

Meeting Minutes
Charlton Water and Sewer Commission
Date: August 4, 2014

Location: Selectmen's Meeting Room, Town Hall

Attendees:

<u>Members</u>	<u>Present</u>	<u>Members</u>	<u>Present</u>
Paul Gagner	Y	Robert Lemansky	Y
Joseph Spiewak	Y	Shabana S. Gagner	Y
Alex J. MacKenzie	N		

Mr. Gagner: I'd like to welcome you to another exciting meeting of the Water & Sewer Commission. Today is August 4, 2014 a little after 6:30 p.m. and all are present with the exception of Mr. MacKenzie.

Mr. Spiewak: I make a motion we approve the following warrants: National Grid: \$7,164.38; Ricoh USA Inc.: \$141.30; Town of Charlton: \$22.88; and AT&T: \$44.13; for a total: \$7,372.69; E.J. Prescott, Inc.: purchase of meters: \$1,666.00; Lefort Electric Inc.: pump/controls changeout: \$520.00; and residential permit: \$40.00 for 100 Osgood Road for a total of \$560.00; Woodard & Curran: pass through costs for the period ending 6/27/14: \$1,315.93; and MTA samplings for the period ending 6/27/14: \$506.00; total: \$1,821.93; and elderly abatement warrants: Title V: \$241.50; Meters: \$208.00; seconded by Ms. Gagner. Vote: Unanimous. Mr. Spiewak: I make a motion to approve the minutes of July 21, 2014 as printed; seconded by Mr. Lemansky. Mr. Gagner: Any further discussion? There was none. Mr. Gagner: All in favor? Vote: Unanimous. Mr. Spiewak: I make a motion to approve the minutes of July 21, 2014 as printed; seconded by Mr. Lemansky. Vote: Unanimous.

6:37 p.m. Steve presented his office report. Honey Farms – Charlton City water connections started today. Water privilege fees: Route 169 west there are a number of properties asking to have water. I have talked with Ms. Craver and asked how we proceed relative to privilege fees and it was suggested that a system of methods must be voted on and decided. Mr. Gagner: Just to clarify: This was a high pressure line and it isn't any more. Why did our privilege fee differ? Steve: These have not been charged before. Mr. Spiewak: We established that we would use privilege fees for water. We did not set up a schedule of amounts, so there's no methodology to do it at this point. We would probably do it the same way we assessed the betterments, not quite the edu method. Right now there are only two of us on the board who are part of the committee who can vote on this – myself and Alex; or we could have the whole board discuss the methodology. Mr. Gagner to Mr. Lemansky: I don't feel comfortable voting on privilege fees since we abstained from them in the past. Mr. Lemansky: We were exed out of the process in the beginning because we both had conflicts with properties in those areas that were going to be bettered. The subcommittee determined the amount of dollars and cents that would be bettered to each property and they had to consider which areas were going to be bettered. Now that that has been done, there is no more conflict because the properties that were questionable have since been dealt with; and those numbers have been determined. We can't change the numbers on those properties. I don't believe we have a conflict any longer. That's already been done. Mr. Gagner: Why don't we use the same method as was used from the betterments on Route 169 and Route 20 as well? Mr. Lemansky: Privilege fees come after the betterments have already been assessed. It's those properties that came forward; or during the period of time they did not realize they could be charged a betterment; and they have been overlooked. Now because the property is receiving an improvement, the privilege fee is to pay for that improvement; and it's collected when the property chooses to connect to the system, whether it is sewer or water. We have to make a vote to accept or not accept the

privilege fee amount to use for the betterment. What makes this area west of 169 on Route 20 different from lower Stafford Street? I don't see how the infrastructure we put in should affect those Southbridge properties. Because of the connection we did on S. Sturbridge Road, it lowered the pressure of the waterline west of 169 enabling those properties that weren't able to hook up, to hook up. Because of what we did, all the water going west of 169 is flowing through our infrastructure. That's what allows us to say that a privilege fee is due. Mr. Gagner: West of 169 – I don't know Mr. Spiewak if you or Mr. MacKenzie have the exact formula to calculate a privilege fee. We could call the Abrahams Group to help us with this—I think that's the way it should be done. Mr. Spiewak: I would like to put the whole package together and then have the commissioners look at it and then maybe take a vote; and determine what the privilege fees would be. Mr. Lemansky: Doesn't this section fall under the Special Legislation? Mr. Spiewak: The Special Legislation was only for betterments, not for privilege fees. It is very specific in the law which section in the law it affected. Mr. Lemansky: Put your package together then. When you read the law, betterments and privilege fees are synonymous.

Steve continued: Completion of work at S. Sturbridge Road – a letter is being drafted that will be presented to us that would allow us to release the retainage. I took pictures. I think they should supplement the grass seed there. Mr. Gagner: No complaints from the homeowner? Steve: No. Mr. Lemansky: What did our engineer say relative to the request for the completion? Steve: With the bullet punchlist, our engineer is going to recommend paying it. The grass seed is on the punch list. I've had multiple conversations with Honey Farms about the connection status. There are 6 of the 8 that are going forward, and two are being held up with paperwork. There will be some more connections on Gillespie Road. They know that they have to be out of the school lanes by the 25th of August which is the first day of school. Follow up calls have been made regarding humidity in the plant. William F. Lynch returned my call. They came to the plant with two people and plan to return with something to offer to us. There are two other people we have been talking to who had questions which have been responded to. We are trying to schedule a time and a place with the Conservation group, the GPS and Jody to plot out the manholes so that we can get that on the CMRPC layer. Mr. Lemansky: We had made a payment last budget cycle for this; and it didn't get done, so we are trying to get it done in this budget cycle. We have to make sure this gets done. Mr. Spiewak: Is the combined water system also on this – is there any water system that's on Vadar? Steve: They have portions of sewer and water on there that are not immediately available to us. I spoke with McClure Engineering, and they have two layers there and they are working with CMRPC. Mr. Lemansky: I sat with Matt Franz three years ago. The entire Charlton water system is on a layer, and that layer is available through one of the three programs that we have in this town: one is with Conservation, one is with the Building Inspector; and we should ask for it. I don't know if that layer was ever approved. We ought to be able to put this on our GIS system. Steve continued: Looking for guidance. Thursday night around 7:30 p.m., I was traveling on Route 20 on Thursday night – intersection of Route 31 and Route 20. I saw yellow lights. There was a car off to the side – on the north side of Route 20 just west of City Power, there was a contractor working in the road. They were searching for a lost mole that was under the road. They were working without sufficient lighting; were working outside their permit and working after dark. There was one car – police detail. When I got to my residence, I did call the engineering company involved. They had no knowledge of it. In a future situation, what actions do you want me to take? Mr. Gagner: My suggestion is to drop it. It is after the fact. They were working there in the past. Mr. Lemansky: It was a subcontractor of the contractor who took out the permit. The sub-contractor had some lost equipment buried in the ground; and late that afternoon he started searching for it; but around 7:30 at

night when Steve saw him, he was still searching for equipment he lost. Did he have a permit? Steve asked the engineer. No permit appeared to have been drawn. Around 9:30 p.m. we reached the contractor and he said the person doing the work knew the hours were between 7 a.m. and 3 p.m.. He was a sub-contractor. Mr. Gagner: We could either impose a fine or forget about it. Maybe just a letter sent to them and highway – they should not have been out there at night on Route 20; and they operated outside the scope of their work. If it happens again, we will have to levy a fine. I don't want to come up with a fine right now. Steve: There was a Charlton cruiser there. Mr. Spiewak: How would they get a detail without a permit? Steve: To the best of my knowledge, if the contractor calls and asks for a police detail, they get a detail.

Mr. Gagner: Our next appointment is 7 p.m. and they are here. Please identify yourself. I am Pierre Theriault and this is my wife Carol. We appreciate your time and consideration. Mr. Gagner: Last time you were here, you had a two family home that you converted to a one family home. You have taken out the 20 year payment plan. It has been 10 years and since you now have a one family home, you were asking for an abatement. Mr. Theriault: We have been in Charlton for 17 years. I think some consideration should be given. Mrs. Theriault: I was at the town hall a long time ago and told them what I was doing. Mr. Gagner: It is a problem and I agree with you, and that's why I asked you to come back. We sent an inquiry out to the lawyers. The reason we can't lower your bill is because no precedent has been set. We can't lower the fee; but we can raise it. The problem we are running into here is betterments are assessed within six months of any system, be it water or sewer, available to you. The betterments are then registered with the Department of Revenue; and it's out of our hands; but you do have the right within the first six months to an abatement or a hearing. After six months, it is the same fee but it is called a privilege fee. From what I have seen and read, the privilege fees come under the jurisdiction of this board. As far as I'm concerned, anything after six months – I think there should always be the availability for someone to come forth and meet with a board to discuss the situation and see if anything can be done about this. I couldn't find a law. Mr. Theriault: Can we set a precedent? Mr. Gagner: That's what I am hoping to do tonight. We have a lot of cards stacked against us. Once you have gotten this, you can't go back to a two-family home because if you did, the privilege fee in the long run most likely would cost you more money than what you saved. Mr. Spiewak to Mr. Gagner: Can I ask for a point of order Mr. Chair--are you speaking of your opinion or the opinion of the board? Mr. Gagner: I am speaking my opinion, not the opinion of the board. There will be room for discussion, and I'd like to hear the opposing point of view. Mr. Gagner to Mr. Theriault: Did you take out a building permit to do this? Mr. Theriault: Yes. Mr. Gagner: This is a change of use from a two family home to a one family home; and you should not be paying the rate of a two family home; and this is not a restaurant. The answer was no. Massachusetts General Law Chapter 83, Section 16 states that all rates must be fair and equitable. At this point in time, I don't think yours is fair or equitable. The same law, Section 16E does give the right to an appeal, but only within the first 6 months. Mr. Theriault: We are cornering Old Worcester Road and Main Street. At one time it was a double entity. We want consideration for the fact of the money we have paid and the money we are going to pay as a one family home. We're not young. We're 56 years old. We've been here 17 years. We work hard and we're good people; and what's fair is fair. Mr. Gagner: I agree with that. Fair is fair. In this department, there is usually no going back. In this case, you took it out for 20 years, so you have had the option of changing your mind. I'm sure you have a little bit of hardship since you don't have a tenant now. Mr. Gagner cited an example. A couple owns a car wash; the sewer comes along and a high betterment fee is assessed; a year later the man dies and the wife doesn't know

how to run a car wash. Some people down the street open up a car wash with all updated equipment, so she lets the building crumble into decay or sells it as a vacant lot—is it fair that she should pay 19 more years' worth of the high price that was assessed as a car wash? I think not. There has to be a process for people to appeal, go before a board, and get a decision. Mr. Theriault: We're trying to set a precedent. We don't want anything more than what we deserve. Mr. Gagner: In the interest of fairness and equality, I'd urge the commission to back me on this. I'll entertain a motion to give the Theriaults the abatement they sought in the form of a negative privilege fee, the dollar amount not to exceed that which is still owed. I'm looking for a second. Ms. Gagner: What's the timeframe for the abatement? Mr. Gagner: From this point forward, it doesn't go back. Any money already paid is down the drain. Mr. Lemansky: Steve, has there been a formal application for an abatement? Steve: No. Mr. Lemansky: We are here to be open and service the public whenever we can. We have an obligation to do our job and follow the statute. In Chapter 83 they talk about when you do the betterment process and are determining the property's use, you have to consider the zoning. If you are in a zone with the existing house based on square footage – based on edu's 10 or 11 yrs ago, that home was being used as a two-family and the zoning for a two family was allowed. The betterment goes with the property, not the people; and people have six months from receipt of the betterment to file an abatement. The statute says that you cannot come back and get money. Personally for me – everything is in place for that property to where it was properly bettered at the time; and now that you want to pull back, the next owner could change it to a two family. Steve: The zoning right now says it can be a one family or a two family. Mr. Lemansky: The statute is set up such that you have to deal with the Assessors, and documentation has to be recorded at the Registry of Deeds. I don't know if we have enough evidence to do anything. The problem is self-created. Mr. Theriault: I think if people saw the property – the house was built in 1844. We're not selling it. We've done a lot to the property. If you came to see the property, maybe you would have more insight. Mr. Spiewak: I empathize with your situation. The betterment is based on the use at the time. There is a six-month period to appeal. I don't think there is any debate about the fact that it was a two-family when the betterment was assessed. The option of paying it across 20 years is convenience to the homeowner. It is like taking a mortgage. There is no provision within the law for us to make any adjustment to an abatement at this point. We have an option if we wanted to appeal it. I believe our administrator Steve sent a fax to the state, and they advised they saw no reason for an extenuating circumstance to grant an abatement. Ms. Gagner: Considering your mortgage, people refinance all the time...you are refinancing your bill in a way. Mr. Spiewak: If you refinance your home, they don't cut principal off because you are a nice person. My point is the law does not allow this board to take action on that betterment. The law is clear. We have no option. There is no precedent that I could see for us to do that. The privilege fee: That is an option if our Rules and Regulations allowed for negative privilege fees which I couldn't find. It is a case of saying that our current Rules and Regulations do not allow for it. I'd also like to check with the Assessors to see if it's even possible to issue a negative privilege fee. I'm guessing that it's not. When this was assessed as a two family, how long was it a two-family? Mr. Theriault: We had a tenant for almost 8 years. Before that the Carpentier family lived there. Mr. Spiewak: Were you the owners when the betterment was assessed? Mr. Theriault: Yes we were. Mr. Lemansky: I'd volunteer my time to make the apartment rentable to grade. Mr. Theriault: It is rentable. The front part of our property is owned by the town. We have maintained it for 17 years. I don't know if that would be part of the consideration. I'd like people to know that. Mr. Lemansky: From Mr. Spiewak's point, there is nothing in the statute that allows us to go backwards. For example, when you receive your tax bill in February, you have 30 days to appeal that tax bill. If you go there on the 31st day to file an abatement, you miss the boat. To the Theriaults: You would have had to come to the board within six months of the

betterment being assessed. Mr. Theriault: We are asking for some consideration. We also understand that this will not be an easy process. We've lived in Charlton for 17 years. We understand there are going to be some issues and problems. That's why we are asking for consideration. I don't have a knowledge of your procedures. That's why we are coming to you. Mr. Gagner: I joined this Board 8 years ago because there were such inequities in town; and I do what I can to keep things fair for everybody; and now I am having a failed effort on your behalf by not getting a motion yet. Ms. Gagner: For the sole reason that this is a one bedroom, **I make a motion to approve the abatement to match their use with their bill.** Mr. Lemansky: **I will second that for more discussion.** Mr. Lemansky: The request here is to take their two family use and convert it to a one family use. Mr. Theriault: I just think maybe you would have more to say in our stead if you saw the property. It is not much of an apartment in the back. Mr. Lemansky: That could be an apartment. The deciding factor for me is if that property was zoned a single family, and a two family use could not exist there, I would be on the band wagon to change it. We have an opinion from our Code Enforcement Officer who says that it is a two-family use. You go to the Building Inspector and tell him what you are planning to do; and he has to sign it off. We're talking about the property today, tomorrow or in the future. It was a two-family home when the betterments came along. Mr. Theriault. The fact that we are on a corner and now a one-family, why are we paying for two things? Mr. Gagner: There is one bathroom in that house. Mr. Theriault: Yes. We are trying to keep the house alive and get by ourselves. Mr. Lemansky: We have a responsibility to uphold the law. If the commission votes this in, the Assessors will ask how do we do this tradeoff, and that this betterment is not going to be paid. The statute allows for items that were unplanned for and unintended – that's why they have the privilege fee. I'm happy where I live to have the option to tie into sewer if I wished, but I have a new septic system that is only two years old. The rules have to be followed. The current zoning on your property is one of two-family use. The property was properly bettered. Mr. Theriault: We purchased the home from Carpentier as a one family home. We just want consideration. What you people have to deal with is the written word. We know you guys put a lot of time in. Mr. Lemansky: I'd like to do a little more research on this. I want to see the field card. It may not have passed habitability standards as an apartment. You said you have owned the property for 17 years. Mr. Spiewak: For 8 years you paid the betterment and it was considered a two family with no objection; then you change the use, and now you'd like your money back. Mr. Theriault: We don't want our money back, just forgiveness. Mr. Spiewak: I did a quick calculation. I'm not supportive of changing anything. For 8 years you paid the betterment for a two-family and no objection (\$6,560); and then for the next 12 years you changed the use to a one family; and you want your money back. You are asking for us to forgive the rest of it. I did a quick calculation: For 10 years, \$16,400. If you want to abate that to a one family, you would still owe \$12,300. (a difference of \$4,100) Mr. Theriault: We have been paying \$8,000. You can't pretend that 10 years of a family did not exist. Now to abate that to a one family. Mr. Lemansky: I remember filing for abatements and spending hours reading the statute. The group tried to do the best we could. Before I vote on this, I want to be fair but I want to see the field card from the Assessors. **Mr. Gagner: We have a motion but no second.** Mr. Lemansky: **I make a motion to continue this meeting at our next regular meeting in two weeks at the sewer plant; and Mr. Spiewak--and that we ask our administrator to contact the Assessors' Office to see if they could, in fact, handle a negative privilege fee; seconded by Mr. Spiewak. Vote: Unanimous.**

Mr. Gagner: We agreed on the Moratorium so we are just signing that. It has been extended only for those who use 10,000 gallons or more who would have to come before the commission. **Mr. Lemansky: I make a motion that we adjourn with our next meeting being on August 18, 2014 at 6:30 p.m. at the sewer treatment plant; seconded by Mr. Spiewak. Vote: Unanimous.**

Meeting adjourned at 7:45 p.m.



Paul Gagner Date

8/18/14

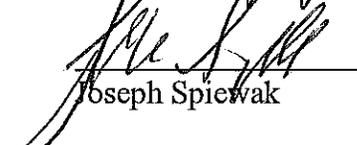
Date



Robert Lemansky Date

8/18/14

Date



Joseph Spiewak Date

8/16/14

Date

Shabana S. Gagner Date

Alex J. MacKenzie Date