

**BOARD OF SELECTMEN
SPECIAL MEETING WITH THE SEWER COMMISSION
TOWN OF PEMBROKE, NH
JUNE 13, 2019 at 6:30**

Present: Chairperson Tina Courtemanche, Selectman Ann Bond, Selectmen Richard Bean, and Selectmen Michael Crockwell

Staff: Town Administrator David Jodoin

Excused: Selectmen Sandy Goulet

Also Present: Paulette Malo, Sewer Commissioner Harold Thompson, Sewer Commissioner Dan Driscoll, Sewer Commissioner Jules (Andy) Pellerin, Counsel for the Sewer Commission Matt Upton

Commissioner Harold Thompson called the meeting to order at 6:32pm

I. Meeting with the Sewer Commission regarding the purchase of 4 Union Street:

The Sewer Commission's legal counsel, Matt Upton, opened the meeting describing his role in the process. Matt made an opening statement of behalf of the Sewer Commission. He stated that the Sewer Commission feels it has the first right of refusal on the building. They currently have the funds in an account that could be used for purchasing the building and they feel pretty strongly about staying in same location that sewer customers are accustomed to. The statute allows the Sewer Commission to invest in property that is necessary for the management of the sewer system. There are funds in the capital reserve account set up for the potential purchasing of buildings and there are some surplus funds that are available that can be transferred into the capital reserve account. The statute also allows the Commission to expend funds from the capital reserve account without further permission from the Selectmen or voters. After an agreement is made with the Town, there would not be a transfer of deed but a declaration that the Sewer Commission be responsible for and in control of the building. Matt clarified that by law, the Selectmen have control over the assets of the town. While every effort should be made to respect the wishes of the voters, the Selectmen have final say with a warrant article such as this one. Allowing the Commission to purchase 4 Union Street will save the rate payers money, give the Sewer Commission a stable home, get the town the money for the property that they wanted, allow the town to stop acting as landlords, and take the fixing of the wall off their hands.

David Jodoin stated that in 2006 the town was given the authority to buy and sell property in accordance RSA 41:14. He would like to know what statute governs the Sewer Department that gives them the same ability. Matt stated that the Town gave

them authority when they put into the lease that the Sewer Department has the right to first refusal and that is a binding obligation. Under RSA 41:14a the town has the authority to sell property as well as to buy it. David stated that there would be a purchase and sales agreement and what statute gives the Sewer Commission the authority to actually buy the property. Matt stated that there would be a transfer of funds but the Town would still own the property. Selectman Courtemanche stated that the towns people said no and they do not want to disregard what the towns people said. Matt stated that the voters did not want to spend the money on fixing the retaining wall and they would rather dispose of the property and they did not want the town to be landlords. David clarified that the comments were that the towns people did not want the Town to be in the commercial real estate business.

David asked if they agree or disagree that the Sewer Department is an entity of the Town. Matt stated he did agree. David stated that they are under the same Tax Id Number. Matt said he agreed. David stated that the vote and intent of the voters was that they did not want to be in the commercial real estate business. David stated that the majority of the discussion was around them being in the real estate business and not the retaining wall. Matt stated that under those guidelines the Department of Public Works is also in the real estate business. David asked what gives the Commission the authority to rent or lease the building. Matt stated that any department would have the authority as owners of the building they occupy.

David stated that in the 149 statute that governs the Sewer Department, they talk about the purchase of property as for infrastructure such as a pump house or new lines but not a building. Matt stated that the Commission needs a building to operate out of and 149 I:8 talks about the ability to spend money on the operation and management of the Sewer System. The management of the sewer system would require an office.

David discussed section 8 of the lease agreement which covers the first right of refusal. The last sentence is the party's rights and obligations under this provision are subject to any necessary approvals that may be granted or denied by any annual or special town meeting. The voters made their will and intent clear at town meeting to sell the property which would negate the first right of refusal. Matt asked if the voters were informed that the Commission wanted to purchase the property. Selectman Bean stated that nothing was brought forth. David stated that they were clear that they wanted the building sold. Matt asked if there was discussion around if the Sewer Commission purchased the building that it would reduce rates for rate payers. Selectman Courtemanche asked how it would reduce rates. Matt stated that right now the Commission pays \$8,000/year in rent. That \$155,000 that is in their accounts and earning interest of 2-3% a year equals out to between \$3-4,500/year in interest. If they buy the property, they no longer are paying that rent. Selectman Courtemanche stated they would now have to pay utilities and all the maintenance on the building. During the budget season, the Commission told the Budget Committee that that money in the account was for emergency purposes only. Matt stated that the capital reserve account includes being for buildings.

Selectman Bond stated that the building is very old and requires a lot of maintenance. How will that be saving rate-payers money. Using the money in the account that is already there, will stop the 8,000/year payment. They do not disagree that there will be additional costs but the Commissioners will handle that. Selectman Bond asked how much will be left in reserves so they do not have to go to rate-payers to fix the retaining wall. Matt stated that the new numbers that came out are less than the \$150,000 to fix the wall. David stated that there were different numbers and opinions. There are no guarantees on the costs and how long it would last.

Selectman Bond stated that residents are very concerned about their rates going up with all the additional operational costs and the maintenance costs. Matt stated they were not prepared to discuss operational costs but would be willing to draw up some projections.

Selectman Courtemanche shared concerns that if this \$155,000 is spent, there will be a lack of funds if something at a pump station should fail. Dan Driscoll stated there is money for that. Selectman Crockwell asked how much. Paulette Malo stated there is \$350,000 in accounts and almost \$500,000 in the trust funds total.

Selectman Bean commented that there was an overwhelming support at Town Meeting to sell the building. Selectman Bean was also surprised to see the amount of people who owed on their sewer bills. He believes there may be other options for space available in the town such as town hall or the water department building. Paulette stated that they need garage space.

Dan Driscoll asked where the town would put them. David stated that they can stay in the same building for the same amount of rent they currently pay. The potential buyer wants everyone to stay as is under their current terms. David stated he did speak to the town attorney and he stated that the Commissioners only have the authority that the Board of Selectmen have if the Commission had not been formed. A Board of Selectmen has no inherent authority to purchase property unless they have 41:14 approved which has been done but there has been no authority granted for the sewer department. In addition, a specific appropriation would have to be approved by town meeting vote to expend the money for this purchase. Matt stated that he disagrees with the legal opinion because the case law is very clear on the money in capital reserves. The Commissioners have the right to expend it as they see fit. David does agree with this, however, the purpose on the creation of the trust fund and the buildings was likely meant for pump houses and infrastructures and not to purchase a building and rent it.

Gerry Fleury, Trustee of Trust Funds, stated there is \$541,000 in the capital reserves but it is split between a number of different accounts. Gerry does not interpret any of the reserves to be legally expended for the purchase of commercial real estate. Gerry also expressed concerns that any large expenses that may have been spread across the entire town of tax payers will now be concentrated to the rate-payers. Matt

stated that in 2013 when the capital reserve was established it was titled sewer equipment and buildings.

Chet Martel, 74 Broadway, understands that the intent of the vote at town meeting was also to get the building back on the tax rolls. Matt stated there will be two public hearings and they can ask voters what they want at those meetings. The question at town meeting was to get rid of the building or keep it but the question about the Sewer Commission owning it was never asked. David stated that the question was asked if the Town wanted to retain the building. The Sewer Commission is under the Town tax id number and is therefore part of the town and the will of the voters was not having that building owned by the Town anymore.

Selectman Bond asked Gerry Fleury if the Sewer Commission comes to the Trustee of Trust Funds to request the money, is it up to the trustees to say yes. Gerry would have to go back to the agreement and if he did see a reasonable request, they would grant the request. Otherwise, he would refer it to Department of Justice Office of the Attorney General Charitable Trust Division for a ruling. Matt reiterated that the 149 I:8 says they can spend money for the management of the sewer system. Selectman Bond asked if they ruled against it, would they be able to come up with the \$150,000. Matt stated it would have to come from those funds.

Gerry Fleury asked if the sewer commission is confident they could undertake the management of the commercial real estate and expressed concerns that if tenants move out and the building is not the full the rate-payers have to make up the difference in the budget.

David asked if the lease is a valid legal binding document since leases that long are typically not allowed. Matt does find it a valid legal document and he regularly does leases that long.

Harold Thompson stated that the money spent on their rent would cover the costs of operating that building with no tenants. David disagreed that \$8,000/year would cover the costs of the building. Paulette stated that with the building fully occupied it costs \$13,000/year and if the building was not fully occupied the costs would come down.

Selectman Bond asked how long they have been at 4 Union Street. The answer is since January 2006 or 13 years. Paulette added that they were at the library building on Pembroke Street for two years, the highway department four years before that, and town hall for seven years.

Selectman Courtemanche asked if they have something in place for the management of the building. Harold stated that they need to acquire the building first before entering into contracts with anyone. Harold stated there isn't room around town for a permanent building and it would cost around \$300,000. Chet added there isn't any room at the Water Works building. Selectman Bond stated that they have until 2026

to figure something out. Matt stated that if the other person buys the building, they are under no legal obligation to keep a lease until 2026. Paulette shared concerns that if the Town is not willing to hold up their end of the current lease, they cannot count on a new person buying the building and upholding their word to honor the lease. David stated that if it is a part of the purchase and sales agreement it will bind them to the lease.

Matt reiterated that the option of the Sewer Commission buying the building was never brought to the voters so it isn't necessarily the will of the voters not to sell to the Commission. Selectman Bond stated that the money is coming from a town entity and the voters will see money going from one town entity to another town entity.

Matt asked if the intention was never to sell the building to the Sewer Commission, why was the language put in the lease for right of first refusal. Selectman Courtemanche asked how old the lease was. Paulette stated the original was 2005 but the renewal was in 2016.

Selectman Courtemanche asked if the rate payers have the ability to tell the Commission not to buy the building. Dan Driscoll stated that they have the same voice that they do with the Selectmen. They can come to open meeting and make their will known. Paulette stated that meetings are the third Monday of the month at 7:00pm and all agendas and approved minutes are on the Town's website. There are two public hearings scheduled for June 17th and July 1st.

Selectman Bond asked if the lease agreements in 2005 and 2016 are the same. Paulette stated that the language on the payment is different due to when the siding was done on the building, the Commission spent \$7,000 to retrofit a second garage door. Paulette added that had they known the building would be sold, they would not have spent that money.

Gerry Fleury stated that there is a possibility to add language to the purchase and sales agreement with the buyer that guarantees the lease with the Sewer Department until 2026. Matt stated that in the purchase and sales agreement there would have to be language that the lease agreement would survive all further sales of the building.

II. Non-Public Session:

Motion by Commissioner Dan Driscoll to enter non-public session in accordance with RSA 91-A:3 II (E) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the public body or any subdivision thereof, or against any member thereof because of his or her membership in such public body, until the claim of litigation has been fully adjudicated or otherwise settled.

at 7:22 PM. Seconded by Commissioner Andy Pellerin.

Roll Call Vote:

Commissioner Pellerin

Commissioner Driscoll

Commissioner Thompson

Selectman Courtemanche

Selectman Crockwell

Selectman Bond

Selectman Bean

The Board came out of non-public session at 8:30 PM

III. Adjourn:

Justine M. Courtemanche, Chairman

For more detailed information, the meetings are now taped and can be seen on www.townhallstreams.com click on Pembroke NH and look for the day of the meeting under the month.