

Shanna Nealy

From: Patrick Costello <pcostello@lccplaw.com>
Sent: Monday, April 13, 2015 12:58 PM
To: Jill Goldsmith
Cc: Shanna Nealy
Subject: Sewer Bank Policy Implementation

Importance: High

Jill:

My opinion has been requested on the issue of whether additional sewer hookups or increases in sewer flows for structures currently being served by Town sewer may be permitted in accordance with the provisions of Article II of the Town Sewer Department Rules and Regulations ("Article II") and the Selectmen's Sewer Bank Policy (the "Policy"). Upon review of said Regulation and Policy, it is my opinion that the Selectmen, acting in their capacity as Sewer Commissioners, may permit increases in sewer flow pursuant to the terms and conditions set forth in the Policy.

I note for purposes of this review that Article II and the other Sewer Department Rules and Regulations are, as their title suggests, rules and regulations of the Sewer Department adopted pursuant to G.L. c. 83, §10; *they are not Bylaws* of the Town, nor do they rise to the level of Bylaws in the overall regulatory scheme, notwithstanding the fact that they were adopted/ approved by the Town Meeting. Further, it is my opinion that the Sewer Bank Policy continues in effect, notwithstanding the expiration of the prior ACO, the terms of which the Policy was adopted to help implement. There is nothing in the ACO or the Policy which would indicate an intent that the Policy would terminate upon dissolution of the ACO; in fact, the Policy is clearly within the regulatory scope of authority possessed by sewer commissioners to regulate the expansion and use of limited sewer/ wastewater treatment capacity by Town operated facilities and, as such, it continues to advance the public interests underlying the ACO.

Although the language of Section 1 of Article II is hardly a model of clarity, I see no reason why this Regulation and Policy can't be implemented conjunctively and consistently given the level of flexibility that is typically afforded to policies and regulations. On the one hand, Section 1 of Article II does provide that "No person shall modify an existing structure or change its use so as to increase its sewage flow."; yet, it also expressly provides that expansion or modification of existing structures which were connected to sewer as of May 10, 2005 that "may result in increased flow" *is permitted* if it is allowed under Part #1 of the Sewer Bank Policy, which provides a basis for review and allocation of increased sewage flow into the Town's system in a controlled manner. Considering the fact that the Sewer Bank Policy was adopted after the initial edition of the Sewer Department Rules and Regulations, and its provisions were thereafter expressly incorporated into Section 1, I believe there is a clear inference of intent to apply these regulatory provisions in conjunction with one other.

I understand that there are differences of opinion among Board members as to the application of these regulations, likely because of this seemingly inconsistent language. When such inconsistencies exist within regulations, the implementing/ enforcing authorities of the Town must endeavor to apply the regulations in a manner consistent with the overall context of the regulations, rather than in a piecemeal fashion. As noted above, while Article II was clearly adopted in an effort to regulate and limit additional flows into the Town wastewater treatment system, it does expressly provide for exceptions: "*Expansion or modification of existing structures, which may result in increased flow, shall not be allowed unless the increase is in compliance with the Board of Health's Regulations in effect on May 10, 2005, or a variance pursuant to Section 5 below is first obtained; except as currently allowed under Part #1 of the Town of Chatham Sewer Bank Allocation & Permit Policy for properties connected to the sewer as of May 10, 2005.*" Accordingly, I believe that the Selectmen would be within their rights to allow increased flows in accordance with the aforementioned criteria.

Please let me know if there are any further questions or more discreet issues which you wish to have addressed in this regard.

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