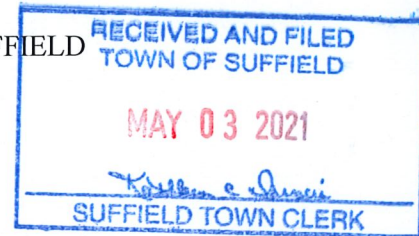


MINUTES OF THE REGULAR MEETING OF THE TOWN OF SUFFIELD
CHARTER REVISION COMMISSION
JANUARY 19, 2021
7:00 P.M.
VIA ZOOM TELECONFERENCE



Members Present Via Teleconference: Jerry Mahoney, Mike Haines, Collin Seguin, Mark Winne, Chace Wessling, Jeff Greer, Beth Fanous, George Marion, Mark Winne, Terrence Plakias, Ed McAnaney, James Moll, and Mark O'Hara.

Also Present Via Zoom Teleconference: Kris Lambert (Host), Derek Donnelly (Town Attorney), WPCA Superintendent Jamie Kreller, WPCA Commission counsel Andrew, Lord, Esq., WPCA Chair Janet Davis, and other members of the WPCA.

Chairman Mahoney brought the meeting to order at 7:07 and began with the Pledge of Allegiance.

Public Comment: None.

New Business:

At Ms. Davis's request, **Ed McAnaney** moved to amend the order of speakers to allow WPCA Chair Janet Davis to speak first. **Collin Seguin** seconded the motion. The motion passed unanimously.

Remarks of Town of Suffield WPCA Chair Janet Davis and discussion of same:

Chairman Jerry Mahoney introduced Ms. Davis. He noted that Ms. Davis had previously provided materials which had been shared with the entire charter revision commission. He said that it was his understanding from those materials that the position of the Town of Suffield WPCA Commission that the Town of Suffield WPCA is a completely separate entity from the Town of Suffield and asked her to share her thoughts on that with the CRC.

WPCA Chair Janet Davis thanked the Commission for inviting her and the other members of the WPCA Commission. She introduced Jamie Kreller and Andrew Lord. She discussed the credentials, education, and professional background of the members of the WPCA commission. Our sewer use fees are some of the lowest in the state. She explained that not everyone in town pays a user fee. User fees pay for running of the plant, the employee benefits and the maintenance and running sewer system. Because of this, the water treatment plant does not rely on tax dollars to operate. She pointed out that the plant is very well run and that is thanks to the WPCA. She stated that the National EPA visits our plant and sang its praises as to how it is operating. She believes that the WPCA's continuing existence is important to the ongoing successful running of the water treatment plant and its systems. The system is run and managed by 10 people. They are well below the requirements of DEEP in terms of contamination levels. She believes that having one person or a small number of people who do not understand the system would be detrimental. The WPCA works with the town to keep costs down, even though they are legally a separate entity, but there is a give and take with the town. Hood, the prison, and Suffield by the River are the 3 biggest customers.

Mr. Mahoney asked Ms. Davis what role the WPCA sees for the Town in hiring the people who work at the WPCA. **Ms. Davis** said the Town has no role in hiring the people who work at the WPCA, and that is for the WPCA.

Mr. Mahoney then asked Ms. Davis what role she sees for the Town in evaluating the job performance of the people who work at the WPCA. **Ms. Davis** said she does not see any role for the Town to evaluate the

job performance of the people who work at the Town WPCA. She said the Town is not qualified to evaluate the job performance of the people who work at the WPCA.

Mr. Mahoney asked Ms. Davis what role she sees for the town in negotiating the union contract for the people who work at the Town WPCA. **Ms. Davis** said the Town does not understand the operation of the WPCA. The WPCA has a labor attorney. She said that DEEP regulations allow the WPCA to enter into contracts, advised they have their own labor attorney and counsel and that per DEEP allows WPCA to enter into contracts.

Mike Haines asked Ms. Davis's when she expected to have a report from the EPA regarding a recent visit. **Ms. Davis** referred that question to **Mr. Kreller**, who said the report came out about 1 year ago. He said the report didn't say much, but the WPCA received very position feedback during the EPA visit, some of the cleanest results they have seen.

Mr. Haines asked why there had been a 24% increase in user fees from 2015 to 2020. **Ms. Davis** said there have been incremental increases because \$14 million of upgrades need to be made to the plant. In addition, a contingency amount must be maintained in the event of a disaster. **Mr. Kreller** said the annual increase has been 3% on average, the national average of increase since the 1990s has been 6%.

In response to a question by **Mr. Mahoney**, **Ms. Davis** agreed she does not believe the people who work at the Town WPCA are town employees. Ms. Davis said the people who work at the Town WPCA do receive town benefits. She said this helps the Town because more people are receiving the benefits. She said not one dime of tax dollars are used for employees at the WPCA because those benefits are paid for by the WPCA. She said it's cheaper for everyone in the Town to have one contractor. **Mr. Mahoney** asked if the benefits are paid by the Town or paid by the WPCA. Ms. Davis referred that question to Julie Nigro, the WPCA business manager. **Ms. Nigro** said that her understanding is that WPCA obligations are paid only and completely by the WPCA.

George Marion asked Ms. Davis whether, in her view, the WPCA employees are subject to the town's personnel policies. **Ms. Davis** said they maintain all of the legal requirements they must maintain: OSHA, DEEP, and any others, including the requirements under labor contracts. Ms. Davis said that she does not know what personnel policies the Town may have. **Mr. Marion** asked whether policies with respect, for example, vacation time, are set by the Town or by the WPCA. **Ms. Davis** said union employees are subject to the provisions of the union contract. Ms. Davis deferred to Mr. Kreller as to non-union employees. **Mr. Kreller** said benefits of the non-union employees at the WPCA are determined by the Town executive contract.

Mr. Haines asked if the Town has potential liability if there is an environmental problem which generates liability beyond the capacity of the WPCA. **Ms. Davis** said the WPCA has a reserve fund. In addition, the WPCA is allowed to take out loans and to bond. Ms. Davis then deferred to Attorney Lord. **Attorney Lord** said that *if one subscribes to the view that the WPCA is a separate entity from the Town*, then the liability would stay with the WPCA. Attorney Lord discussed a case where a court held that the WPCA was separate from the town and the town was not liable for damages caused by the WPCA. Attorney Lord identified the case as Garufi v. Stamford, 2010 Ct. Sup. 14778. **Collin Seguin**, vice chair, asked in that case whether the alleged liability for the town was direct or vicarious. **Attorney Lord** said that the town in that case took the position that it was the WPCA that was liable, not the town, and the court agreed. **Mr. Seguin** asked Attorney Lord if the Town of Suffield is obligated to defend a lawsuit brought against the Town of Suffield WPCA. **Attorney Lord** said that he is not aware of any obligation for the Town to indemnify the WPCA. **Mr. Mahoney** asked if the WPCA in the Garufi case was established by the Town of Stamford, or established in some other manner. Attorney Lord was not able to say.

Mr. Marion asked Attorney Lord whether it would be true that the Town would be vicariously liable for the conduct of WPCA employees under principles of *respondeat superior*. **Attorney Lord** said that the Town has performed certain functions as a matter of convenience, but the WPCA could outsource those functions to a third party. **Mr. Mahoney** said that Mr. Marion's question was more pointed: Does the Town have liability for the conduct of WPCA employees? **Attorney Lord** said that *if you subscribe to the conclusion that the employees are WPCA employees*, then the Town does not have liability for the conduct of the WPCA employees.

Mr. Mahoney asked if Attorney Lord had an opinion whether the people who work at the Town of Suffield WPCA are Town of Suffield employees? **Attorney Lord** said he did not have an opinion one way or the other.

Mr. Marion asked Attorney Lord if a WPCA employee can bring a sexual harassment or other claim against the Town. **Attorney Lord** said the claim could be brought, but he would expect the Town would take the position that the proper defendant would be the WPCA.

Mr. Mahoney asked Attorney Lord whether the Town of Suffield has potential liability for the conduct of WPCA commissioners. **Attorney Lord** said he did not know that.

Ms. Davis pointed out the contract is between the WPCA Labor Union and the WPCA commission.

Mark O'Hara asked whether the WPCA has its own tax ID number and does it maintain its own liability insurance. **Ms. Davis** said WPCA does not have a Tax ID number. She deferred the question on liability insurance to Ms. Nigro. **Ms. Nigro** was not certain whether there is a distinct liability policy for WPCA. She thought it may be a joint policy with the town.

In response to a question by **Edward McAnaney**, **Ms. Davis** said that the WPCA could elect not to reimburse the Town for services provided by the Town. In response to a question by **Mr. McAnaney**, **Attorney Lord** said there is a difference of opinion whether the people who work at the WPCA are Town employees or not. Attorney Lord said he does not think it's a black and white issue. **Mr. McAnaney** asked about bonding for WPCA projects. **Attorney Lord** clarified that WPCA doesn't receive bonding, so much as they apply for loans from the state, and that only the Town has the authority to bond. The WPCA could request that the Town approve a bond by way of town meeting and then the WPCA would repay the bond.

Mr. Mahoney asked Attorney Lord what he would need to offer an opinion on whether the folks who work at the Town of Suffield WPCA are Town employees. **Attorney Lord** said he did not know. The statutes allow a WPCA to have employees. He has colleagues who are labor attorneys who say they look and feel like town employees. He just doesn't have the answer.

Ms. Davis said that Attorney Lord had recently provided an opinion letter dated January 9, 2021. She said that she will provide that opinion letter to the CRC.

Derek Donnelly, town attorney, pointed out that there has been ongoing confusion, to the detriment of the WPCA and the town, regarding the status and operation of WPCA and its relationship to the town. He can provide the historic meeting minutes and other documents for the CRC to review.

Mr. McAnaney asked Attorney Lord whether the charter could be changed to dissolve the WPCA and revert to a sewer commission as it was originally conceived. **Attorney Lord** said that there probably could be a way to do that, but it would not be advisable.

Mr. Marion asked whether it is the role of the CRC to address the issue to resolve uncertainty. **Mr. McAnaney** said if at least a portion of the uncertainty is in the charter, then perhaps the CRC could recommend charter revisions to define roles more clearly because it would not be good going forward for the lack of certainty about the relationship between the town and the WPCA or the people who work at the WPCA. **Mr. Mahoney** added, and to resolve uncertainty about what liability the Town may or may not have. **Attorney Lord** said that another alternative would be for the WPCA to hire a third party to provide the services to the WPCA which the Town now provides and/or to run the plant.

Derek Donnelly said there is a great deal of confusion in the charter about the WPCA. For example, what does it mean to say the WPCA must “consult” with the board of finance on the WPCA budget? Why would that provision be in the charter if the WPCA is an entity completely separate from the Town? The charter does list the WPCA commission as a board or commission of the Town. Yet there is a footnote in the charter that suggests the employees at the WPCA are not subject to the first selectman. There are inconsistencies within the charter that can be addressed by the CRC. **Attorney Lord** referenced that footnote to Section 502 of the charter. He said that footnote carves out the WPCA as separate from other boards and commissions in the Town.

Ms. Davis said that in the last 5 years there has been a lot of ridiculous and frustrating interference by the town in the operation of the WPCA. Ms. Davis made a lengthy statement about perceived interference by the town, including interference by the Town in union contract negotiations by the WPCA commission and exclusion of the WPCA commission members from those negotiations. Ms. Davis said that the WPCA cannot be changed unless the Town no longer has a town meeting form of government.

In response to a question by **Mr. Mahoney**, **Andrew Lord** agreed that he had previously referred to the Town of Suffield WPCA as semi-autonomous in his letter to the CRC. Andrew Lord said, however, that was polite language and the WPCA is actually a fully autonomous entity.

Mr. McAnaney moved to adjourn at 8:33, **James Moll** seconded, and all voted in favor.

Respectfully submitted,
A. Chase Wessling
Secretary