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Memorandum

To: Board of Selectmen
Martha White, Town Administrator

From: Michael Walters Young, Deputy Town Administrator

Date: Thursday, August 06, 2009

Re: Water/Sewer Rate Setting Update

Items included in this packet:

- 1) Correspondence from Town Counsel regarding opinion on averaging
- 2) Correspondence from Phillip Levine

Summary

At the meeting of June 1, the Board was informed that Town Counsel had determined that the current policy of averaging some but not all master meter residential properties was not in accordance with applicable case law. Town administration asked counsel to review that assumption and to inquire with other communities as to whether or not that finding was agreed to by other communities' legal representation. After nearly two months of review, the limited correspondence is attached to this memorandum stating that counsel's opinion remains unchanged. With that legal review completed, staff is advising the Board of Selectmen in your role as Water & Sewer Commissioners to set water rates at your next meeting of August 17, 2009.

As reminder, based upon the total expenses approved by Town Meeting in May for the Water & Sewer Enterprise Fund of \$13,530,366, total revenue from rates must increase only 1.15% This amount is even less (0.5%) after your decision to raise a fire connection fee earlier in the rate setting process . The budget is shown on the next page.

	FY 2008 Budget	FY 2009 Budget	FY 08-09 %	FY 2010 Appropriated	FY 09-10 Change	
					\$	%
Water & Sewer Enterprise Revenues						
User Charges	9,992,305	12,173,950	21.8%	12,314,366	140,416	1.15%
Connection Fees	94,291	95,000	0.8%	95,000	-	0.00%
Other Departmental Income	739,814	740,000	0.0%	700,000	(40,000)	-5.41%
Investment Income	81,930	60,000	-26.8%	45,000	(15,000)	-25.00%
Capital Article Closeouts/Transfers				162,304	162,304	#DIV/0!
Retained Earnings	2,675,000	-	-100.0%	213,696	213,696	#DIV/0!
Total Water & Sewer	13,583,340	13,068,950	-3.8%	13,530,366	461,416	3.53%

Water & Sewer Enterprise Expenses						
Sewer	4,743,775	4,933,877	4.01%	5,218,449	284,572	5.77%
Water	1,649,681	1,930,055	17.00%	2,013,391	83,336	4.32%
Utility Billing	231,116	217,262	-5.99%	219,282	2,020	0.93%
Fringe Benefits	604,816	661,535	9.38%	607,776	(53,759)	-8.13%
Debt Service	1,888,392	2,264,563	19.92%	2,415,052	150,489	6.65%
Reserve Fund	0	200,000	#DIV/0!	200,000	-	0.00%
Indirects (included in G/F)	2,379,592	2,546,345	7.01%	2,506,416	(39,929)	-1.57%
Capital	TBD	315,000	#VALUE!	350,000	35,000	11.11%
Total Water & Sewer	11,497,373	13,068,637	13.67%	13,530,366	461,729	3.53%

With counsel's opinion affirmed, the board now has two of the original nine choices available to it in terms of setting rates for FY 2010. The impact on the rates of the most common Water & Sewer user – those with a single meter which uses both Water & Sewer - is detailed below. You have already voted to implement column B.

Proper Quarterly Bill Cycle Impact								Delayed Bill Cycle Impact
Options for Rates:	A	B	C	D	E	F	G	H
	Basic level necessary	Add Fire Connection Fee	Average Apartments	Average Out-of-Town Customers	Average 2 & 3 Family Homes	Do Away with averaging	Final Rate Impact (4 Qtrs.)	Final Rate Impact (3 Qtrs.)
Percentage Inc./Dec.	1.15%	-0.65%	3.50%	0.65%	1.90%	-5.75%		
A If you vote all alternatives	1.15%	-0.65%	3.50%	0.65%	1.90%	N	6.55%	4.91%
B If you do not average any and you add the fire connection fee	1.15%	-0.65%	N	N	N	-5.75%	-5.25%	-3.94%

The categories shaded in white are those which remain to be voted upon (Columns C through F) – effective whether or not to average all multi-unit properties or to do away with averaging entirely. It is important to acknowledge Column H – the impact on rates for the average user of water & sewer services over three billing cycles – in this case the 2nd, 3rd and 4th quarters.

Full rate sheets will be provided to you on Monday night, August 10th so that you have the week of the 10th to review them in advance of final rate setting.

Recommended Action:

- 1) **Vote FY 2010 Water & Sewer rates on August 17th, 2009.**

Staff will be available to answer questions.

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

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Please Respond to Quincy

August 1, 2009

VIA FIRST CLASS MAIL

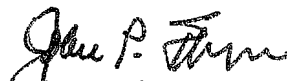
Michael Walters Young, Deputy Town Administrator
Natick Town Hall
13 East Central Street
Natick, MA 01760

Re: Water and Sewer Billing

Dear Mr. Walters Young:

I spoke with Attorney Christopher Petrini, Framingham Town Counsel, to whom I had sent a copy of my June 12, 2009 letter to you regarding water and sewer billing. Mr. Petrini told me and authorized me to inform Natick personnel that he reviewed that letter, that he agrees with the general principles contained in that letter, but that he has not been asked to analyze Framingham's water and sewer billing structure and to give an opinion on that subject, and that therefore, he has not applied the law to Framingham's system to see how the law applies vis a vis Framingham's billing system and rules.

Very truly yours,


John P. Flynn

JPF/cj

cc: Martha L. White, Town Administrator
Natick Town Hall

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Please Respond to Quincy

July 31, 2009

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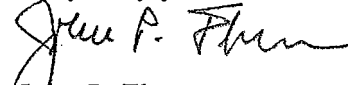
Michael Walters Young, Deputy Town Administrator
Natick Town Hall
13 East Central Street
Natick, MA 01760

Re: Water and Sewer Billing

Dear Mr. Walters Young:

As requested I have reviewed the subject matter of my June 12, 2009 letter to you, a copy of which is enclosed. In my opinion the analysis and conclusions in that letter are correct.

Very truly yours,


John P. Flynn

JPF\sd

Enclosure

cc w/enclosure:

Martha L. White, Town Administrator
Natick Town Hall

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Please Respond to Quincy

June 12, 2009

HAND DELIVER

Michael Walters Young, Deputy Town Administrator
Natick Town Hall
13 East Central Street
Natick, MA 01760

Re: Water and Sewer Billing

Dear Mr. Walters Young:

In my opinion the answers to the three questions which you have asked regarding water and sewer billings are as follows:

1. Condominiums and apartment complexes may not be treated differently in terms of billing (i.e., to average or not to average) if they both receive water from a master meter.

As I understand the facts condominium complexes and apartment complexes are billed for water and sewer usage on a tiered system, in which the rates increase at certain levels of usage. For a condominium complex which has the water pass through a single meter, rather than through separate meters for individual units, an average usage is determined for each unit and the bill for the complex is determined by applying the rate for the average consumption per unit. For an apartment complex which has the water pass through a single meter, rather than through separate meters for individual units, the bill for the

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Michael Walters Young, Deputy Town Administrator.
Natick Town Hall
Natick, MA 01760
June 12, 2009
Page 2 of 3

complex is determined by applying the rate for the total consumption of water by the units in the complex, without consideration of any averaging. In part this system is based upon a rationale that apartment rental is a business which allows the owner to deduct such expenses for the non-owner occupied units.

In my opinion this system, if challenged, would be found to be illegal. In my opinion the effect of this billing system is to charge apartment building dwellers at a higher, ballooning rate which would be held to be discriminatory between customers who receive the same service under similar conditions. I base this conclusion upon the decision of the Massachusetts Appeals Court in Flatley v. Malden, 40 Mass.App.Ct. 38, 40-41, (1996) and the decision of the Massachusetts Supreme Judicial Court in Brand v. Board of Water Commissioners of Billerica, 242 Mass. 223, 228 (1922).

In my opinion the Town of Natick would have the authority to adopt a regulation which requires condominium units to be separately metered but not to impose such a requirement upon apartment complexes. The Massachusetts Supreme Judicial Court has held that such a regulation would have a rational basis because it is reasonable to conclude that ownership of individual condominium units may change more often. To ensure continuous direct billing of unit owners and thereby encourage conservation, the board may require separate water meters for each condominium unit. Cohen v. Board of Water Commissioners, Fire District No. 1, South Hadley, 414 Mass. 744, 753 (1992).

2. Out of town customers may not 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. In my opinion this would be discriminatory based upon the holding of the Massachusetts Appeals Court in Massachusetts Municipal Wholesale Electric Company v. City of Springfield, 49 Mass.App.Ct. 108, 112-113 (2000). In that case the Court held that "Like customers, located in a utility provider's franchise area, are entitled to nondiscriminatory treatment in the matter of rates. ... Rate differentials are

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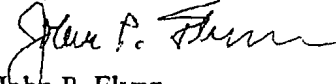
Michael Walters Young, Deputy Town Administrator
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June 12, 2009
Page 3 of 3

recognized and permitted, but they must be based on either the increased costs, or some other circumstances, of providing the utility to the specific customer." 49 Mass.App.Ct. 108, 112, 113. In my opinion, those circumstances do not exist in this situation.

3. In my opinion, multi-family properties (i.e., two, three and four-family units) may not be treated differently in terms of billing (i.e., to average or not to average) if they too receive water from a master meter. My reasons for this conclusion are the same as the reasons for the conclusion in item 1. above.

If you have any questions or need any further information, please contact me.

Very truly yours,


John P. Flynn

JPF\sd
502495v1

Walters Young, Michael

From: binary60 [binary60@comcast.net]
Sent: Sunday, August 02, 2009 3:55 PM
To: Walters Young, Michael
Subject: Water Rates For Irrigation Owners Discriminating
Attachments: Untitled-1.jpg; imstp_animation_butterflies_en_020908.gif

Michael,

I am addressing the Board of Selectman regarding how the water rate charges are determined.

I have installed an irrigation system at my home in 2005 to avoid paying the high sewer tax and have the benefit to approve the appearance for my lawn and flowers, as well for my neighborhood and the Town of Natick.

After my system was installed, the board revised the water rates with a tier formula which raises the high usage water taxpayers disproportionately to the lower levels.

When the Board voted to determine the rate options before them, two members did not vote for the unjustifiable and unfair rates, but preferred a more **equitable** formula for **Natick citizens and**

businesses. Unfortunately three members decided and overruled and voted for the unjustifiable and unfair rates. The argument raised for this unpopular vote was the environment would benefit from less water usage because of the higher cost? Has this been proven since the rates have been in acted? If true how much? Is the purpose to have more revenue collected to use for our debt ridden town?

I am a retired person living on a fixed income and try to budget my cost as every retired individual. In economic crises we are in, any increases to that budget can cause reevaluating my option. That option can be not using my irrigation system. The outcome would be my neighborhood and the Town of Natick would have dead flowers and an unsightly lawn.

If the Town of Natick decided that the environment would benefit from less water usage and took the same action, what would the Town of Natick appear to the citizens and those who travel through our town? Since the town does not have to pay for water usage (other than the golf course) the environment is of no concern to the selectman that had the majority vote? Since our golf course has to pay at the higher rate which increases the debt for the golf course, thus causing the taxpayers more of a burden. Also businesses have an extra burden causing them to be less competitive or effecting their bottom line, whereby decisions to move elsewhere. New businesses may not want to come to our town. This certainly can cause more problems for the Town of Natick. If businesses decided to turn their irrigation system off, how would our town appear?

In my judgment, according the way the board votes, two board members are concerned to the fairness to the people of Natick. Three are concerned (not always, when all are in agreement) irrational judgment, when two board members vote 'for' and 'three against'.

I hope water rate tiers are rethought and not discriminate upon higher usage users soon and a more justifiable formula is voted upon.

Philip Levine

20 Burning Tree Road

Natick, MA 01760-3245

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