

LEBANON BOROUGH SEWERAGE AUTHORITY

MINUTES

DECEMBER 7TH, 2017

The meeting of the LEBANON BOROUGH SEWERAGE AUTHORITY was called to order by Chairman, Edward Cichone at 7:30 PM at the Boro Hall, 6 High Street, Lebanon NJ.

The meeting was convened in compliance with the Open Public Meetings Act.

MEMBERS PRESENT: Richard Burton, John Saharic, Gregory Crawford and Edward Cichone

Also present: Joseph Novak, Novak of Novak & Novak LLC, James Hill of Frey Engineering, Kayla Kern of Frey Engineering, William Colantano of BKC, and Secretary Anita Weingart

The meeting was convened in compliance with the Open Public Meetings Act.

APPROVE NOVEMBER MINUTES

Mr. Burton moved and Mrs. Saharic seconded the motion to approve the November 2017 minutes. All Ayes: Motion Carried.

FIRST PUBLIC COMMENTS – Mr. Peter Garner, Ms. Altieri and Mr. and Mrs. Altieri were present to discuss the legal dispute between LBSA and the Garner's regarding 3 Nitzer Ave. They mailed in a check for the connection fee of \$3,082.56. This property is on the real estate market and potential buyers have contacted LBSA for the connection fee. The Garner's contend that the LBSA line ran partially up Nitzer Ave., and that they felt the higher connection fee amount is not accurate based on the fact the way the line was run. They lived there when Nitzer was being paved in 2008. The LBSA Attorney confirmed that Judge O'Neill's opinion was that the LBSA did not have the authority to charge a benefit assessment, but explained that the judge stated that LBSA can charge a connection fee. Further discussion took place on how the connection fee was calculated and the different classes of users that exist in Lebanon Borough.

CLOSE PUBLIC SESSION:

Mr. Burton moved and Mr. Crawford seconded the motion to close the public session for a closed Executive session for litigation review. All Ayes: Motion Carried.

Upon conclusion: The LBSA returned to open session for continuing the regular business of the Authority.

PUBLIC HEARING ON USER CLASSES AND NITZER EXTENSION COST

A public hearing was commenced in accordance with the Notice of Public Hearing published in two newspapers of general circulation in the area serviced by the Authority (Lebanon Borough) at least 20 days in advance of the said public hearing, with Affidavits of Publication to be made part of the minutes of the Authority. Notice was also provided to the Clerk of each Municipality serviced by the Authority and proof thereof is to be filed in the minutes of the Authority. All persons receiving Notice, and the newspaper publication advised the public of their opportunity to be heard at the public hearing commenced for the purposes of memorizing the classes of users and reviewing the calculation of the connection fee for the four unsewered Nitzer Avenue properties, comprising Class "C" and establishing the said cost of connection for this class. All members of the public were offered the opportunity for comment.

Pursuant to N.J.S.A. 40:14A-8, the LBSA is authorized to charge and collect various rents, rates, fees or other service charges as may be deemed equitable and uniform throughout the Authority's sewer service area, recognizing that there may be different types, classes and amounts of use or service of the sewerage system. Based thereon, the LBSA previously established four classes of users to conform with the type, amount of use, and delivery of service, based upon the initiation and type of sewer services to the various classes. Accordingly, the LBSA has reviewed those classes, and following the recent litigation and Remand Order, moved to re-establish, recognize and memorialize the said classes.

Mr. Burton moved and Mr. Saharic seconded the Motion to re-establish, recognize and memorialize the classes of users of the LBSA sewer system. Roll Call Vote: All Ayes: Motion carried.

During the said public hearing, the members of the Authority reviewed with the Authority Engineer, the costs incurred in the line extension and physical connection so as to connect the four, unsewered Nitzer Avenue properties. The LBSA also provided various subsidies and credits for payments made directly by the Authority for initial and general services in extending the main line of Nitzer Avenue. The total cost of the physical extension of the Nitzer Avenue main sewer line was determined to be \$102,578.07 and accordingly, the proportionate share of the cost of the said connection allocated among the four unsewered properties was determined to be \$25,644.52. The unsewered property owners are not obligated to connect their property to the extended LBSA system. In addition to paying the proportionate share, an unsewered property electing to connect to the system, will also be required to pay the new connector contribution toward the various infrastructure costs determined on an annual basis by the Authority, which cost for calendar year 2017 was established as \$3,082.56. Accordingly, the "connection fee" for the unsewered properties on Nitzer Avenue is comprised of two components, calculated in accordance with the Sewerage Authorities Law, N.J.S.A. 40:14A-5 et seq.

Members of the public including Mr. Garner, Ms. Alfieri and Mrs. Alfieri asked questions about the connection fee calculations, expressed opinions as to the Court's ruling, and felt there was still confusion about connection fees.

In accordance with prior direction of the LBSA, Authority Attorney Novak presented a draft of proposed Resolution 17-31 memorializing user classes and establishing the Nitzer Avenue extension costs and connection fee. Mr. Novak summarized the agreement between the Borough and the LBSA to simultaneously in a joint Contract, extend the main sewer line on Nitzer Ave. and thereafter pave the roadway. As to its portion of the Contract cost, the LBSA is authorized to charge a connection fee under the Sewerage Authorities law, and as a result of litigation instituted against the Authority by one of the owners of the unsewered Nitzer Avenue properties, the Court remanded the connection fee matter back to the LBSA for a review of the user classes; and to review and set a connection fee in accordance with the governing Sewerage Authorities law.

Attorney Novak reviewed N.J.S.A. 40:14A(b)(1)(3) pointing out that the connection fee is comprised of two components, including the Costs associates with extending the line, plus an amount computed to represent a fair payment toward the cost of the system. A Motion was made to adopt Resolution 17-31 as follows:

RESOLUTION 17-31 – USERS CLASSES AND NITZER EXTENSION COSTS

WHEREAS, the Lebanon Borough Council, adopted Ordinance #80-8 on August 20, 1980, creating the Lebanon Borough Sewerage Authority (hereinafter “LBSA” or “Sewerage Authority”) as a separate and distinct body corporate empowering the Authority with those Powers as enunciated in the Sewerage Authorities Law (hereinafter “SAL”) in N.J.S.A. 40:14A-5 et seq.; and

WHEREAS, among those Powers granted by N.J.S.A. 40:14A-8, the LBSA was authorized to charge and collect rents, rates, fees or other charges for direct or indirect connection with, or the use or services of, the sewage system, owned, operated and/or maintained by the Sewerage Authority, recognize various classes of users, and insure that connection charges for such classes be uniform within each class; and

WHEREAS, simultaneously with the creation of the LBSA, the Readington Lebanon Sewerage Authority (hereinafter “RLSA”) was created as a separate legal entity to construct, own and operate a sewage treatment facility providing sewerage services to the LBSA and the Township of Readington; and

WHEREAS, the original subscribers to the Sewerage Authority have underwritten the LBSA’s contribution to the construction of sewer infrastructure and the RLSA treatment plant; and thereafter, subsequent developers of vacant areas within the Borough of Lebanon who secured sewer capacity for approved projects, contributed to such initial and subsequent plant/capacity expansion costs, servicing of the LBSA debt, and the payment of capacity reservation and sewer service fees and connection fees; and

WHEREAS, under the SAL, a connection fee shall be uniform within each class of user, except as otherwise provided, and the amount of the connection fee may include “. . . the actual cost of the physical connection, if made by the Authority, plus an amount computed in the

following manner to represent a fair payment toward the costs of the system. . . .” as set forth in N.J.S.A. 40:14A-8(b); and

WHEREAS, the LBSA in collaboration with the Borough of Lebanon, extended a sanitary sewer line from its then terminus in Nitzer Avenue to a point whereby the remaining four additional residents (unsewered) on Nitzer Avenue would then be able to connect to the sanitary sewer line and abandon their on-site septic systems; and

WHEREAS, the cost to extend said sanitary sewer line after subsidizing of initial costs by the LBSA, was calculated to be \$102,578.07 and was initially borne in its entirety by the LBSA, subject to reimbursement from the four properties that potentially could benefit from said extension if they chose to connect to the system; and

WHEREAS, a separate and distinct class of users comprised of the five residential properties located on Nitzer Avenue have had reserved (at no cost to them or the original developer of their lots) individual lot sewer capacity for eventual connection of their residences to the sewer system without their sharing in or paying any cost or expense for the construction of the extension of the sewer line in Nitzer Avenue, nor sewer infrastructure, plant construction, expansion and operation; and

WHEREAS, limited additional capacity available to the LBSA has been reserved for the future development of low, moderate and market residential properties and/or commercial properties within the Borough, which will require from those developers the payment of application expenses and costs as well as line extension costs, sewer connection fees and sewer services charges; and

WHEREAS, by Resolution No. 12-25, adopted on December 6, 2012, the LBSA calculated the equal proportionate share of the cost of the extension of the sanitary sewer line in Nitzer Avenue for each of the four remaining unsewered properties now having access to the extended sanitary sewer line to be in the amount of \$25,644.52 as of December 6, 2012; with interest at the rate of 5% per annum, with a time payment option payable over nine years

WHEREAS, since the date of that calculation, two of the neighboring properties have paid their share of the extension, and interest has accrued on the unpaid balance for those of the five four two residents who have not as yet remitted their proportionate share of the cost of the extension of the sanitary sewer line in Nitzer Avenue which enabled or will enable them to connect to the LBSA sewerage system; and

WHEREAS, in *Garner v. Lebanon Borough Sewerage Authority*, Superior Court of New Jersey, Hunterdon County, Docket No. HNT-L-321-14, the Honorable Michael F. O’Neill determined that the LBSA could not impose a Local Improvement Law assessment pursuant to N.J.S.A. 40:56-1 et seq. but found under the SAL” “. . . that the statutorily defined capital costs associated with extending the sewer line to the Nitzer Avenue properties may be assessed to new connectors through the ‘connection fee’ authorized under the statute,” N.J.S.A. 40:14A-8 (b) (1) – (3) and (c) citing, among other cases, *Meglino v. Township Committee of Eagleswood*, 103 N.J. 144, 161-165 (1986); and the Court remanded the matter to the Authority (LBSA) for calculation of a connection fee in accordance with the Statute; and

WHEREAS, the LBSA desires to reconfirm its creation of a unique and distinct class of users (Class C) now comprised of the remaining four unsewered Nitzer Avenue properties solely benefited by the aforesaid extension, and establish (1) a separate charge in the nature of a connection fee or tapping fee in respect of each connection of any property with the LBSA Sewerage system, uniform within the Class "C" users, (2) plus an amount computed to represent a fair payment toward the cost of the system in accordance with N.J.S.A. 40:14A(b) (1) (3).

NOW, THEREFORE, BE IT RESOLVED by the Lebanon Borough Sewerage Authority that the following classes of users, having been previously established, are (1) hereby re-established, recognized and memorialized, and (2) the connection fee of of each residential lot comprising Class "C" desiring to abandon its private on lot septic system and connect to the extended line of the LBSA system is established as follows:

(1) Classes of Users.

Class A. --- Original users subscribing and connecting to the LBSA/RLSA sewer system at the time of the inception of the Authorities, which initial users have underwritten the construction, expansion, and maintenance of the infrastructure of the sewer system and treatment of effluent, and underwritten the servicing of all LBSA/RLSA debt. These users shall continue to pay the recurring sewer service charges as established by the LBSA.

Class B. --- Developers of commercial and/or residential properties in the Borough of Lebanon approved subsequent to the initial subscription to the sewer system, and including those new subscribers who incurred new and additional costs and expenses for the extension of the LBSA system to service their developments and/or for the expansion of the RLSA sewer treatment plant. Such subscribers have and will continue to pay initial fees and expenses, sewer capacity reservation fees, and sewer service charges on an ongoing basis as established by the LBSA and connection fees at the time of the connection to the LBSA sewer system in an amount as established by the LBSA.

Class C. --- Five original residential properties located on Nitzer Avenue at/or about the time of the establishment of the LBSA identified as Block 8, Lots 9.05, 9.06, 9.07, 9.08 and 9.09 on the Official Tax Map of the Borough of Lebanon. The original developer of these lots installed individual, on-site septic systems, and as such, did not connect to, nor underwrite any of the cost and expenses of, the LBSA/RLSA since the time of the Authority's inception. Nonetheless, sewer capacity for these properties has been reserved by the LBSA, without any charge, cost or expense to the individual lot owners, pending each individual lot owner's potential connection to the LBSA sewer system to service their respective properties. Previously, one of the five owners (Markey) paid to extend the line to his lot. The remaining users are to pay (1) their proportionate share of the actual cost of the physical extension of the sanitary sewer line in Nitzer Avenue which would enable them to connect to the LBSA sanitary sewerage system (2) plus an amount to represent a fair payment toward the cost of the system fee as annually established by the Authority and calculated in accordance with N.J.S.A. 40:14A-8b et seq..

At the present time, 2 of the 4 property owners have elected to connect to the LBSA system and have paid their proportionate share of the actual cost of the extension.

Class D. --- Owners and/or Developers of low, moderate and market residential properties, and/or commercial properties in the future, that will require extensions of the sewer service main line and which will require the payment of application fees and expenses, sewer capacity reservation fees, line extension capital costs as may be necessary, connection fees and sewer service charges as established by the LBSA.

(2) Cost of Nitzer Extension and Allocation.

Notice of a public hearing to establish the cost of the Nitzer extension and the proportionate cost of each residential lot comprising the Class "C" residential lots on Nitzer Avenue, at least twenty (20) days in advance of the public hearing, providing notice of the cost determination to be calculated and attributed to each of the residential lots was provided by mailing such notice to the Clerk of each Municipality serviced by the Authority, and publication of the Notice of the hearing on the said calculation and proportionate share to be allocated, with such Notice providing the date, time and place of the public hearing, being published in at least two newspapers of general circulation in the area serviced by the Authority. All persons receiving Notice were advised of their opportunity to be heard at such public hearing, which was held on Thursday, December 7, 2017, commencing at 7:30 PM, at the Lebanon Borough Municipal Building located at 6 High Street in the Borough of Lebanon.

At the public hearing, a review of the costs of the actual physical connection (line extension) made by the LBSA to connect to the four Nitzer Avenue properties in class "C" was conducted by the Lebanon Borough Sewerage Authority, and after the providing of various subsidies and payments by the LBSA for initial and general services, the total cost of the physical extension to the main sewer line of the Authority was determined to be \$102,578.07. Accordingly, the proportionate share of the cost of the said connection was and is determined to be \$25,644.52 for each of the four unsewered residential lots on Nitzer Avenue as of December 6, 2012 and now reconfirmed as of December 7, 2017.

Each individual residential lot owner may elect when and if they wish to connect to the LBSA extended system and upon connection into the sewer system, shall pay in addition to their above calculated share, the then existing new connector contribution amount computed on an annual basis in accordance with N.J.S.A. 40:14A-8 (b) (1) – (3) and (c) to represent a fair payment toward the cost of the system, including debt service, sinking funds, reserve funds, principal and interest bonds, and the amount of any loans and interest thereon, paid by the LBSA to defray the capital cost of developing the system.

Mr. Crawford moved and Mr. Burton seconded the motion to adopt Resolution 17-31 User Classes and Nitzer Extension Costs and the resulting connection fee for Nitzer Avenue properties
Roll Call Vote: All Ayes: Motion Carried.

RESOLUTION 17-29 - RECOMMENDING THE REAPPOINTMENT OF JOHN SAHARIC

WHEREAS, the current term of office of Lebanon Borough Sewerage Member John Saharic ends on January 31, 2018; and

WHEREAS, John Saharic has been an active and integral member of the Lebanon Borough Sewerage Authority, having served on the LBSA with distinction for the past nineteen years; and

NOW THEREFORE BE IT RESOLVED on this 7th day of December, 2017, by the Commissioners of the Lebanon Borough Sewerage Authority that they wholeheartedly and respectfully recommend and request of the governing body, the reappointment of John Saharic to a new term as Lebanon Borough Sewerage Authority Member commencing February 1, 2018.

CERTIFICATION

I hereby certify that the foregoing is a true and accurate copy of a Resolution adopted by the Lebanon Borough Sewerage Authority at its regular meeting held on December 7, 2017..

Mr. Burton moved and Mr. Crawford seconded the motion to adopt Resolution 17-29. All Ayes: Motion Carried.

ENGINEER'S REPORT

Mr. Hill's report is on file.

The trench on Main St. was discussed including quotes. The road work to be done on Lynwood and Locust was briefly discussed.

Mr. Hill will prepare a draft of proposed work for the Jan 2018 meeting. He will also prepare an update on the recommended areas for easement clearing in 2018.

EXPENDITURES

Mr. Burton moved and Mr. Saharic seconded the motion to approve December expenditures as listed below. Roll Call Vote: All Ayes: Motion Carried.

<u>GENERAL</u>			DEC 2017
<u>ACCT:</u>			
17-144	PAYROLL ACCT	PAYROLL	\$2,534.33
17-145	RLSA	WATER TREATMENT	\$28,582.30
	LEBANON		
17-146	BOROUGH	LEASE	\$1,300.00
17-147	JCP&L	HEAT TAPE	\$7.53
	CONSUMER		
17-148	CELLULAR	HEAT TAPE PHONE	\$20.62
	ANITA		
17-149	WEINGART	MOBILE PHONE REIMBURSEMENT	\$300.00
	EDWARD		
17-150	CICHONE	REIMBURSEMENT NJ LEAGUE	\$1,140.15
17-151	BUZAK LAW	9/21/17-10/20/17	\$1,062.50
	NOVAK &		
17-152	NOVAK	DEC RETAINER	\$3,468.30
	R&L		
17-153	DATA CENTERS	PAYROLL SERVICES	\$193.00
	ONE CALL		
17-154	CONCEPTS	INV# 7105373, 7115373	8.74
17-155	ALPHADOG	INV# 23794	\$600.00
17-156	MSI	SUPPORT 2018	\$1,410.00
	NJ ADVANCE	PUBLIC HEARING - CLASSES OF	
17-157	MEDIA	USERS	19.01
		PUBLIC HEARING - CLASSES OF	
17-158	GANNETT	USERS	46.61
	FREY		
17-159	ENGINEERING	INV# 5622	5,692.08
	FRENCHTOWN		
17-160	INN	ANNUAL AWARDS DINNER	3,380.75
	BANK FEE	SCANNER	75.00
TOTAL			\$49,840.92
 <u>ESCROW ACCT:</u>			
		TOTAL	\$0.00

FINANCIAL REPORTS and BANK RECONCILIATION OCT 2017

Mr. Burton moved and Mr.Saharic seconded the motion to acknowledge the December reports and the bank reconciliation reports from Oct 2017.

Roll Call Vote: All Ayes: Motion Carried.

RLSA

Mr. Burton reported repairs to the roof will be made. The fair share of the annual share was discussed. Mr. Cichone and Mr. Burton will meet with RLSA to discuss our usage decrease and rate increase. Mr. Colantano may ask RLSA about this also.

GLADSTONE EQUITIES

Gladstone Equities responded to our correspondence stating they will arrange a meeting with Mr. Cichone soon.

CLOSED SESSION: POSSIBLE LITIGATION

Mr. Saharic moved and Mr. Crawford seconded the motion to enter into Executive Session.

OPEN FOR PUBLIC SESSION:

Mr. Burton moved and Mr. Saharic seconded the motion to enter into Public Session.

MISCELLANEOUS – LBSA would like to see the sewer service application available as a link on the LBSA website in addition to this being available under the Rules and Regulations.

RECESS

Mr. Burton moved and Mr. Crawford seconded the motion to recess the meeting until 12/8/17.

All Ayes: Motion Carried.

Respectfully submitted by,

Anita Weingart,

Secretary/Treasurer

CERTIFICATION: I hereby certify these to be true and correct copies of minutes as approved by the Commissioners at the meeting of _____.

_____ Anita Weingart, Secretary/Treasurer

December 8th, 2017

MEETING RECONVENED – Frenchtown Inn

Mr. Burton moved and Mr. Saharic seconded the motion to reconvene the meeting. All Ayes:
Motion Carried.

Repair work to be done on Main St. by Beckage Sealcoating was discussed.

Mr. Burton moved and Mr. Saharic seconded the motion to approve work quoted by Beckage Sealcoating for the trench on Main St. not to exceed \$8,000.00. Roll Call Vote: All Ayes: Motion Carried.

Mr. Cichone acknowledged Mr. Crawford and thanked all the members, professionals and their spouses.

MEETING ADJOURNED

Mr. Saharic moved and Mr. Burton seconded the motion to adjourn the meeting. All Ayes: Motion Carried.

Respectfully submitted by,

Anita Weingart,

Secretary/Treasurer

CERTIFICATION: I hereby certify these to be true and correct copies of minutes as approved by the Commissioners at the meeting of _____.

_____ Anita Weingart, Secretary/Treasurer