

**Delafield-Hartland**  
**Water Pollution Control Commission**  
416 Butler Drive, Delafield WI 53018-1871  
Phone: 262-646-4364/Fax: 262-646-5187

Commission Meeting Minutes for July 20, 2010  
Delafield-Hartland WPCC Treatment Plant Board Room

Time  
7:00 PM

Call Meeting to Order

M. DeYoe called the meeting to order at 7:00 p.m.

Roll Call

Delafield

Tim Aicher  
Michele DeYoe  
Beth Leonard  
Gerald MacDougall

Village of Hartland

Karen Compton  
Richard Landwehr  
Michael Meyers (absent)  
Rick Stevens

Also Present

Rose Frick  
Scott Luczak  
Tim Fenner, Del-Hart's Attorney  
Tim Schuenke, City of Delafield Administrator  
Bruce O'Neill, SJNMA's Attorney  
Jerome Kolashinski, SJNMA's Facilities Operations Supervisor  
Ryan Lancour, Civil Engineer, R. A. Smith National  
Steve Celichowski, SJNMA's VP of Business Affairs

Approve Minutes of June 15, 2010 Commission Meeting

**R. STEVENS MOTIONED TO APPROVE THE MINUTES FROM THE JUNE 15, 2010 COMMISSION MEETING AS PRESENTED. G. MACDOUGALL SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

OTHER ISSUES

Resolution 072010 – Commending Ed McAleer for Sixteen Years of Dedicated Service

M. DeYoe read the resolution into the record giving praise and thanks to City of Delafield Mayor Ed McAleer for 16 years of dedicated service to the community, the Del-Hart facility and Commission. Financial stability and security in the facilities operations were noted as a result of the contributions given by Mayor McAleer. On behalf of the community and Commission, M. DeYoe presented a plaque of gratitude to Mayor McAleer for his years of service.

GENERAL MANAGER'S REPORT

St. John's NW Military Academy's Appeal of Additional Domestic User Equivalents from 2008

M. DeYoe introduced representatives from St. John's Northwestern Military Academy (SJNMA) to the Commission.

Bruce O'Neill, SJNMA's Attorney, handed out information packets for the Commissioners and explained the facts of SJNMA's case. He stated that SJNMA did not increase its wastewater discharge to the wastewater facility from the 3<sup>rd</sup> quarter of 2006 to the 2<sup>nd</sup> quarter of 2008. SJNMA should not be assessed additional DUE charges for 2008 and should not have had its assigned DUEs raised from 102.25 to 118. He commented that for the past year from (June) 2009 to July 2010, SJNMA has been at a DUE level of 78 and was now being assessed at 118 (DUEs); that's 40 points higher than their actual usage for the last year (2009 - 2010) or a multiple of 50%. He referred to the information packet report that showed an increase per quarter that went from 2.1 million gallons (September 2006) to 5.0 million gallons (March 2008) and then the next quarter (June 2008) it drops by more than half to 2.2 million gallons. Why this happened he explained is because SJNMA discovered and fixed its leak in its water pipe. He pointed out an April 2009 report from Zachow Plumbing that showed a leak in the water pipes had been found in (January) 2009 and was leaking at the rate of 20 gallons per minute. He stated that this leak did not go into wastewater system because it went into the ground and therefore the treatment facility did not incur any treatment costs. He stated that one of the problems that SJNMA has run into in presenting its case to the Commission is an erroneous reading (June 17, 2010), a "phantom" reading of 440,000 gallons that the City obtained from a non-existent meter. He commented on a letter and an email from Attorney Fenner in July 2010 that questioned a wide range of fluctuations in water readings occurring at SJNMA in 2010. He referred to the Del-Hart report showing the City of Delafield's meter readings that included a 440,000 gallon reading on June 17, 2010 and suggests that it is a totally fictitious number. He noted several pieces of correspondence that stated the pool meter water pipe and well were not in service during the periods that readings were recorded by the Delafield Department of Public Works (DPW) and reported by the Commission. He explained that there was a pump onsite that had been removed on April 26, 2010 and taken apart as a result of finding the leak and called the Delafield DPW meter readings "phantom" readings. A new pump was installed and run through a new meter and proper usage of 1,775 gallons had begun on June 17, 2010 the date of that reading. Opposed to this "phantom" 440,000 (gallons) that just made it impossible for SJNMA to present its case because supposedly its meters were so bad. He pointed out that the pool well was off line starting Nov 10, 2009 and a new meter was installed and first read by SJNMA personnel on July 8, 2010. On that date, 10,475 gallons were recorded on the regular meter and 47,600 gallons were registered on the exempt (subtract) meter. So on June 17, 2010 although meter readings (of 440,000 gallons) were reported by Delafield DPW, the reading should have been 0 (gallons).

Jerome Kolashinski, SJNMA Maintenance Supervisor for the past two and half years, explained the meter area in question was being monitored. He stated that since SJNMA did not have a pump, therefore, they did not have a meter. He was not sure when the actual external readout that they put on the outside of the building was taken away. The only explanation that he could think of is somehow that the readout that the City uses got voltage or something. He further added that he did not know how else it could read because when that readout is connected to the meter it reads, but there was no meter. There was no meter connected to the outside readout. He didn't know how it could possibly be other than maybe an erroneous electrical impulse happened to the readout. In response to a question about the number of meters, he explained there were two meters at the pool house, a sewer meter and a deduct meter that feeds the pool. The "phantom" meter being discussed would have been outside the pool area which SJNMA labeled as well #2 but the City labeled as well #1 (or pool building well).

B. O'Neill introduced Ryan Lancour, a civil engineer with R. A. Smith National. His resume and experience were noted for the Commission. He had been given all the information including quarterly reports on the water usage from 3<sup>rd</sup> quarter 2006 through 2<sup>nd</sup> quarter 2008, a chart of

enrollment showing a level number of students at the school during these years and the report from Zachow Plumbing showing the repairs that took place early in 2009. Attorney O'Neill asked the engineer if he could form a professional opinion about the excessive usage being the result of a leaking pipe and that the water did not enter the wastewater treatment system. R. Lancour concurred with the information provided that there was a direct correlation with water coming out of the main pipe and a reduction in water usage. He noted that the water from the hole in the water main would be going into the ground and then with the repair noted, the usage started again as appropriate. He went on to explain that the water would not have puddled on site due the location of the leak and the existing topography where the leak took place. The ground was conducive to water infiltration and the leaking water would go directly into the ground rather than puddling where it could be noticed by SJNMA Staff.

Steve Celichowski, Vice President of SJNMA, provided a videotape from the time of the repair in 2009 that showed the leak, the water flow from that leak, and the actions taken at the time the leak was once discovered by SJNMA. He noted it did not pond like in a normal water main break.

Some questions were asked by the Commissioners regarding figures shown in the usage reports. Clarifications were provided.

B. O'Neill noted the February 2009 Commission meeting minutes and pointed out that the Commission was to wait two billing cycles and discuss this again at its August or September 2009 meeting. He, also pointed out in the minutes about the process used for Arrowhead and suggested that they had experienced the same problem as SJNMA. He requested consideration be given to returning to a DUE level of 102.25 and a refund or credit of \$83,000 (\$61,645.50 from Del-Hart) be granted to SJNMA as they did not use the extra gallonage and should not have had to pay the wastewater treatment charges. He, also, referenced Chapter 68 of the Wisconsin State Statutes on Administrative procedure regarding the appeal process and he said that it applies to the Commission. He thinks that the appeal was timely filed because they were not given proper notice before hand. Separate from the technicality of the appeal, he feels that this body (Commission) has the right to take into account or will take into account a situation like SJNMAs. He added that the Commission was simply taxing or assessing someone for money that they should not be paying. He added that SJNMA fixed the problem in 2009 and he thinks that is what everyone had in mind. He thought the reason it never gets adjusted is because of the "phantom" meter reading all of a sudden of 440,000 gallons and added how do you explain that. He hopes that SJNMAs has explained that tonight and asked the Commission to adjust the assigned DUEs to SJNMA back to 102.25 and that there would be a refund or credit with regard to the \$83,000 of adjustments that were wrongfully paid by SJNMA, that were paid for nothing and something they did not do. He thanked the Commission for their time.

G. MacDougall asked "Did not the Commission send two letters that were not responded to?" S. Luczak stated yes, a warning letter (2007) and a billing (2008) were sent to SJNMA.

T. Aicher asked if the engineer had ever noted in his experience a meter or a lack of meter responding in such a fashion as to giving a "phantom" reading. R. Lancour explained he had minimal experience with that and there are cases where a meter is disconnected and has issues; however, he could not tell if that would be at such a high level and did not know what was happening in this case as he was not familiar with this meter.

J. Kolashinski noted that the physical meter was there, but the pump was not. As a result, there could be no water pumping through the meter. The meter itself was still in the plumbing; however the water was not running through that meter. Meter readings are done daily; however, once the pump was pulled, the meter was not read by SJNMA's staff as it had been done in the past.

R. Landwehr noted that in the instance of Arrowhead School District referenced by B. O'Neill, there was no leak. Faucets had been left on and that was remedied with an automatic shutoff and corrected within a few months time. That situation appeared different from the one being discussed.

Tim Fenner, Del-Hart's Attorney, explained there were two issues at hand. One related to the 2008 connection fees imposing additional 15.75 DUEs based on the information obtained at that period of time. The second was current billings given the suggestion that there was a problem with a meter. He further explained that our whole system is predicated upon meter readings. We rely on the mechanics of the system. If they are not working properly then you have to get them fixed because our billing system has to accommodate what is actually happening. We want to make sure that they are being billed for what they put into the system. With respect to the 2008 connection fee, you are able to address it on a few different merits. However, let me make a couple observations in that our ordinance provides for a specific procedure. We go through a twelve month period and we find out if there is excessive use. The community of the user informs them that there is excessive use, we go through another twelve month period and if the excessive use has not been remedied then we actually bill for additional DUEs. That is what happened in this particular case and this is not a procedure that is foreign to SJNMA. We have a timeline that goes back more than ten years and shows that this warning process of excessive DUEs was followed in 2000, 2003 and 2004 where SJNMA remedied and addressed their problems in each of these years and did a good job. In 2007, the City sent SJNMA a warning letter of additional DUEs and nothing happened between 2007 and 2008. In 2008, the City sent another letter saying that their consumption did not go down and they were going to be billed the additional 15.75 DUEs and it was put on the tax roll and it was paid. Again there was no appeal taken. He noted that under our ordinance they had an opportunity to appeal and they did not. The thirty days had expired, so technically their appeal is barred. He did not think Chapter 68 was applicable in this case for a couple of reasons. The Statutes themselves provide that the denial of a tort claim or contract claim for money is not an administrative decision that is subject to review. Secondly, Chapter 68 does not apply to an administrative action that is subject to an administrative review provided for under an ordinance; and our ordinance does provide for such an administrative review. In terms of what is going into the system and what is not; he said he was confused. He came to the meeting thinking that we would talk about a leak in the system and now that has expanded to a faulty meter. This is the first time he has heard about this deficiency. He passed out information sheets that had been prepared by the Del-Hart staff. He showed that SJNMA's water usage in the past 10 years had fluctuated and stated that we can only rely on the meters. He pointed out that some of the years they have been under the 102.25 level and some above. He noted that SJNMA's use had been fairly constant for a period of time and interestingly enough, the first 12 month period following the additional assessment of 15.75 DUEs resulted in another determination of excessive use. So the City again notified them in August of 2009 that they were still continuing to have excessive use. This was after the leak had been identified and the problem remedied. They were warned of an additional 9.25 DUEs. Now in 2010, there is a second twelve months that has just ended and they will not be assessed the additional 9.25 DUEs. The reason for this is that the second twelve months shows that their usage has dropped significantly. However, he stated that he was still troubled tremendously as he referred to his handout that showed the

second twelve months because there are huge fluctuations in use each month. This was the first time he had heard of a meter problem. He stated that as an outsider looking at this usage history, he feels that something is really wrong. He stated that he did not know if it was because their water system is so old that it has breaks that keep happening all the time or not. He stated that he is not convinced based on the evidence that he has seen that the usage has in fact been permanently reduced. The Commission will have to make that determination. He added that he did not think they had the right to take this matter to the Commission and told the Commission that if you want to dismiss it you can or if you want to consider its merits you can. It is now up to the Commission.

B. O'Neill stated as a rebuttal, that he did not say that there was an erroneous meter. He said that there was a non-existent meter; someone read it from the City and came up with 440,000 gallons; so saying we had bad meters was not true. This being said the problem was impossible to remedy. SJNMA did not do anything wrong and it was not because it had an old meter. The City reading (on June 17, 2010) for whatever reason was erroneous and they got charged for it. He reviewed that he had presented an engineer's testimony that the excessive water did not go into the wastewater system. All of the numbers that SJNMA has presented to the Commission bear out that this problem started sometime in the 3<sup>rd</sup> quarter of 2006 and went on into the early 2009. The water never went into the system, he said that Chapter 68 (State Statutes) requires the City to give notice of appeal rights and the Commission can not opt out of that provision. But regardless of the appeal situation, the Commission should give SJNMA relief from the charge of \$83,000 for nothing and something they did not do. He added that SJNMA has done its level best to fix the problem. If you take away the 440,000 gallons (June 17, 2010 reading) that we had nothing to do with as the meter is gone; then SJNMA is right in line. He asked that the Commission keep in mind that in the last year, SJNMA was at a DUE level of 78 and is now being assessed at 118 (DUEs); a 50% increase and it is not right.

G. Mac Dougall asked when they had found out about the 440,000 gallon charge; did they contact anyone at the City? B. O'Neill answered that this happened after the time period in question that was bracketed off (3<sup>rd</sup> quarter 2006 to 2<sup>nd</sup> quarter 2008) and that they are talking about a DUE assessment that is for 2008. It (440,000 reading) was really brought up in conversations with Attorney Fenner when he talked about the meter readings and use. B. O'Neill said that he hit this point about the 440,000 gallons hard because there was no meter.

R. Landwehr stated he had been on the Commission for a long time and SJNMA was the only user that took over two years to fix their problem. The Arrowhead situation was remedied right away. SJNMA had been receiving excessive usage warnings for two years and asked if there was anyone to open the mail at SJNMA. There were several warning letters sent to SJNMA and he questioned why nothing was done to remedy the situation after the first warning letter was sent. After one warning letter and especially after two letters, someone should have questioned it. He wondered why no one questioned it until late the fall of 2008 or early in 2009 when the leak was found by accident.

M. DeYoe thanked all present for providing input on this matter. This matter would appear on the next month's Commission meeting agenda in order for appropriate review of information to take place. She stated that the next Commission meeting is August 17, 2010 and If SJNMA has any supplemental documentation in written form that the Commission needs to review that it be given to R. Frick or S. Luczak at least 10 days before the meeting or August 7, 2010.

B. Leonard asked about the correlation between the wide fluctuations and days students are at school. S. Celichowski answered that the students are off campus for a number of days in

December and April. However, R. Frick stated that if you look closely at the days off and the DUEs used there seemed to be no consistent correlation between them.

#### Revisions to Wisconsin Department of Natural Resources' Phosphorus Limits

S. Luczak stated he had spoken with Wisconsin Department of Natural Resources (DNR) Staff member Timothy Thompson who explained that a bill on phosphorus limits would be going to the State Legislature for consideration. It would most likely be nine to ten years before any enforcement is undertaken. Information had been received regarding an upcoming Senate Hearing in Madison on the phosphorus legislation that he hoped to attend. Millions of dollars would need to be spent to comply with the phosphorus levels being proposed. The Del-Hart facility was considered a point source that made up approximately 20% of the phosphorus that goes into streams and rivers while the other 80% responsible were not being examined with the proposed regulations. Each plant would be examined to determine outfall and impact to the river. More information would be shared with the Commission at the next meeting.

#### Purchase of Pumping Station #4 Wet Well Access Cover

S. Luczak explained approximately \$15,000 had been allocated in the budget to redo the Wet Well Access Cover for Pumping Station #4 to make it more accessible to alleviate materials that build up and cause problems in pumping. Of the six companies contacted about the bidding process for this project, three bids had been received. Two were from Staab Construction and one from Underground Pipeline, Inc. (UPI). The bid from UPI was the lowest; in the amount of \$9,400. Clarification was provided as to the specific services provided as part of the bid.

**K. COMPTON MOVED TO APPROVE THE BID FROM UNDERGROUND PIPELINE, INC IN THE AMOUNT OF \$9,400 FOR THE PURCHASE OF PUMPING STATION #4 WET WELL ACCESS COVER. R. STEVENS SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

#### FINANCE DIRECTOR'S REPORT

##### Re-Structure of Domestic User Equivalent Update

R. Frick explained that she had submitted a complete first draft of the new connection charge calculations with supporting schedules to the Del-Hart auditor. She anticipated feedback on this first draft from the auditor in the next month.

##### Financial Statements

R. Frick briefly discussed the financial statements stating there was nothing unusual in them and they looked good. She noted the Budget Variance Report reflected a reallocation of budget dollars from the Operations & Maintenance (O&M) Contingency account to O&M Engineering. This was the result of a reclassification of the Sawyer Road Pipe Relocation capital project costs to expense in June 2010 due to the new floor elevation approval by the DNR (and DOT) that eliminated the need to move the Del-Hart pipe.

Approve Expenses & Disbursements

**R. LANDWEHR MOVED TO PAY THE BILLS AS PRESENTED. B. LEONARD SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

Next Commission Meeting's Agenda Items

- Update on St. John's NW Military Academy's Appeal of Additional Domestic User Equivalentents from 2008
- Update on the Restructuring of the Domestic User Equivalentents
- Revisions to the DNR phosphorus limits

ADJOURN MEETING

**R. STEVENS MOTIONED TO ADJOURN FROM THE MEETING. T. AICHER SECONDED THE MOTION. ALL WERE IN FAVOR. MOTION CARRIED. THE MEETING ADJOURNED AT 8:00 P.M.**

Respectfully submitted:

Minutes prepared by:

Rosemary Frick, CPA  
Finance Director

Accurate Business Communications, Inc.