



MINUTES
Board of Commissioners Monthly Workshop
Monday, April 26, 2010 – 7:00 PM
Town Barn

PRESENT: Mayor Tom Stevens, Commissioners Frances Dancy, Mike Gering, L. Eric Hallman, Evelyn Lloyd, and Brian Lowen.

WATER/SEWER ADVISORY COMMITTEE MEMBERS PRESENT: Joe Phelps, Frank Cohen, and Tony Kubisz.

STAFF PRESENT: Town Manager Eric Peterson, Assistant Town Manager/Public Works Director Nicole Ard, Town Clerk/Director of Administration and Human Resources Donna Armbrister, Town Engineer/Utilities Director Kenny Keel, and Finance Director Greg Siler.

1. Open the Workshop

[7:03:01 PM](#) Mayor Stevens called the Workshop to order. He did not read the Public Charge but noted it would be followed.

2. Agenda Changes & Agenda Approval

[7:03:08 PM](#) No changes were noted.

Upon a motion by Commissioner Lowen, seconded by Commissioner Dancy, the Board moved to approve the Agenda as submitted by a vote of 5-0. The motion was declared passed.

3. Committee Updates and Reports

[7:03:39 PM](#) Commissioner Dancy asked if others would be attending the TJCOG 50th Anniversary Forum on May 20. She said the goal was to have at least 2 representatives from each jurisdiction, noting she needed a commitment soon.

Several members indicated their schedules would not allow participation, and Commissioner Dancy asked that anyone able to attend to contact the Town Clerk.

4. Joint Meeting With Water & Sewer Advisory Committee (WSAC)

[7:05:18 PM](#) Mayor Stevens opened the joint meeting with the WSAC, and turned the meeting over to Joe Phelps, WSAC Chair.

- **Review Status of Wetlands Permit Non-Compliance for West Fork Eno Reservoir and Resulting Unexpected Future Expenditures (Presentation by Town Engineer Kenny Keel)**

[7:06:36 PM](#) Town Engineer Kenny Keel stated a large budget item for the upcoming budget was related to the reservoir, noting that there was additional work that would need to be done to meet the minimum requirements to comply with the Corps of Engineers Wetland permit. He said the estimate was that it could require up to \$900,000 to perform the necessary work to comply, including construction and design, planting of various wetland plants, reconfiguration of 3 or their 4 water quality ponds, and construction of ephemeral pools.

Mr. Keel stated they had about \$300,000 remaining in the project construction budget for that work, so an additional \$600,000 was needed. He stated the packet of materials included a timeline and description and the various events that had taken place over the last 15 years that brought them to this point, including the projected timeline to complete the necessary work, the monitoring period, and obtaining the actual permit in 2018.

[7:10:20 PM](#) Commissioner Gering asked if they knew when the Town might be assessed for fines or what those fines might be. Mr. Keel said at this point the information he had been given had been sketchy, noting the Corps of Engineers had been coy in committing to anything. He said his best information was that the Corps wanted the Town to get into compliance and then they would determine what fines might be forthcoming.

Commissioner Gering said it appeared that they could have anticipated much of this, including the additional requirement for funds to address mitigation, and did not know how they might provide financing for that \$600,000 estimate. He said it appeared they might be springing a surprise on their water customers with required rate increases to deal with that, noting that unfortunately they could likely have mitigated some of that had they known about it sooner. Mr. Keel said the plan now was a 5-year loan for that amount so it would be spread out somewhat. He said they were looking at another project that could potentially be included in that loan to save some money.

[7:12:00 PM](#) Town Manager Eric Peterson said they had all been in shock when they had learned what the cost would be, and he would be proposing to use Capital Reserve fees that came from Capital Facility fees. He said Mr. Keel had originally proposed to take the \$600,000 out of Capital Reserve, which they could do, but they were also going to take another \$200,000 for the Mayo Street/Orange Grove Road pump station. But, Mr. Peterson said, he had not wanted to lose \$900,000 from their Capital Reserve fund when loans were cheap because they would lose a lot of flexibility to respond to other issues, and the 5-year installment loan would prevent that.

Mr. Peterson said another point was that they had not realized that the water quality ponds were not in compliance, so that had been a surprise and had not been on their radar.

[7:14:11 PM](#) Commissioner Lloyd asked Mr. Keel to provide brief information on all that would be entailed in bringing the Town into compliance, noting she believed there were other

issues at play. Mr. Keel stated December 1995 was when they had actually applied for the Wetlands permit for the reservoir, and such permits normally took some time and this one was no exception, taking about 3 years to actually get the permit. He said the following year after the initial application there had been revisions and resubmittals. Mr. Keel said construction on the reservoir had begun in May of 1998, before the Wetlands permit was received, and because they had already taken bids they had had to limit what the contractor could do so that they could move forward. He said the Town Engineer at that time had left the Town in October 1998 when they had received the permit, and he had started his work with the Town in January of 1999.

[7:16:07 PM](#) Mr. Keel stated the original language in the permit called for a deadline of March, 2000 for all the wetlands mitigation work, but they had not finished with the overall construction at that point although they were close. He said he had been under the impression at that time that the consultant the Town had hired from the Wooten Company, who was overseeing the project, was moving forward with the wetlands work.

Mr. Cohen asked what exactly the consultant's responsibility was as spelled out under the contract in regards to the wetlands. Mr. Keel said they were to complete the project according to the permits and make sure everything was done properly. He said they had the ponds constructed but apparently the inspection process was not what it should have been to make sure the ponds qualified as wetlands and were built in a way that would be satisfactory to the Corps of Engineers. Mr. Cohen said in other words, Wooten had done what it thought was its job but the Corps had not accepted that. Mr. Keel said he could not say they had done what they thought was their job or not, but thought they likely did. He said he knew that Wooten had experienced a few staffing changes over that same course of time so that may have been a factor. Mr. Keel said from his perspective and what might be the Town's perspective Wooten had been hired to oversee the entire project and make sure it had been done according to the requirements in the permit.

[7:18:14 PM](#) Mr. Cohen asked had the Town Attorney looked at the contract to determine what Wooten's obligation was. Mr. Keel said he was sure he had when the contract was first developed. Mr. Cohen said if the responsibility was Wooten's and they had been paid to do a particular job but they had not done what had been spelled out in the contract, then it would seem that the cost needed to come out of Wooten's pocket and not the Town's.

Mr. Kubisz asked was there any clause in the contract that penalized Wooten for failure to meet deadlines or to fulfill any of its responsibilities or meet requirements.

Mr. Cohen said if there were fines being assessed by the Corps of Engineers or any other agencies then those should be passed along to the entity responsible for those fines. He said what happened happened, but to take \$900,000 out of the Town's funds when Wooten had been contracted and paid to perform a particular job would indicate that the Town Attorney should take a close look at the contract and determine if Wooten had any liability or responsibility. Mr. Keel said he did not know if any of that might fall back to the contractor actually hired to do the work as well.

[7:19:43 PM](#) Mr. Cohen said another question was if Wooten was still a solvent company, and if the Town went after them for the \$900,000 would that cause Wooten to file for bankruptcy. Mr. Keel said he did not believe that would cause a filing for bankruptcy. Mr. Cohen said it appeared to come down to what Wooten's contractual obligation might be, and that was unknown. Mr. Keel agreed that was correct, and he did not know how strong the language in the contract might be and whether it would be possible to pursue that course.

[7:20:16 PM](#) Commissioner Dancy asked had Mr. Keel spoken to anyone about this. Mr. Keel said only briefly, noting he had had such a hard time with them towards the end of the project that he had not wanted to deal with them to this point. He said he had been dealing with a consultant that had more of an environmental focus related to wetlands work, noting that Wooten was a general engineering firm that did all levels of engineering including wetlands work. Mr. Keel said he had been dealing with the environmental consultant to get through the process with the Corps of Engineers, and to get some leniency so that the wetlands that were created inadvertently through putting the lake where it was would be counted towards the Town's requirements since they were not in existence prior to building the reservoir. But, he said, the Corps would not even consider that.

[7:21:48 PM](#) Mr. Cohen asked if the Corps were to do that would that bring the Town into compliance. Mr. Keel said they had not surveyed the entire perimeter of the reservoir to identify those wetlands, but had done some GIS modeling of the area around it and then had taken a small section as a pilot area to make sure that what they were seeing from their GIS model matched what was actually on the ground. He said they had then calibrated the model to match what they were finding on the ground so that they could say that there would be so many acres around the perimeter. Mr. Keel said if the Corps had allowed them to go with that, then they would have actually put feet to the ground and gone around the entire perimeter of the reservoir and actually delineate all of them to put a finite number to it. He said it was a positive to them that they would have the amount of wetlands they would need if the Corps allowed that.

Mr. Cohen asked what the Corps reasoning was for not allowing that. Mr. Keel said basically the reasoning was that every lake project in the future would want to do the same if the Corps allowed it even once, in that it would encourage other projects to not do the wetlands work on their permit and just wait and see what nature did to create natural wetlands.

Mr. Kubisz said he understood that reasoning, because there was no way to get the wetlands to follow the rules. Mr. Keel said the outcome was that you would likely have more wetlands than were required by the permit, but the Corps would not accept that reasoning.

[7:23:54 PM](#) Mr. Phelps asked if the year that the second phase had to be completed was 2018. Mr. Keel replied that was correct, noting it had to be completed by December 31, 2018, which was when the 20-year permit expired. He said they had only been given such an extended contract in the first place because it was a two phase project.

Mr. Phelps asked what the "ballpark" interest figure was that the Town could acquire a loan for. Mr. Peterson responded between 2.65% and 3.5%. He said in late 1997 when he had come to the

Town the bond referendum had been passed in 1993 for \$5.8 million, and just a few months later the bids had come in at \$8.8 million. Mr. Peterson said they had had to scramble and convince the LGC that they could go forward with the bond sale, which they had done. He said they sold the bonds and then had discovered they were still short, and were forced to borrow \$3 million and to completely empty all of their Capital Reserve funds and use cash. Mr. Peterson said the project had gone from \$5.8 million to the current estimated cost of \$11 million, so the cost of the project had been underestimated by about \$5 million.

[7:26:00 PM](#) Mr. Keel said once construction was over the Town had been sued by 20 of the 30 property owners and the land costs skyrocketed compared to the original estimates.

Mr. Phelps asked in paying such a loan back, would they be forced to increase water rates or could it come from reserves and the Capital Facility fees. Mr. Peterson said the short answer was there would be no immediate impact on rates because it would come from Capital Reserves, and it was legally permissible to use Capital Facility fees for service expansion, which was what had been done with the reservoir and this was basically a part of the reservoir project. He said there would likely be no rate impact for about 5 years, and the only time customers would experience an impact was when that \$600,000 was used years down the road.

[7:27:08 PM](#) Commissioner Hallman asked could they finance the entire \$900,000 using the \$300,000 remaining in the project budget to offset that. Mr. Peterson responded they could.

Mayor Stevens said he believed they needed to determine what kind of financing they could obtain and at the same time to do some due diligence to see if there were pathways to follow in terms of the contract responsibilities or bonding, and where they stood legally.

Mr. Cohen said it was unclear to him that the Town was actually responsible for that \$600,000. Mr. Peterson said they would have to get together with both Wooten and the contractor, but the Town had culpability in this as well. But, he said, if they could “share the pain” with the Town then it would save the Town some money, so he believed they needed to get the Town Attorney to look over the contract and discuss it with Wooten and the contractor.

[7:28:21 PM](#) Mr. Keel said Wooten and the contractor would have insurance for just this type of thing, and they may choose to settle for some amount that could be determined.

Mr. Cohen agreed that was a possibility, noting that they had \$300,000 available so if they could get, for instance, 50% of the additional funds needed, the amount the Town needed to bring the project into compliance would be greatly offset.

Finance Director Greg Siler commented he believed the Town should prepare for the worst case scenario.

Mr. Cohen agreed, but added they should not submit to that unless they had no other option. He said as far as any funds from Wooten, he believed they should determine what Wooten had already been paid and whether that money should have been spent to bring the project into

compliance, which he assumed was what they were hired to do. Mr. Cohen said it was not like Wooten had donated their services; they had been paid for particular services as spelled out in the contract. He said it Wooten was paid for something that had not been done, then that had caused the Town a greater expense and they should share in the cost to address that.

[7:29:24 PM](#) Mr. Keel said they could pursue that option, but regardless they would still need to move forward with the project as quickly as possible because they needed to be able to show the Corps of Engineers that the Town would bring the project into compliance as the Wetlands permit required.

Mr. Cohen said he noticed in the timeline that the person with the Corps who had rejected the idea of using the existing wetlands had said that the Town could appeal that decision. He said that was a great stalling tactic and believed they should investigate doing that and taking it further by saying there was no reason why the Town's proposal should be rejected. Mr. Cohen said the "slippery slope" argument used by the Corps was a catchall that really held no water, so he believed they should keep appealing and stall for as long as possible until they were forced to spend that money from the budget. Mr. Keel said he could check on that, but it appeared that the process to go to the next level could potentially end up in a revocation of the permit if they failed to get the necessary approval.

[7:31:14 PM](#) Mr. Cohen asked what exactly the permit was permitting them to do. Mr. Keel responded to fill in existing wetlands and replacing them with wetlands elsewhere. He said of course the wetlands had already been filled in with the construction of the reservoir. Mr. Cohen asked what the ramifications were of either losing the permit or voluntarily not fulfilling the permit. Mr. Keel said it would likely guarantee they would be sued by the Corps of Engineers and the EPA, and the Town would not win.

[7:31:54 PM](#) Commissioner Lowen asked was there anything that could be done now to address the financing part of this, noting that obviously the Corps of Engineers was interested in having the issue settled. He wondered if it would be worthwhile to have the Mayor contact their representatives on the federal level to explain the predicament the Town was in and explore what kinds of negotiations might be available. Commissioner Lowen said all across the country communities and states were struggling financially, and the Town was not trying to hurt anyone but was only trying to make them aware of the significant situation the Town was facing. He said he would like to have all avenues explored.

Mr. Cohen agreed, noting something like this could bankrupt the Town.

[7:32:43 PM](#) Mr. Phelps said the Town could arrange to borrow the necessary funds, but asked if they found they did not need all of it would they be obligated to accept the full amount of the loan. Mr. Peterson replied that if they borrowed \$900,000 but only used \$500,000 he believed they could return the unused portion but would still be obligated to pay the same amount on the front end, in other words returning the unused portion would not decrease the payment amount so you would experience no immediate relief up front.

Mr. Siler agreed that they could take the extra funds and make a payment towards the principal, but it would not change the monthly payments that would have to be made.

Mr. Phelps asked would there be any prepayment penalties. Mr. Siler said in most cases there were such penalties assessed, but that was generally 1%.

[7:34:00 PM](#) Mr. Peterson said they would only be borrowing the money for 5 years so they would likely not want to pay it off early. He said the reason for doing it over 5 years was they would not have to go to the LGC for approval so that would speed the process, it was cheaper, and you got a better interest rate. Mr. Peterson said that would also mean that loan would get paid off very close to when the \$3 million bond loan was paid off.

[7:34:29 PM](#) Mr. Peterson said they had received the 404 Wetlands Permit, they had agreed to build all the ponds, and they had agreed to purchase the Hatley Farm property. He said they had complied with their end of the bargain, so he wondered from the EPA's standpoint why they would believe the Town was not sincere in its intent but was trying to "pull a fast one." Mr. Peterson said that was a basic philosophical argument he was having a hard time seeing them win.

Mr. Keel said that was very much low the Corps representative had taken what the Town was doing.

[7:35:15 PM](#) Mayor Stevens said as a Town they had an obligation to provide the wetlands and they should do that and move forward. He said if there was some culpability from the construction even if it was only oversight, then they at least needed to pursue that. Mr. Keel said the Town was not in great standing to convince them to allow those shoreline wetlands because that was not what the permit called for. He said when they reached the point where there was an attempt to place fines on the Town, then he believed they were in good standing to fight that vigorously, noting that in that point in time they would be proceeding with getting into compliance or would have completed everything needed to be in compliance. Mr. Keel said then the Town would be able to point to what they had accomplished and note they had not caused any harm, adding that they could point out they had complied even if it had been late, that there was all these other wetlands that had been created as part of the project, and now they were just being punitive by assessing fines. He said it was possible they would not assess any fines, but if they did the Town should fight it any way possible.

[7:36:45 PM](#) Mayor Stevens said he believed they needed to operate in good faith, and that would be their strongest argument.

Commissioner Lloyd said she did not understand the high estimated cost. Mr. Keel said that was the estimate that had been presented to him, noting he believed that was the worst case scenario. He said hopefully the cost would come in under that, especially since construction costs were down at the present time so a better price might be achieved. Mr. Keel said the Corps was expert in this kind of work, and that was the estimate they had provided.

[7:38:47 PM](#) Commissioner Lloyd said it had been extremely difficult to acquire the Hatley land, and had thought once the Town had gotten the land that it would be monitored in some way. Mr. Keel said he had found in the files something about some monitoring and information that was to be provided, but nothing had ever been received.

Mr. Phelps said he would like to see all of this reviewed and then a report brought back to the Board, noting they needed to take the time to investigate all avenues before any one option was decided on.

Mr. Keel said another issue that was a part of this was that for some reason when the project was planned out, that during construction of the 4 ponds around the reservoir that 3 of those ponds were accessed through the reservoir property that was now flooded. He said he supposed the thought was that they would never need to get to those properties again except by boat or helicopter because there was no permanent legal access to the other three ponds provided in the project. Mr. Keel said over the last few years when they had gone out to check on the ponds they had actually been trespassing, so if they were asked to leave the property by the owners they would have no way of inspecting the ponds. He said for that reason, a part of the current work was obtaining permanent easements for access drives to the ponds. Mr. Keel said one property owner was agreeable to doing that, and another one may not be willing but they had another way to access the pond through property the Town owned although it would require cutting in a road. He said there was another pond they had no access to and the property owner in that case had been agreeable to allowing the Town to go across his property to check on the pond, and he intended to approach that property owner about a permanent easement as well. Mr. Keel said that would allow the Town legal access to all of its ponds, both for construction and for future monitoring.

[7:42:03 PM](#) Mr. Cohen said he had heard that there were some ill feelings between some property owners and the Town. Mr. Keel said that had happened because the Town had taken the property through the eminent domain process, and that had not been taken well by some.

Mr. Peterson said one property owner had actually shot off a shotgun over someone's head during the construction. Mr. Keel said if it was the same person he believed it had been, they now had a good relationship with that property owner and was being allowed access through his property to get to the pond. He said they were trying to build some trust, but with some people that may not be possible.

[7:43:35 PM](#) Mr. Cohen said he had been confused because he had thought they had purchased the property, but was now learning it was by eminent domain. Mr. Keel said they had purchased some, but most was acquired through eminent domain. He explained that when the Town took land through that process, the property owner was compensated at whatever the market rate was at that time.

Commissioner Lloyd said she was somewhat distressed to learn that not everyone involved in this process had received information about tonight's meeting, and was not sure how much the Board knew about this issue as well.

- **Review Change to be Requested for Consensus Principles to Guide Falls Lake Nutrient Management Strategy (Presentation by Town Engineer Kenny Keel)**

[7:44:50 PM](#) Mr. Keel said after the last Board meeting staff had realized why the Consensus Principles and the proposed rules were hurting the Town so badly. He said basically there were several package plants that were tiny and would not be restricted as much as the Town would be with the new rules, because those plants were so small and the cost would be too great for them to comply. Mr. Keel said so there was that tiny group that got somewhat of a break, and then there were large dischargers of which the Town was one of the three that included the South Granville Water Sewer Authority and Durham. He said Hillsborough was the smallest of those three large dischargers in terms of how much they discharged. But, he said, the way the Town's proposed limits was calculated they took the total amount of nitrogen and phosphorus discharged by all three dischargers in the year 2006 and added it all together, and then there was a formula used to dole that back out minus the 20% and 40% reduction that they had to achieve as a group.

Mr. Keel said the net effect was that because of the way the numbers were calculated and for what the Town's growth was expected to be, as well as the condition of the plant, the Town was actually having their amount of nitrogen discharge cut by close to 65% and phosphorus cut by over 60% versus what they had discharged in 2006. Mr. Keel said South Granville ended up with a 40% to 50% reduction, which was still significant, but Durham had actually gotten 9% more in both nitrogen and phosphorus discharges. So, he said, in effect the Town was giving away some of its allotment to Durham. Mr. Keel said there were some reasons that that could be justified, in that Durham had already upgraded its plant and in theory would be able to reach the current limit of technology for removing nitrogen and phosphorus, although their plant was not being operated as completely or as effectively as it could. But, he said, Durham had already put money into upgrading their plant so the thought was that Durham was putting in less as a percent of their discharge than either Hillsborough or South Granville because they had not yet upgraded their technology.

Mr. Keel said you could argue that both ways, but the net effect was that Hillsborough and South Granville had to suffer the consequences as well as outrageous expenditures to get a plant to reach that level with projected growth, or to even maintain their current level.

Mr. Cohen asked had South Granville already signed off on that. Mr. Keel said it was his understanding that they intended to do so if they had not already.

[7:49:11 PM](#) Commissioner Gering said the wording change to the Consensus Principles that was being proposed would still cost the Town \$15 million plus. Mr. Keel said that was what they had expected to spend in any case, and that would be a "limit of technology" plant which was basically building the plant the way they had planned to anyway to maximize what current wastewater technology allowed for in a high efficiency plant.

Commissioner Gering asked if that would require any additional concessions on the Town's part. Mr. Keel said what he was suggesting was that in looking through the agreement, with one minor change he would be okay with the Town signing on to it.

[7:50:12 PM](#) Commissioner Gering said his question was if that statement would give them any more concessions than the Town had been prepared to make based on the Town Board's regular meeting two weeks ago. He said at that meeting the Town Board had said they could not agree to those Consensus Principles, and they had asked Mr. Keel to look at any constructive changes that might be made to the agreement so that the Town Board could agree to it. Commissioner Gering said Mr. Keel had come back with the current proposal, and he was trying to determine if there was a delta in the Town's position between then and now as far as monetary costs or other kinds of concessions. Mr. Keel responded that the suggestion was to change the wording in item 7 where it said "large point sources as a group" which took more nitrogen and phosphorus away from both Hillsborough and South Granville and gave it to Durham. He said the intention was to remove the phrase "as a group" and insert the word "individually" after the phrase "large point sources" so that reductions would be on an individual discharger basis, which would make it possible for Hillsborough to build a wastewater treatment plant to the current limit of technology, which was reasonable. Mr. Keel said the Town could achieve the additional 20% reduction they were required to achieve by 2016 by building the plant they had already planned to construct.

[7:51:39 PM](#) Commissioner Gering said Mr. Keel had said before that they would build to the limit of technology, and what he was saying was they would still build to the limit of technology and be able to achieve the required 20% reduction. Mr. Keel said that was correct, but as the Consensus Principles were now written, even with building to the limit of technology they would not be meeting what they were required to meet.

Mr. Cohen said what Commissioner Gering was asking was if there was going to be any additional outlay of funds by accepting the proposal with the changes as opposed to what had been in the Consensus document. Mr. Keel said they would be doing exactly the same work at the plant as they had planned to do before the rules were put out.

[7:52:29 PM](#) Mayor Stevens stated that would be on the assumption that everyone in the group reached the limit of technology which might change the formula. Mr. Keel said Durham's plant was already built at the limit of technology, and he did not know if they could meet what he was proposing. He said Durham's nitrogen allocation for 2016 was 90,000 plus pounds a year, and implementing the change would reduce their amount by 6,000 pounds which was not a great deal. But for Hillsborough, he said, they were at 14,000 and it would reduce the allocation by 8,000 pounds, which was a tremendous difference. Mr. Keel said it may cause Durham a little more of a problem to meet it, but it was not in any way as close to being as profound as it would be for Hillsborough, or for South Granville for that matter.

[7:53:58 PM](#) Commissioner Gering said he did not understand why they would propose anything for those water authorities if it required something more than the limit of technology would achieve. Mr. Keel said there was the possibility that the levels they were talking about

would involve some experimental treatment, and there was a possibility that the Environmental Management Commission (EMC) would look at the rules and say they were going to make everyone do the limit of technology because it was not fair or just to make them go to an experimental level or tell them that they would not grow any more unless then went to an extreme level of treatment. He said although not exactly the same, Jordan Lake had gone through a similar process a few years ago and in the end the EMC was doing something similar in insisting that they all had to reach the discharges that were at the limit of technology. Mr. Keel said he did not believe Jordan Lake's case was as extreme as Falls Lake's, in that Falls Lake was failing some water quality parameters and the State was trying to get ahead of the EPA before the EPA placed mandates on the State.

[7:55:44 PM](#) Mayor Stevens asked if the Consensus document was actually a statement of intention and not an enforceable document. Mr. Keel said the EMC was not required to just accept the document, but the fact that a community signed it would give away its right to argue with them if the EMC enforced the rules. He said the change he was suggesting be made to the Consensus Principles would make the document acceptable for the Town.

Mayor Stevens suggested that as Mr. Keel had said, the change suggested would be of great benefit to the Town. He also suggested that if they went forward with that change that Mr. Keel craft a one or two page document to include with the Consensus Principles that detailed what the Town's thinking was and that they were operating in good faith. Mayor Stevens said that would allow those who followed in their footsteps to understanding exactly what the Town's thoughts were and why. Mr. Keel said he had already put some notes together and would put them in the form of a draft letter that he would send to the Board for comment.

[7:58:37 PM](#) Commissioner Gering asked was there a deadline they needed to work towards. Mr. Keel said he was unaware of a deadline, although he would imagine that they would want a response back in a few weeks because the public hearing process would begin sometime in May.

- **Budget Priorities from the WSAC**

[7:59:32 PM](#) Mr. Phelps said they had talked at one time about replacing some of the troublesome water lines, with the main one being at Orange Grove Road. He said he believed there were several others that Mr. Keel was aware of that might need to be included, noting it had been the WSAC's consensus that it may affect customers but if a slight increase was needed to pay for some of that then in the long term it would allow the water system to work more efficiently. Mr. Phelps said they were not in favor of raising rates, but were in favor of addressing some of the projects that had been waiting in the wings which could lead to a slight increase in rates.

Mr. Cohen said to do what was necessary he did not believe they would have a choice other than to raise rates. He said had they raised rates in the last year or two they would not be in the current situation, but now they needed to address those water lines.

[8:01:18 PM](#) Mr. Peterson said they had raised rates substantially over the years, so the thinking was that at some point they needed to hold the line. He said he had a fair idea of what the water and sewer budget would look like, and did not believe there were items included that Mr. Keel had added that had been cut. Mr. Peterson said Mr. Keel had cut some things on his own, and he had added some to that so that they would hit some target areas. But overall, he said, if you simply looked at the budget from a financial standpoint and looked at the rate model, what it showed was that on the water side they had a deficit between revenues and expenditures of \$300,000 or \$400,000 but had a surplus on the sewer. Mr. Peterson said looking at next year, the water expenses were going to go down somewhat, but sewer would jump up. He said because of that, his budget recommendation would split the difference between recognizing the environment where people did not want their taxes and water rates to rise so the budget would not recommend a tax rate increase. Mr. Peterson said he also would not be recommending a water rate increase but believed they would have to raise the water and sewer rates the following year and possibly for a couple of years. He said for the coming year he was recommending a 5% sewer rate increase, noting that the bottom line was he had believed that only raising sewer rates they might be able cut back on what increase might be needed next year. Mr. Peterson said that a lot of their out-of-town customers were basically paying double rates, and many of those did not have sewer service. So, he said, it was also a way to help the customers paying the most by delaying a rate increase for another year.

Mr. Peterson said that at present they were looking at a deficit of \$210,000 in the Water/Sewer Fund, and the rate increase in sewer rates would generate an additional \$125,000. He said the Fund Balance and the retained earnings in the Water/Sewer Fund would be solid, and if they only had a \$200,000 deficit they would still be in good financial shape. Mr. Peterson said when you budgeted things as tightly as they did everywhere, they would likely end up using Contingency, which was at \$150,000 currently.

[8:05:23 PM](#) Mr. Cohen said he had expressed a budget concern in a previous meeting, in that the point was raised that they depended upon certain funds that existed as penalties, and that if everyone decided to do what they were obligated to do that those funds would disappear. He said his proposal to staff and to the Town Board was to figure out a way to balance the budget so that they were not dependent upon people being irresponsible and not paying their bills.

Mr. Peterson said the Water/Sewer budget was around \$6.5 million, and this past year penalties amounted to about \$200,000. So, he said, he did not believe it was an accurate reflection to say they were relying on penalties to balance the budget. Mr. Peterson said the Town Board had just adopted a significant reduction in penalties.

[8:06:27 PM](#) Commissioner Gering commented that reduction had been more than the WSAC had recommended.

Mr. Peterson said the penalty had been reduced from \$75.00 to \$40.00, and that reduction was included in the budget and the penalties line item was already shown at a lesser amount. He said that \$40.00 reflected the cost of service level, and believed that was where it should be.

Mr. Cohen said then the Town was moving in the right direction in that regard, noting that Mr. Keel had received a letter from a water customer on Murdock Road who had been irritated by the “nickel and dime” penalties that she was receiving. Mr. Keel said those were not penalties, but were fees for reconnection and the like. Mr. Cohen said he would like to see the Town receive the money it should, but would prefer that the bills not list individual penalty fees. He said it just made it feel “dirty” for the customer.

[8:07:37 PM](#) Mr. Siler remarked that in the case of the Murdock Road customer, those fees were the connection fees which included a deposit.

Mr. Cohen said the customer had remarked she had been charged several very small fees which were an irritant.

Mr. Phelps said Mr. Peterson had not talked much this year about conservation of water. Mr. Peterson said one previous conversation had been about how people began to conserve when water rates rose, and they had considered that as they had developed the recommended budget. He said people tended to respond psychologically to rate hikes by conserving, especially when the economy was bad.

[8:09:49 PM](#) Mayor Stevens said he had seen a report from OWASA that said over the last few years they had seen a 25% reduction in water usage, which was a huge reduction. He said that was good news and bad news, because while water was being conserved it caused them to look at fairly high rate increases to provide the necessary revenue.

Mr. Peterson said that OWASA had between 7,000 and 8,000 more customers than they had had 10 years ago, but they were using the same amount of water. He said for Hillsborough, they were using 500,000 gallons less per day than they had used in 2000, so they were using one-third less water than 10 years ago.

[8:10:54 PM](#) Mr. Phelps said that was true, and they had more customers now than 10 years ago.

Mr. Peterson said if you took the Flynt plant out of the equation, they were using the same amount of water they had used 9 years ago.

Mayor Stevens said he did not want to hear the Board say they needed the penalties in order to generate revenue, noting they did the penalties because they needed to cover the cost of reconnections and other services, and it was a fair way of doing business. He said the other big thing was they wanted to focus on the long term, and to the degree possible to keep up with infrastructure. Mayor Stevens said they would rather pay a little now to keep up with infrastructure instead of robbing from the future. He said he knew that was the prevailing attitude on the Town Board as well as the WSAC, so they were in accord with that and he would like to see that continue. Mayor Stevens added that the water lines on Orange Grove Road had been rated highly during their budget priorities discussion.

[8:12:38 PM](#) Mr. Keel said for information, the new I-85 water line went into service today and they would be taking the old line out of service on Thursday. He said the good news was that the estimate was to use Contingency funds between \$50,000 and \$90,000, and believed they would only need something around the \$50,000 figure.

▪ **Other Discussion Points/Issues from the WSAC**

[8:13:49 PM](#) Mr. Phelps said there had been a lot of discussion around the County as well as other counties about sludge application, and the County would be pursuing tests to see what they were actually spreading on land. He said he looked for that to be an issue, maybe not next year but certainly in the future, because they needed to know exactly what was in the sludge that was being spread. Mr. Phelps said Mr. Keel had talked in the past about other possibilities for the sludge, but those were expensive propositions. He said everyone who disposed of sludge by spreading would need to be aware that in future other options may need to be explored. Mr. Phelps said it helped farmers and was an inexpensive way for the Town to dispose of the sludge, but if something changed then they would need to be prepared because it could be costly to get rid of that waste.

[8:14:56 PM](#) Mr. Keel said the \$15 million plant upgrade included a Class A sludge process, noting that they had a Class B process now but it meant that all the land the sludge was applied to had to be permitted through the State which was a difficult process. He said the Class A process produced a safer product and there were not nearly as many restrictions, in that each particular piece of property did not need to be permitted but you could obtain an overall permit instead.

[8:15:37 PM](#) Commissioner Lowen asked if the sludge could be used as revenue, in that it could be packaged to be sold as fertilizer. Mr. Keel said that was an option with the Class A process, but that would cost another \$8 to \$10 million, noting it would be dryer but it would not be powder dry. He said if they were a larger operation like Durham that might be worthwhile, but that economy of scale was not great enough.

Commissioner Lowen asked was it possible that was something that would potentially be regulated by the County. Mr. Keel said if the County were to get regulatory authority he was not sure whether it would be to regulate just Class B or if it would regulate Class A as well. He said it would depend on what type of regulatory authority the County might be given by the Legislature, as well as what the County decided it wanted to regulate.

Commissioner Lowen said he believed that was something they needed to remain cognizant of, because there was the possibility that the Town would actually sell its sludge as a useful fertilizer and provide a profitable way to get rid of it.

[8:17:34 PM](#) Mayor Stevens said that might sound futuristic, but like the rail station sometimes the future was right upon them and there were emerging waste energy issues.

Commissioner Gering said he could see the County considering such regulations. Mr. Phelps said the State regulated it now, noting that part of the concern was that Orange County was getting a lot of sludge from Alamance County via OWASA that was being brought to the northern part of the County and there had been a lot of questions from citizens as well as the County Commissioners who had acted on that. He said they wanted to do some testing to see what was in the sludge, and if it was not bad then perhaps it would calm fears, but if it turned out to contain something really bad then it would be an issue that would have to be dealt with.

[8:18:44 PM](#) Mr. Keel said they were required to do testing and they also were required to provide an annual report to the EPA as well as the State on what they were putting out, so it may be that there would have to be some additional testing over and above what was now required. He said that Durham and Burlington now trucked a lot of their sludge into Orange County, and from what the County Commissioners had said their biggest reason for wanting to have some sort of authority was because Burlington had not been cooperative with them as far as requests for information. Mr. Keel said that Burlington mostly took their sludge to the southern end of the County near Carrboro, and there were several citizens in that area who were really outspoken regarding sludge and were complaining regularly.

Mr. Phelps said he just wanted the Town to be aware and keep watch over what the County did as far as trying to gain regulatory authority. Mr. Keel said apparently the County had had this issue on its legislative agenda for the past 3 years, but he had only learned of it this year. He said he believed it had been made a higher priority this year so more people were becoming aware of it..

[8:20:28 PM](#) Commissioner Lowen said was a big issue, not just for the Town but for Durham and Burlington and everyone else. He said the issue was that the sludge had to go somewhere, just like trash, and if there were going to be rules then the Town needed to figure out ultimately what to do.

[8:21:26 PM](#) Mayor Stevens thanked the WSAC, noting their service was much appreciated by the Board.

Mr. Cohen said he wanted to make one point. He said he had been unaware that their presence had been requested at the meeting tonight until Mr. Kubisz had alerted him, so he did not know if that was the reason some of the other WSAC members had not been present.

[8:22:03 PM](#) Mr. Phelps said it was on their long-range calendar, but they had not reminded themselves with an update. He said normally all of the members would have been in attendance, and apologized for that.

Commissioner Lowen said it appeared that some of the members had not known about the rich history behind the reservoir, and hoped that the information they had received tonight was enlightening. He suggested that with Mr. Keel's help that that kind of information would show them how they had gotten to this point and why, and said any kind of updates like that would

especially give newer or incoming members a firm grasp of what the WSAC would be dealing with.

[8:23:24 PM](#) Mayor Stevens closed the joint meeting with the WSAC.

5. Discussion Regarding the Handling of Requests from Subdivisions for Upgraded Street Lighting (Assistant Town Manager Nicole Ard)

[8:23:35 PM](#) Assistant Town Manager Nicole Ard stated that residents in Beckett's Ridge had indicated a lot of interest in upgrading street lighting, but the developer had not felt the need. She said at this point there were about 6 lights they wanted to have included at a cost of about \$600 each. She said she needed direction from the Board, noting there were some dark spots now but citizens wanted the lights more to provide a better lit area for walking. She said that the citizens did understand that street lights were not something the Town was responsible for, but was the responsibility of the developer.

[8:25:40 PM](#) Commissioner Lowen said it had certainly been noticed that there were dark areas, but he believed the reason it was dark was because of the lighting that had been chosen by the developer in the first place. He said the lights just did not give off enough light and believed that was an issue, but the Town was not paying for the upgrade of the street signs and believed they may need to think carefully before the Town agreed to pay for street lighting. Commissioner Lowen said the Town would be opening itself up to requests from others should they do it in this case.

[8:27:56 PM](#) Commissioner Dancy said she was thinking along those same lines, and believed if the Town were to provide additional lighting that the neighborhood/developer would have to pay the cost. She said she could not see putting up "fancy" light fixtures that did not provide adequate lighting and the Town having to suffer the cost of that.

[8:28:27 PM](#) Commissioner Gering asked if the Town owned those fixtures now. Ms. Ard said that was correct, noting the Town would be responsible for any replacement. Commissioner Gering said the most he believed the Town should offer would be the cost of the pole and not the cost of new fixtures.

Mayor Stevens said there was an ongoing cost to the Town for electricity, and that was not trivial. Ms. Ard agreed.

[8:30:12 PM](#) Commissioner Lowen said he believed the Town should adopt some policy for the future, noting that if they set a precedent with a development that was yet to be built out then the same issue could arise in other areas.

[8:32:01 PM](#) Mr. Peterson said they probably needed to figure out if they wanted to basically come up with a formula that was equivalent, noting that one standard street light was really not equivalent in output of light to one of the nicer fixtures. So, he said, they would need to do some thinking about that because it would not be a one to one exchange, in that one of the Town's

lights might equal three of the other type. Mr. Peterson said that had come up with Beckett's Ridge, in that some had said there was not enough lighting and the Town had taken the stance that they would pay only the cost of a standard lighting package. He said the lighting package for Beckett's Ridge was about twice that standard lighting cost, so they had done some comparisons and the residents of Beckett's Ridge was now paying along with their monthly fees an additional amount for that lighting.

Mr. Peterson said he believed having a set policy made a lot of sense. He said another option to think about would be what if they were to say once they approved a lighting plan then if the developer wanted to have an upgraded plan then the developer and/or the homeowners would be responsible for that and the Town would pay the electricity once those lights were put in. Mr. Peterson said that might not be a fair approach, but many times when people learned how much those additional lights would cost them they tended to be more attuned to what the real need might be.

[8:33:54 PM](#) Commissioner Lowen said he agreed to a point, but the reality was there were areas that were very dark. He said he did not disagree that there was a need for more lighting, but the question was why the Town should have to pay for that.

Mayor Stevens agreed, noting there was any number of neighborhoods facing the same issue. He said for simplicity's sake, he believed it was fine for the Town to pay the cost of electricity. Mayor Stevens said he believed that in future when the Town was looking at a development they needed to have a standard for lighting, noting that he had also heard complaints about too much lighting or lighting pollution. He said for now, it made sense for the Town to say it would cover the cost of the pole and the electricity, but not the fixture. Mr. Peterson said it may be something as simple as figuring out a formula and contributing that amount to get them through this issue and then to develop a more formal policy.

[8:35:58 PM](#) Commissioner Gering said in situations where there was not enough light for safety, then he believed it was the Town's responsibility to pay the cost, so he believed there needed to be a base line that they lived up to.

Mayor Stevens said the simple way to address this was if it was a safety issue, the Town would step up and handle it, but if it was an aesthetic issue then the Town would pay for the poles.

[8:37:23 PM](#) Commissioner Lowen said he would like to know the cost of the standard pole and lighting fixture used throughout the Town so that when the Board discussed that they would have that information. Ms. Ard said they actually had a document that spelled out the costs of all the different types of lighting, and she would provide that to the Board.

[8:38:07 PM](#) Mayor Stevens said it would be interesting to see what an individual street light cost the Town yearly, noting that would be a valuable piece of information.

6. Other

[8:38:23 PM](#) Mayor Stevens stated he had a brief update on the idea of a hotel tax. He said he had talked with Bill Faison who had suggested the Town wait until after the election, noting that with everything they were facing now it would likely not be ready until January in any case. Mayor Stevens said Mr. Faison was very willing to do it, but suggested that short delay. He suggested that the Board table that and take it back up after the election and be ready for the Legislature's short session.

There was no objection from the Board.

7. Closed Session to Receive Updates on Personnel Matters

- A. Closed Session as authorized by NC General Statute Section 143-318.11(a)(3) to meet with the Town Attorney regarding potential Litigation arising from a Zoning Violation (incomplete work under Prevention of Demolition by Neglect) at 153 West King Street).**
- B. Closed Session as authorized by NC General Statute Section 143-318.11(a)(3) to meet with the Town Attorney to receive an update on status of the former Colonial Inn.**
- C. Closed Session as authorized by NC General Statute Section 143-318.11(a)(6) regarding Personnel Matters.**

[8:39:23 PM](#) Upon a motion by Commissioner Gering, seconded by Commissioner Dancy, the Board moved to go into Closed Session.

8. Adjourn

Upon returning to Open Session, and upon a motion by Commissioner Dancy, seconded by Commissioner Lowen, the Board moved to adjourn the meeting at 9:15 p.m. by a vote of 5-0. The motion was declared passed.



Respectfully submitted,
Donna F. Armbrister, MMC
Town Clerk