Mr. Lawrence said they might not have been asked to pay them because their property did not actually touch the sewer line. Mr. Lawrence asked for an official motion on his request.

Mrs. Mumford-Pautz said they could not do that. Mayor Bailey said that Mr. Bristoll's motion that was seconded and voted on was that this was not in the bailiwick of the Mayor and Council and that the County Commissioners must make the decision. The Town gave them a certain number and it was their job to use them as they should. Mr. Kirby said to make a motion and vote on Mr. Lawrence's request was putting the Town back into something that was not in the Town's capacity to handle.

Mayor Bailey said the Town would advise the County Commissioners of the motion made at the meeting.

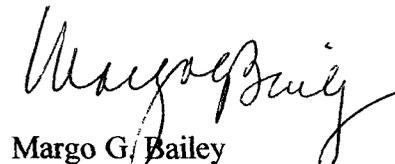
Mayor Bailey asked if there were any questions or comments. There being none, she asked for a motion to pay the bills. Mr. Bristoll moved that the bills be paid as presented, was seconded by Ms. Mumford-Pautz and carried unanimously.

Mr. Clark moved that the meeting be adjourned at 8:15 p.m. was seconded by Mr. Bristoll, and carried unanimously.

Submitted by:


Jennifer Stead
Stenographer

Approved by:


Margo G. Bailey
Mayor