

SOUTH BRISTOL TOWN BOARD SPECIAL MEETING

January 5, 2015

SPECIAL MEETING

The regular meeting of the South Bristol Town Board was called to order January 5, 2015 at 6:02pm at the South Bristol Town Hall, 6500 W Gannett Hill Road, Naples, NY 14512.

PRESENT

Barbara Welch, Supervisor
James Bachman, Councilman
Robert Cone, Councilman
Scott Wohlschlegel, Councilman

RECORDING SECRETARY

Judy Voss, Town Clerk

OTHERS

Anne Jacobs, Mattie Bicknell, Howie Jacobson, Tim Buehl, Dick Johnson, Bob & Melanie Eisenberg, Dan Marshall, Bruce Hunt, et al

Supr. Welch opened the meeting to discuss the process and obtain public input for the Town Board review of a Rate Increase Application from Bristol Sewerage Disposal Corporation.

Opening Remarks – First I'd like to thank the Town Board for their willingness to conduct this meeting held in order for Municipal Solutions to present the process they intend to follow in their review of the Application for a Rate Increase received from Bristol Sewerage Disposal Corporation and equally important to obtain input from you, the public. The written communications received by the Board thus far reflect bear witness to the degree of thought, interest and resources residents served by the Sewer Corporation have devoted to this ... the first basic rate increase request under review in over 30 years.

I'd also like to thank the Board for their decision early last month to engage the services of Municipal Solutions, Inc. to perform a Sewer System Rate Study and Review on behalf of the Town Board. This Board recognized early on that the Application for a Rate Increase represented an issue of great importance to the Town, the Sewer Corporation and the residents served by the Sewer Corporation and that given the complexity of this project that it was prudent to bring on the professional services of Jeff Smith, President of Municipal Solutions. Based upon a number of phone calls and e-mails I've received I feel confident in stating that the residents of Bristol Harbour join me in expressing thanks to the Board for this decision as well. It is important to note that the Board is grateful to Doug Weins and Greg Mulhern for the time they have devoted to preparing the Application for a Rate Increase. Without exception, they have provided answers to all the questions posed by the Board in what we believe to be a thorough and timely manner. They continue to express their willingness to provide additional information that may be needed in order for Municipal Solutions to complete their study and review.

Lastly I want to thank each of you for your attendance and participation in this evening's presentation and public comment on this matter. While the law governing the Board and Sewer Corporations review and ultimate agreement on the Application does not mandate such a meeting as this, the Board acknowledges that the public has already demonstrated a high level of interest and research into this topic and that your input has value in our review of this matter.

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Discussion of Review Process – Jeff Smith, President, Municipal Solutions, Inc.

Jeff Smith thanked Supr. Welch and introduced himself. The way we approach coming up with the proper rate structure include what are the environmental and regulatory agencies demands on the system now and the future? What we have been seeing in the last 10 years is that regulations on the water and waste water side have continued to become stricter and stricter forcing many communities to have to address and make improvements or in a lot of communities they haven't kept up with the repair and maintenance and nothing happened since being built and now the facilities are worn out. Mr. Smith said he hasn't toured the sewerage facility at Bristol Harbor and there does appear to have been capital investments in the plant made over the years. The Transportation Corp. company has done a service to the community by investing in its facility and picking up the liability. The regulatory demands on the waste water side are significant and they have taken on that liability and exposure. What are the regulatory demands, what are the SPEDES permits conditions now and what do the regulations see as potential areas that need to be addressed at the waste water treatment plant in the future. The second part of the analysis is, what are the future capital needs and what will be the cost of financing for those projected needs over the rate review period; a 5-year period or an annual review depending how involved the Town Board wants to be in the process. There also is an existing debt on the system and he would like detailed information on how that is being financed, rates and terms and where they are on the amortization process and what conditions have the lending agencies put on them as far as satisfying loan covenants. The next step will be knowing the regulatory demand, knowing the capital costs that will be looked at and trying to come up with various ways of financing those costs in the future, working with the owners and what kind of relationship they have with the bank, what rates and terms did they get. Usually what will happen, there will be some sort of commercial loan and the terms can be for a number of years with a rate reset. Once we can determine those costs we will put together a future, a multiyear budgeting plan and come up with what the operation, maintenance and capital charges that would be assessed on the system. The next step is establishing equitable billing methods, looking at the concept of benefitted users. There should be a reflection in the rates between what benefits is a user is deriving, what benefit are they getting versus what they're paying and we want that equity situation. We have mixed uses, single-family, condominiums, hotel, golf courses. There are, over the years, recommended or guidelines how you distribute those costs, especially the capital costs. If there are lands, vacant properties, that are benefitting from having the services the value of that parcel is enhanced and there should be some recognition for permitted parcels that are in a development state to have some sort of assessment assessed. It could be whatever is agreed upon with the users. That would be something discussed in the negotiation also. Equity in the system, regulatory, capital costs, operation and maintenance costs, and the equitable way to pay for those costs are all going to be looked at as part of this overall rate review study. That is the way we intend to approach this. Mr. Smith said an extension of the review will be requested because we have to define the service area and what are the property boundaries and get an idea of what the uses are to be part of the report.

Supr. Welch thanked Mr. Smith and opened the floor for comment.

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Bruce Hunt, of Bristol Harbor and BHVA President, thanked their Board for their attention to this matter and realize this is a town issue with the sewer corporation and ask to document the process so it won't be such a huge event. Mr. Hunt read a letter drafted in conjunction with BHVA and the Coalition of Concerned Citizens:

*Without any prior notification, the Bristol Harbour Village Association (BHVA) and Bristol Harbour Coalition of Concerned Citizens (CCC) became aware of Bristol Sewerage Disposal Corporation's (BSDC) **31% sewer rate increase** application to the South Bristol Town Board (TB) at the TB's 11/10/14 meeting.*

Four months earlier (July 2014), Fred Sarkis and Ted Russell personally retained the engineering consulting services of Timothy C. Buhl, P.E. to determine an equitable billing/cost sharing method for the BSDC daily operations and debt service for the present users, and to also fully address the impact of the proposed Everwilde Inn and Spa project should it go forward.

To do so, Sarkis (Fred), Russell (Ted) & the CCC team asked the Town Board to use its legal right and tremendous leverage over the BSDC to obtain financial as well as usage/waste discharge data. See our attached 8/10/14 letter which is posted on the Town's website re Everwilde. We now realize that the TB did in fact request some of this data since it appeared in BSDC's sewer rate increase application. However, some of the usage and waste discharge data that we requested from the TB has not been provided by BSDC which has made it impossible for our engineer Tim Buhl to update his BSDC study dated June 30, 2009 and in the Town files.

*On behalf of **ALL** three hundred and forty (340) Bristol Harbour residents, major sewer rate concerns were raised in our 12/1/14 and 12/8/14 joint BHVA/CCC letters to the Town Board.*

In the attached joint BHVA/CCC 12/15/14 letter, we commended the TB for their 12/8/14 TB meeting decision to retain Municipal Solutions to review the above referenced subject application and make a recommendation to the TB by the end of January 2015. This would be within the ninety days from the 10/31/14 BSDC application date.

*We continue to feel strongly that the TB's ninety day application review window should not start until the TB and your consultant has received **ALL** the information requested from the BSDC. As in the past, it is sad that SBR shareholders again use the Holiday Season to seek Town approval for a sewer rate increase. In the future, the Town should establish a fair and reasonable policy regarding the timing of SBRs future applications whether related to the BSDC or future expansion. We would appreciate receiving an update on whether Municipal Solutions has received at this time all the financial information needed from BSDC to complete their review.*

At the last Town Planning Board meeting on 12/17, the Everwilde team indicated that they had met recently with BSDC and the town's engineer (LaBella). At that time the BSDC indicated to the Everwilde team that the sewer corp had retained an engineer to determine their sewer plant's capacity. Town Planning Board member Ralph Endres immediately commented "on the record" that BSDC has not been transparent in the past and that a town appointed qualified engineer should be chosen to conduct an independent BSDC sewer plant capacity study to confirm BSDC's engineer study.

*The flow records that we asked the TB to request from the BSDC in our 8/10/14 letter would be necessary for a town appointed engineer (and BHVA/CCC engineer Tim Buhl, P.E.) to confirm BSDC's engineer capacity study. We would anticipate that Everwilde would be willing to pay for a town appointed engineer (LaBella?) to conduct this sewer capacity study to resolve this concern for ALL Bristol Harbour residents (BSDC customers). It seems silly for BH residents to pay higher sewer rates if there is plenty of sewer capacity to complete the build out of Bristol Harbour as well as serve the needs of a new commercial sewer customer if Everwilde's application for rezoning is approved by the TB. **The BHVA/CCC is urging the TB to resolve this sewer capacity issue once and for all by the end of January 2015!***

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Again, we thank the Town Board for its assistance in these related sewer rate and capacity issues and especially Barb Welch for volunteering to be our Town Liaison on such an important issue to our Bristol Harbour village residents.

Bruce Hunt, President of the Bristol Harbour Village Association Board

Fred Sarkis & Ted Russell for the BH Coalition of Concerned Citizens

Dick Johnson read from his letter:

TO: South Bristol Town Supervisor & Town Board

FROM: Bristol Harbour Village Association (BHVA) &
Bristol Harbour Coalition of Concerned Citizens (CCC)

CC: South Bristol Town Planning Board
Bristol Harbour residents (via email)

DATE: January 5, 2015

RE: BHV - BSDC Sewer Rate Increase Application

In a previous report furnished to the Town Board, Mr. Timothy C. Buhl, P.E. recommended that the assets of BSDC could be turned over to a new Town Special Improvement District. This would make the system eligible for state and federal grants/loans on future upgrades/improvements. It would be municipally owned and operated with charges to both the developer and residents on an equitable basis. It will also remove any potential conflicts of interest in the management of BSDC by South Bristol Resorts (SBR).

The SBR Developer would be paid cash for the depreciated value of the assets turned over to the District, and then become a customer like everyone else. Property taxes on the infrastructure would be eliminated. Private operation and maintenance of the new District could also be obtained, quite possibly by SBR or the Village Managing Agent on an open bidding basis.

The above engineer's recommendation was submitted to the South Bristol Town Board on June 30, 2009. This report was attached to the joint 12/30/14 BHVA/CCC letter you received last week.

We agree with Engineer Tim Buhl's attached updated 12/30/14 opinion that "in its present form (and without additional data/changes detailed in the report) it will be nearly impossible for the current South Bristol Town Board to make an informed decision as to the validity of the BSDC rate increase request".

For the past eight years, sewer rate allocations between South Bristol Resorts (SBR) and Bristol Harbour residents have been grossly disproportionate. This ongoing inequity really needs correction and all future public utility operations should be more transparent. Never again should the town allow BSDC to fail to provide complete financial statements on an annual basis.

Finally, now may be the appropriate time to pursue the BSDC acquisition because the 2006 sewer plant upgrade (97% of which was paid for by Bristol Harbour residents) is almost fully depreciated. Otherwise, with the predictable future residential growth, these problems will continue to get worse.

Fred Sarkis, Ted Russell & Dick Johnson for the BH Coalition of Concerned Citizens

Bruce Hunt, President of the BHVA Board

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Attachments:

- 1) 12/30/14 Report by T. Buhl, P.E. - BHV-BSDC Sanitary Sewer Rate Increase Application
- 2) Timothy C. Buhl's Resume

Tim Buhl, an engineer in NYS and submitted a letter to the Town Board and read his recommendations:

OVERALL RECOMMENDATIONS:

After review of the application details, I have the following recommendation and suggestions for your organization to pass on to the South Bristol Town Board:

1. *The material presented documents proves that BHR is not paying an amount even close to their fair share of cost of BSDC operations. Now that water meters have been installed, the entire basis of a unit charge should be flow-based and the same for all system users. If we take the residential average use (condo units + single family homes) of 26,262 GPY and call that an equivalent dwelling unit – an EDU which is what each dwelling unit would pay), then all other commercial and non-residential properties should pay unit charges based on their equivalent EDU count for each use – hotel, extensive dining and meeting room seating, WWTP, Golf Course, etc. This would amount to over 130 EDU's for the commercial properties – a drastic change over the present 13 residential units, and one that is long overdue. There should also be a regular schedule of meter calibrations to insure that all the flows are accurately recorded.*
2. *There are several discrepancies and inconsistencies in the financial portion of the application, which have been outlined above. Rather than have a shotgun approach to the water usage and financial data, a clear, concise report should be prepared by an engineering and/or accounting firm that explains all of the sources of income, outstanding loans, interest, consumption fees, capital project fees, special assessments, etc. so that the Town Board can understand what they will be approving. There are too many grey areas at present.*
3. *For the above reasons, I would recommend the application be denied (or deemed incomplete) until such time as a new and universal EDU-based unit charge can be established and the actual financial need is better explained and documented by the applicant. If this is not done by the applicant, it might be time for the Town Board to consider taking over both the water and sewer transportation corporations as allowed by law, which will remove any possible conflict of interest that may exist at present, and give the whole utility operation more transparency.*
4. *It would also be advisable for the Town to ask for the actual WWTP flow and treatment data for the last several years, and for the map of the BSDC service area described in the approved resolution attached to the rate application. This will help the Town Board better assess how many approved parcels are obligated to be served and what the actual WWTP demand ultimately will be. It is odd that this information was not included in the first place – only the water consumption data.*

It is my opinion that in the application's present form (and without the additional data/changes detailed above), it will be nearly impossible for the Town Board to make an informed decision as to the validity of the BSDC rate increase request.

Very Truly Yours,

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Timothy C. Buhl, P.E.

Councilman Bachman read a letter submitted by Ralph Endres who is a Bristol Harbor resident and Planning Board member:

I have been a resident of the Town of South Bristol for over 15 years living in the Bristol Harbor Development. I am also a member of the South Bristol Planning Board. I support the actions of the Town Board with reference to the sewer rate increase by hiring a consultant, but ask that if the information the Town Board requested hasn't been received that we seek a legal opinion to find if we can stop this 90 day window for action by the Town Board.

Bristol Sewerage has not been transparent in this matter.

I would request that if the 90 time limit to act cannot be extended then I request that the Town summarily reject the increase.

Supr. Welch said she would address some of the comments. This whole process is governed by the Transportation Law and in the law there is no ability for the Town to mandate the timing of the rate increase review. There were also references to Everwilde and this rate petition does not include anything about Everwilde. The comment regarding not receiving enough information from the sewer corporation and the sewer corporation fully responded to what the Town Board requested of them. If there is a lack of information then the responsibility or that is borne by the Town Board. We had developed a list of documents and information that we wanted them to provide us with last January, 2014 and they have complied with that. We have requested some additional information the SPEDES information, the Dept. of Health and maps. Supr. Welch noted that while the review for the application has just begun, she has taken steps in the form of a letter from our legal representative to Doug Weins stating that the Town has learned that the sewer corporation added the geographic area that serves beyond the site description found in the resolution dated June 10, 1969 as attached to the Bristol Sewerage Corporation certificate of incorporation. The Town will not engage in a review and/or study of rates to be charged to the customers that are not within the geographic area described in the site description. What that means, based on our research and the help of Bristol Sewer, that the sewer has expanded beyond what was in the original resolution and need to amend that. Maps are available to look at. We don't know what the solutions are and have offered to meet with their representatives. The law is clear that we only have authority to set rates in the area that established under the Transportation Corporation Law. At this point we are asking for an extension or a stay on the rate review until the amendment can take place. The amendment process itself, if that what the corporation chooses to do and bring the rest of the district into the Transportation itself, involves SEQR, etc. The law does require the Town to engage an engineer for review. Labella did prepare a map for the Town Board with the coordinates given in the certificate of incorporation from 1969 and is available for the public to look at.

Adjourn 6:38pm

Respectfully Submitted,

Judy Voss

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Town Clerk

DRAFT