

**Sewer Commissioners Meeting  
Minutes of Monday, November 26, 2018  
Bourne Community Building  
Bourne, MA 02532**

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Glenn Cannon

**Sewer Commissioners**

James Potter, Chairman  
Jared MacDonald, Vice-Chairman  
Judy Froman, Clerk  
Peter Meier  
George Slade

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Others present: Robert Troy, Zachary Basinski - Bracken Engineering, Trish Lubold, Mary Ann Bouldry, Borton Bouldry, Richard Johnson, Brian Cleary, Mary Jane Mastrangelo, Stephanie Comick,

All agenda items herein may be subject to a vote by or other action of the Board of Sewer Commissioners

Note this meeting is being televised and recorded. If anyone in the audience is recording or videotaping, they need to acknowledge such at this time.

**Meeting Called to Order**

Chm. Potter called the meeting to order at 7:04 pm.

**1) Public Comment**

**2) Approval of minutes: 10-15-18**

**Voted** Peter Meier moved and seconded by Judy Froman to approve the minutes from October 15, 2018. Vote 5-0.

**3) Savery Avenue septic system design update and discussion**

James Potter said this meeting is being held as a workshop and brainstorm on the Savery Ave. septic system. We have no further information on the cost and the design. New information came to the Sewer Commission and the Board of Health as it relates to Title V. The system is costly on a weekly basis to pump out; also the new information with Title V, one of the caveats to the state law is the system has to be on land in perpetuity, which we do not have and cannot get from the Army Corps. We still have the design that you last saw but we don't have any new numbers because we didn't go out to bid because we may not be able to execute that design on that land. We are hoping to talk about options amongst us tonight. We may have to vote on removing our application to the Board of Health on the septic design because if they are following the Title V regulations they may not approve our

current plan. We may vote to have Bracken Engineering come up with other options that we may pursue.

As part of Title V Section 15-290 about shared systems, it states that shared systems have to have this perpetuity. It is written into the state law. In the past the easement would have been written into all the deeds to the properties but that was never done and we can't get that and it is on Army Corps land. So it isn't possible to put that into the deeds and that is a requirement in the state law.

Judy Froman said the land is owned by the Army Corps so does that make it federal instead of state and does that make a difference? Atty. Troy said the land is owned by the Army Corps so that makes it federal land. With federal government the town has no powers of eminent domain. I was asked and if the town has any legal documents relating to Savery Ave project, there were none, which means the legal department was not involved. I asked for all the document the town had and I was able to review those documents and it does appear that the Sewer Commission requested the Army Corps of Engineer for a 50 year lease. My understanding is 31 years has passed, which leaves 19 years left. Before anything is sorted out the town needs to go back to the Army Corps to get land that is sufficient or the town might have to consider other options to fix the problem. On a shared system it is a requirement on state law that any shared system be put on land that is owned in perpetuity, so a shared system is not an option that is available. Mr. Troy recommend to meet with the Army Corps to see what type of arrangement they might consider, and/or look into a different type of solution to the problem.

Peter Meier said we could talk to the Army Corps through our legislative to see about negotiating some land, get a long-term easement in perpetuity. An option is Title V on the residents' property, and we should incur the cost because we went into the system 30 years ago and the residents tied into that system, and now we have to take it from them. Mr. Meier spoke about open land, wondering if it is deeded open space, if it is a developable lot and if the town can acquire that property. There are a lot of options we have to consider. These 13 people's houses will be condemned, through no fault of their own, because they need an adequate septic system.

George Slade would like to have a better history and what the liability the town may or may not have. Would like good information before we discuss this with the public.

James Potter said when this went in, years ago, the town was trying to explore different options that were available. This shared systems was, in the report, the most cost effective option to the homes on Savery Ave. There was no ill-intent from the town to do something that wasn't allowed, the regulation have changed over the years, and the perpetuity part is a requirement now.

Zachary Basinski, Bracken Engineering, said the original contract with the town was just to do a Title V upgrade on the existing septic system.

James Potter said the Board of Health and our Board to consider doing individual systems for the homeowners if the town was able to give them an easement under the road for additional square footage they may need to put their system in. It may be an option instead of a shared system. One or two may need a shared system because they don't have enough square footage to put in a system. Mr. Basinski said they could apply for a license. Mr. Potter said this Board could consider that as an option to explore. The first thing we would have to do is all the homeowners would have to have the lots perked to determine what soil is on the properties. We would have to design a system that would work for the different homes.

Jared MacDonald questioned how much space we require for the leach part of the system if we can put the tank in the street and pump to a different leaching location. Zachary Basinski said for a three bedroom house you would need around 400 sq. ft., it would depend on the type of soil conditions. We would have to look at a perk test and based on the soil conditions. A typical three/four bedroom the leaching field would take up about 400 sq. ft. and then another 50 feet for the tank.

James Potter said a separate issue that we have to address is the financial component. There is a legal line once we cross over to the private lots, we can't start doing public work on private lots. This Board will have to look at what assistance we can provide if the systems go private. There may be loan assistance that we can give, but we will not be able to use public funds for private work.

Peter Meier suggested taking the 13 people off the sewer system and the \$800 they spend in a year, they can take that and put it into the county's low interest loan program. If we take them off completely they could allocate that money elsewhere.

James Potter said another option is other parcels of land but they are all uphill from these residents and that would require pumping, but not sure if we save any costs doing that. Zachary Basinski spoke about other alternative, conventional pump station, gravity collection system to a pump station. Low-pressure sewer system is another alternative. Each house would get an individual unit and you put in a low-pressure gravity line.

Peter Meier spoke about taking land, by eminent domain for the purpose of a shared system. James Potter said if we could do individual systems that would be the preference instead of getting land by eminent domain. We have 19 years left on the easement from the Army Corps. It doesn't make sense to design a 25-year system with only 19 years left on the easement. We could approach the Army Corps to see if they would be willing to extend the easement, but not sure if that would satisfy the Title V regulation because we won't be able to adjust the deeds with those easements, so we could never record the easement and we don't meet the law requirement.

James Potter said the Health Department is probably willing to work with us on the other options that are available to us. They recognize that something has to be done. We have an application into the Board of Health, we have to either withdraw without prejudice or keep the design and present it, but it does not meet the state law so they are not going to

approve it. As we keep pumping those costs keep going higher and once we reach \$50,000 we have to go out to bid. As a Board we have to figure out do we keep this a municipal operation or turn it back over to the residents and provide whatever assistance we can provide legally.

Judy Froman questioned do state laws supersede federal regulations; the answer is no. It is worthwhile to have conversation with the Army Corps, because if the septic is on federal property what is the involvement of the Board of Health. Is it a town federal agreement and does the state supersede that decision.

Atty. Troy said a system that is put in by the town on federal land is not exempt from state law. It is important to look at all available options. If you want to consider going for the option of getting an extension on the easement, someone should call Congressman Keating, who is from this district, to see if he can get federal help in getting some cooperation. The town should concurrently look into the remedy of the situation on the properties of the homeowners. This is not necessarily a town problem, this is ultimately the homeowner's responsibility and the town can work in concert. In remedying this situation you have to keep in mind as Sewer Commissioners you have a fiduciary responsibility to other members of the system.

James Potter said the matter before us is are we keeping our design in front of the Board of Health or taking it back. Judy Froman suggested keeping it with the Board of Health at least until we speak to Congressman Keating.

Stephanie Comick said according to the older resident on Savery Avenue we had our own system originally but the Corps removed the individual system and put a pipe into the canal.

Trish Lubold, 21 Savery Ave, questioned under the law can the town ask for a waiver with the state for this particular situation. James Potter said it may be in the Board of Health jurisdiction for Title V. Atty. Troy said he is not sure but it appears that a waiver is not possible, we would have to refer that back to the Board of Health. James Potter said it appears we may already be operating under a waiver because no one has the recorded easement in their deeds, so it is already as though there is a waiver. They would have to waive the easement requirement in perpetuity, which we don't have.

Trish Lubold said the two issues are to request from the Army Corps to extend the easement and to request a waiver from Board of Health.

Jared MacDonald said we want everyone to be aware what we are trying to accomplish; we want to do it by the book without overstraining the system or overstraining the property owners. Our ultimate goal is to find something that would work for everyone.

Ms. Lubold questioned if there is a water main break somewhere on the line because she doesn't understand why it has to be pumped every other day. James Potter said we had Sagamore Water District check that line and they haven't found any leaks or infiltrations. George Sala said we did

a one-week meter check, 9749 gallons was used for one week on Savery Ave. We are pumping out 9600. They did do a leak detection and there is no leak in the system.

George Slade said we have an opportunity to speak with congressman Keating. Questioned how close we are to that \$50,000 limit, and when will we hit that amount? George Sala said we are at \$16,812 first date was September 27, 2018. We should be prepared now so we don't have to scramble at the last minute.

James Potter said maybe it becomes a private system and it isn't a municipal system. If this works and we can use the same property, we have a method, but if that method doesn't work I don't see harm in these being private systems. We have to protect other users on the system.

Mary Ann Bouldry, 27 Savery Avenue, spoke about documents, letters and emails regarding the parking on Savery Ave. and walking or driving across the septic system and leaching field. Ask you to consider whether Bourne appointments elected officials have done their due diligent in regard to Savery Ave. residents from 1994 to 2018. Ms. Bouldry spoke about the documents that she brought.

James Potter said it sounds like the members want to keep the application in with the Board of Health and we will talk with Congressman Keating.

Judy Froman questioned if the Board of Health would allow us to put a temporary hold on the application. Zachary Basinski said the Board of Health withdrew the application. It wouldn't be in front of them until their meeting in December.

Atty. Troy spoke about the conversation between the Town Administrator and the Board of Health members, the Board of Health was preparing to deny the application, there are consequences if it is denied, if it is withdrawn without prejudice you can reapply.

Mary Jane Mastrangelo, Finance Committee, mentioned that she heard from several people that Savery Ave. was included in the Federal Grant for the Wastewater sewer system. That has to be researched to figure out whether or not it is included. Glenn Cannon said they researched that and can't find any documentation. James Potter said that was under a separate DEP permit and that would not cover a septic systems that was for sewer.

Mary Jane Mastrangelo said if that grant included funds for the Savery Ave. system as part of the original Federal Grant that should be research in terms of what the rate requirement are. James Potter said no one has found any information on that, we will look again, but the reason I don't think we will find any information on that is because the DEP Grant was for sewer only. The second piece on that is at Town meeting there was a warrant article to assess betterments and therefor if it had been paid by a grant there wouldn't be betterments. Those betterments were never assessed.

Ms. Lubold questioned if the residents should be calling Congressman Keating? Jared MacDonald said we will approach Congressman Keating to find out what options we have, a grant, funding, or get a longer easement.

James Potter said he wanted to emphasize to the homeowners that he didn't send a letter because this was a brainstorm; be prepared if this has to go private the lots will have to get perked to test the soils to make sure systems can go in. Mr. Potter said he would entertain an easement under the road so the private systems could work, if the Army Corps land isn't an option. The end result is we will look into the Army Corps Land, but if we can't make that work legally we may be back to private systems and end the municipal function of this system.

Brian Cleary 38 Savery Ave. - not connected, questioned if he were to be connected would it go under the road? What would happen when the road has been paved, if a system has a problem and the road has to be dug up, who would pay for that? Would like it written that the residents would not be responsible for the cost of digging up the road. Mr. Cleary questioned why we can't do town sewer. James Potter said you can do town sewer but it will be a much higher cost. If we were to do sewer we would probably do a package plan and would have to tie-in the entire neighborhood. There would be construction under the road and we would have to repave the roads, there would be a betterment for the roads and a betterment for the system.

Jared MacDonald said this is a unique situation. We are trying to come up with all the options so you don't have to bear the brunt of it.

Brian Cleary said we should be able to see three options, something to be worked out with the Army Corps, another option would be under the street, the third option would be a sewer, and to be able to see a cost breakdown of those options.

James Potter said the problem with the sewer is it would take about 10 years, we would need to go through DEP, get a permit, site for sewer, engineered and number of where the lines would go, pump station. You could/would have to do something intermediately until a sewer could be done.

**Voted** Peter Meier moved and seconded by Jared MacDonald to instruct the Town Administrator on the Board's behalf to explore at least three options for what can be done with the Savery Avenue issue and report back to the Board.

Glenn Cannon suggested to these options to explore: 1. Explore whether the Army Corps would be willing to extend the easement. 2. Explore private septic systems on individual lots, an average cost for a septic system and the town undertaking if we need to give any land. 3. Sewering system for this area now.

Judy Froman requested to add to that the timeframes that it would take to implement the different options. And a rough timeframe it would take to get these types of projects implemented.

Mary Jane Mastrangelo said the surveying under the road of the utilities would be really important to do in terms of the individual systems.

Atty. Troy said a shared system is feasible and addresses the issues of time and expense and that is a system that the town would be able to participate with the property owner. What should be looked at immediately is if there is property other than the Army Corps property that is potentially a site of a shared system including the property owners. Different properties that have bigger areas can house different components of the system. A shared system can be a series of property owners decide to resolve the problem or it could be one in which the government funds the system and then gets it back through some type of metering system or some type of assessment allocation. DEP is familiar with that type of system. The Board of Health should be part of the discussion because their role is critical.

James Potter said if we were to use the street for the system would we still need a leaching area? Zachary Basinski said you would still need a disposal area, and then explained what would be needed for individual septs.

Jared MacDonald questioned could we fit the majority of it under the streets. That may be a fourth option. I would rather see it, if we do a shared system, to not have it on the Army Corps of Engineers property. If we can fit a large portion of it under the street and/or in some of the properties front yards, I would prefer that option.

James Potter said the fourth option would be a public system on the street. The second and the fourth options are similar. The second option would be private systems but they would need the component under the street. The fourth option would be a public system under the street and would have to use private land.

**Voted:** Peter Meier modified his motion and Jared MacDonald seconded to include the four requested options. Vote: 5-0

**Voted** Peter Meier moved and seconded by Judy Froman to have the town contact our Federal Delegation to look into this, and research any past Federal Grants or possible future grants. Vote 5-0.

James Potter said if we have two good options we will send a letter, if we have a meeting and do not send a letter it will be another meeting like tonight's meeting, open conversation/workshop format.

#### **4) Adjourn**

**Voted** Peter Meier moved and seconded by Jared MacDonald to adjourn at 9:00 P.M. Vote 5-0.

Respectfully submitted – Carole Ellis, secretary.