



Memorandum

To: Board of Selectmen
Martha White, Town Administrator

From: Michael Walters Young, Deputy Town Administrator

Date: Friday, June 12, 2009

Re: Water/Sewer Rate Setting Update

Items included in this packet:

- 1) Summary memo dated Friday, June 12th, 2009 entitled "Water/Sewer Rate Setting Update "
- 2) Correspondence from Bob Coates
- 3) Correspondence from John Magee

Summary

At the last meeting of the Board of Selectmen, you were presented with many options regarding water & sewer rates for FY 2010. After voting to implement a Fire Connection Fee charge, the number of available options has diminished to three:

Proper Quarterly Bill Cycle Impact							
Options for Rates:		A	B	C	D	E	F
		Basic level necessary	Add Fire Connection Fee	Average Apartments	Average Out-of-Town Customers	Do Away with averaging	Final Rate Impact
Percentage Inc./Dec.		1.15%	-0.65%	3.50%	0.65%	-5.75%	
3	If you vote the base and add the fire connection fee and average apartments	1.15%	-0.65%	3.50%	N	N	4.00%
7	If you vote all alternatives	1.15%	-0.65%	3.50%	0.65%	N	4.65%
9	If you do not average any and you add the fire connection fee	1.15%	-0.65%	N	N	-5.75%	-5.25%

The categories shaded in white are those which remain to be voted upon – whether or not to average apartments and out-of-town customers or to do away with averaging entirely.

In tandem with narrowing the options to three, the Board was asked by administration to wait for the opinion of Town Counsel in regards to several questions which had arisen in response to his research regarding the treatment of customers receiving utility service under similar conditions. These questions included:

- 1) Can Condominiums and Apartment Complexes be treated differently in terms of billing (i.e. to average or not to average) if they both receive water from a master meter?
- 2) Can out-of-town customers be treated differently in terms of billing (i.e. to average or not to average) than condominium properties if they both receive water from a master meter? (As importantly, does the status of out-of-town customers in any way negate or change their standing in the context of procuring, receiving, or charging for the service of water?)
- 3) Can multi-family properties (i.e. two-, three-, and four- family units) be treated differently in terms of billing (i.e. to average or not to average) if they too receive water from a master meter?

At the time of this memorandum, staff has yet to receive the opinion from Town Counsel and therefore has no recommended action concerning these questions.

Recommended Action:

- 1) **Delay vote on water & sewer rates until June 22nd when the Board and staff have sufficient time to review advice of Town Counsel in this matter.**

Staff will be available to answer questions.

4 Meadowbrook Road
Dover, MA 02030
June 8, 2009

Mr. Michael Walters Young
Deputy Town Administrator
13 E. Central St.
Natick, MA 01760

Dear Mr. Young:

Your water rate presentation at the June 1, 2009 Board of Selectmen's meeting with respect to an earlier Massachusetts legal precedent (no rate discrimination for same service under similar conditions) was very informative.

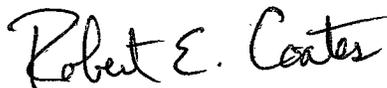
I imagine that Staff will be preparing a water rate recommendation for the Selectmen for how condominiums, apartments and out-of-town users should be handled. I would like to call your attention to a clause in the 1992 Elm Bank Agreement and request that you keep it in mind when making your recommendation.

(7e) Natick shall charge Dover residents receiving water from the Elm Bank water supply on a quarterly basis the same rate charged Natick residents, less any unrelated water charges or surcharges.

I know that you already have a copy of the Elm Bank Agreement but I am attaching a copy for your convenience.

Please do not hesitate to contact me should you want to discuss this further or need additional information.

Sincerely,



Robert E. Coates, Trustee
Meadowbrook Water Trust

cc: M. White, Natick Board of Selectmen, MWT Trustees, GRRT Trustees
attachment: Agreement Between the Towns of Dover and Natick

AGREEMENT BETWEEN THE TOWNS OF DOVER AND NATICK

- Whereas;** the Elm Bank Water Supply should be developed as a local water supply in accordance with the provisions of Chapter 624 of the Acts of 1986, and
- Whereas;** the Town of Natick, as the lead community named in the Four Town Water Agreement entered into between the towns of Dover, Natick, Needham and Wellesley on December 17, 1985, shall develop the Elm Bank water supply as per this agreement, and
- Whereas;** the Town of Dover may have need of a portion of the Elm Bank water in the future, and has rights to share in 50% of the water which the Town of Natick withdraws from the Elm Bank aquifer, and
- Whereas;** development of the water transmission lines should be in a manner that minimizes future costs to the Town of Dover to share in that water supply,

Therefore be it agreed:

- 1. This Agreement between the Towns of Dover and Natick supersedes all previous agreements only to the extent that they are inconsistent with this agreement between the two towns relative to the Elm Bank property and the development of the water supply on that property.**
- 2. The Town of Natick will obtain all necessary permits from appropriate agencies of the Commonwealth of Massachusetts for the development of the Elm Bank water supply.**
- 3. The Town of Natick will obtain all necessary easements and other property interests on the Elm Bank property from the Commonwealth of Massachusetts as required for the development and transmission of that water supply.**
- 4. The Town of Dover will acquire all necessary easements for the water transmission lines and electrical conduits required for the development of the Elm Bank water supply in Dover outside the Elm Bank property.**
- 5. The Town of Dover shall grant to the Town of Natick a license to construct and maintain water-lines in Dover as described in Item 4 of this Agreement.**
- 6. The Town of Natick shall provide funds for all planning, engineering, construction, maintenance, and operational costs related to the development and transmission of water from the Elm Bank water supply.**

7. Unless and until the Town of Dover decides to utilize water from the Elm Bank water supply, no costs for the development of that water supply will be imposed on the Town of Dover.

If the Town of Dover decides to share in the use of the Elm Bank water in accordance with this agreement, the cost for such use will be as follows:

- a. Dover's share in all historic costs for the Town of Natick for the development of the water supply will be in accordance with the following formula.

$$C \times (A/B)$$

Defined as follows:

- A = Actual gallons used by Dover residents for the previous quarter
 - B = Total developed yield of the Elm Bank water supply as determined by the Department of Environmental Management
 - C = Total development costs of the Town of Natick
- b. The Town of Dover shall give six months notice to the Town of Natick prior to connection to the system.
 - c. This formula shall also apply to future capital improvements related solely to the Elm Bank water supply, subject to the approval of both the towns of Dover and Natick.
 - d. Dover shall pay 100% the costs of mains laid by the Town of Dover for the benefit of Dover residents.
 - e. Natick shall charge Dover residents receiving water from the Elm Bank water supply on a quarterly basis the same rate charged for Natick residents, less any unrelated water charges or surcharges.
8. The water transmission lines from the Elm Bank property shall be located in Turtle Lane and Dover Road in Dover, and Dover Road and Pleasant Street in Natick. The cost of installing and maintaining these lines shall be the sole responsibility of the Town of Natick.
 9. The Town of Natick agrees to fulfill those obligations approved by the Dover Town Meeting on September 30, 1991, as set forth in Article 5 which addresses the benefits to be accrued by Turtle Lane residents in Dover.

10. At the intersection of Dover Road and Main Street a water main will be laid across Dover Road and capped at the beginning of Main Street. The Town of Natick will cooperate with the Superintendent of Streets in Dover to insure that all hardware to be installed is of an adequate nature for fire protection purposes for the Town of Dover.
11. The Town of Natick will run water main stubs from the transmission line in Turtle Lane and Dover Road to the property line of all residents abutting the portions of those streets in which the Town of Natick is laying the water transmission lines. (See Town of Dover Assessor's map attached).
12. Upon completion of the construction of the water main in Dover Road in Dover, the Town of Natick shall repave in its entirety that portion of Dover Road.
13. The Town of Natick shall install and maintain a package booster pump station to improve the water pressure to the Dover and Natick residents served by the present water line in Glen Street. The goal of such pump station is to provide a minimum of 20 lbs./sq. inch of pressure.
14. The Town of Natick shall install and the Town of Dover shall maintain two hydrants on Dover Road and two hydrants on Turtle Lane.
15. The Town of Natick shall make all reasonable efforts to inform and seek the concurrence of the Selectmen's Office of the Town of Dover of all project related activities. Representatives of the Town shall meet if necessary to keep all parties informed of all project activity and of the progress of the project.
16. Any and all other approvals and/or special legislation required for effecting this project shall be filed by the towns of Natick and Dover jointly.

The specifications prepared by the Town of Natick for bidding the construction of this project shall contain special language which requires the contractor to pay all expenses related to the hiring of Dover Special Police details which are deemed necessary for this project.

17. Low water flow of the Charles River shall not interfere with the flow of water to Dover resulting from this agreement.

BOARD OF SELECTMEN, TOWN OF NATICK

BOARD OF SELECTMEN, TOWN OF DOVER

Edward H. Stott
Mel Whilley
John Moran

Paul S. Huff
Juence B. Kelly
Kristine Slocum

DATE: _____

DATE: 2-13-92 @

Walters Young, Michael

From: John Magee [mageejo@cs.bu.edu]
Sent: Monday, June 08, 2009 10:55 AM
To: Walters Young, Michael
Cc: White, Martha; Selectmen
Subject: Water and Sewer rate setting comments,

Michael,

This email entails my additional comments for the Water and Sewer rate setting. I realize the public hearing is closed, but I also assume you will be presenting additional information.

The Brand v. Billerica case is interesting. I read the actual case decision. At the time, Billerica had a declining water tier system, so that large (commercial) users essentially got a volume discount. The complaint was arguing that the master-metered complex had a right to this volume discount which was lower than the rate individual residents typically paid. The decision says that since the master-metered users will be residential dwellings, it is similar conditions to individual residents. I would argue that this precedent is the same for Natick's situation, and that only by continuing averaging for multiple-dwelling unit master-meters will we be charged similar rates for the similar residential use.

On the \$5/bill issue, as I believe is obvious in my original emails, I did not intend to fight tooth and nail. I was well aware of being overly antagonistic and thought the cost in good-will would be greater than the savings. However, I feel compelled to respond to some of the comments that I heard at the last hearing.

First, I truly believed that there was an unintentional error in the billing department - that the policy had potentially be miscommunicated, and that actual minutes were not available for 6 months didn't help either. I honestly thought that by pointing out the discrepancy, the error would simply be corrected without much of an issue.

Some of the comments I heard I think unjustly paint this argument as being more than it is intended to be. Comments similar to these were made (not exact quotes):

"Mr. Magee thinks the condos shouldn't have to pay this when everybody else has to pay this"

"if the \$5 fee were not charged to each condo unit, it would unfairly discount the condos"

"Would Mr. Magee rather have the \$5 fee removed or have the averaging removed"

A fee is required to be used to cover the actual expenses for which it is being charged. Single family residences have a single meter - they receive a service of having their water usage individually metered and billed. Condo dwellings do not receive this service individually, we receive it on a per-building or per-complex basis. It does not make sense (and in fact is not legal) to charge people a service fee who are not receiving a service. See below for the relevant case law.

This would be like saying "Mr. Magee doesn't think he should have to pay vehicle registration fees when everybody else has to pay it". Seems like I'm being unreasonable right? But if I tell you that I do not have a car, the entire picture changes!

The \$5 fee per meter issue should not be related to the implementation of averaging. The averaging is to correct an inequity that was created by the system in the first place. Consider this: if the town had flat rates from the start, which would have negated the need for averaging altogether, and then decided to implement at \$5 per meter fee, I doubt there would be any discussion of counting the number of dwellings a meter serves and multiplying the fee by

those dwellings. To say that we should accept the fee simply because we are now being fairly billed for usage is unreasonable.

I'm sure you're familiar with the famous EMERSON COLLEGE v. CITY OF BOSTON et al. case. Here is a nice web page with relevant parts highlighted in red. I also will paste the three relevant paragraphs below.

<http://www.citg.org/citg/Emerson.htm#relevant>

Fees imposed by a governmental entity tend to fall into one of two principal categories: user fees, based on the rights of the entity as proprietor of the instrumentalities used, Opinion of the Justices, 250 Mass. 591, 597, 148 N.E. 889 (1924), or regulatory fees (including licensing and inspection fees), founded on the police power to regulate particular businesses or activities, id. at 602, 148 N.E. 889. See Boston v. Schaffer, 9 Pick. 415, 419 (1830); P. Nichols, Taxation in Massachusetts 6-9 (3d ed. 1938). Such fees share common traits that distinguish them from taxes: they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner "not shared by other members of society," National Cable Television Ass'n v. United States, 415 U.S. 336, 341, 94 S.Ct. 1146, 1149, 39 L.Ed.2d 370 (1974); they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge, Vanceburg v. Federal Energy Regulatory Comm'n, 571 F.2d 630, 644 n. 48 (D.C.Cir.1977), cert. denied, 439 U.S. 818, 99 S.Ct. 79, 58 L.Ed.2d 108 (1978), and the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses

Fees are legitimate to the extent that the services for which they are imposed are sufficiently particularized as to justify distribution of the costs among a limited group (the "users," or beneficiaries, of the services)

That revenue obtained from a particular charge is not used exclusively to meet expenses incurred in providing the service but is destined instead for a broader range of services or for a general fund, "while not decisive, is of weight in indicating that the charge is a tax."

If you read only one sentence there, it should be "and the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses"

I hope this will clear up any misconceptions. Please feel free to contact me with any questions.

Sincerely,
-John Magee
52 Village Brook Ln. #15