

**MINUTES OF THE TOWN OF CHESHIRE WATER POLLUTION CONTROL  
AUTHORITY PUBLIC HEARING HELD ON WEDNESDAY, JANUARY 25, 2017 AT  
7:00 P.M. IN COUNCIL CHAMBERS, TOWN HALL, 85 SOUTH MAIN STREET,  
CHESHIRE CT 06410.**

Present

John Perrotti, Chairman; Steve Carroll, Vice Chairman, Matthew Bowman, Ken Cianci, Tom Scannell, James Sima.

Absent: Mark Kasinskas

Staff: Walter Gancarz, Town Engineer; Attorney Joseph B. Schwartz, Murtha & Cullina.

Guest: Don Chelton, AECOM.

Public Hearing Subject Matter

**JOINT APPLICATION OF EARL J. KURTZ, JR. AND FRANK LONGO SR.  
SEWER EXTENSION AT TALMADGE AND WALLINGFOD ROADS.**

Chairman Perrotti called the public hearing to order at 7:01 p.m.

This is a continuation of the public hearing of December 21, 2016.

Chairman Perrotti read the safety notice.

**1. PLEDGE OF ALLEGIANCE**

The Group Pledged Allegiance to the Flag

**2. ROLL CALL**

The clerk called the roll and a quorum was determined to be present.

**3. EXPLANATION OF HEARING PROCEDURE AND AGENDA**

Chairman Perrotti explained the procedures for a public hearing of the WPCA.

**4. READING OF LEGAL NOTICE**

The legal notice was read into the record of the public hearing by the clerk.

Attorney Schwartz reported there were letters submitted by Robert Gieseler dated January 24, 2017, regarding his claim that one of the WPCA members might have a conflict of interest with seating on the Commission and deliberations on the subject application. These letters were made part of the record.

Attorney Smith provided his memo dated January 25, 2017 reviewing the Code of Ethics and Conflict of Interest Section 10-1 (c)(1) of the Town of Cheshire Code of Ordinances. He summarized his opinion which is stated in the memo, and read into the record sections of Section 10-1(c)(1) which define "Public Officer or Employee", and noted a WPCA member is a public officer. Attorney Smith read the definitions for the terms "Financial Interest" and "Personal Interest" into the record.

Attorney Smith further read *"Whenever a "financial interest" or "personal interest" is alleged to exist, the WPCA member so interested shall, in addition to other*

*requirements of law...disclose such interest on the record of such agency; and abstain from participating publicly or ex parte in any hearing, discussions, debate or decisions...regarding an application.*

The ordinance further states that *"whenever an agency member is requested by another member of the agency or by a party to the matter pending before such agency or by a member of the public who may be aggrieved by the decision of such agency, to abstain from participating in any hearing, discussion, debate or vote on any matter which is pending before the agency for the reason that he has a conflict of interest, and if such agency member refuses to so abstain, the remaining unchallenged members shall consider any relevant evidence concerning such claimed conflict of interest, as defined by this section, and vote on such request for abstention as follows: Either vote to sustain the member's refusal to abstain and proceed with the meeting, or overrule the member's refusal to abstain and proceed with the meeting without the member's participation (Section 10-1(f)(4))."*

The Authority was told by Attorney Schwartz that under Section 10-1(i) there are penalties for violating the Ordinance. In summary, Mr. Smith said if there is alleged conflict of interest then Mr. Bowman must decide whether to abstain. If he does not want to abstain and does not believe there is conflict of interest, the Authority members can consider if there is a conflict of interest to have Mr. Bowman be recused. Without any conflict of interest Mr. Bowman can sit and act on the application in this public hearing.

Attorney Smith read excerpts from the Gieseler letter into the record and noted sections from the Code of Ordinances cited in the letter. In the letter, Mr. Gieseler states *"...(Mr. Matthew Bowman) has (and had) a business relationship (within the closer than the fourth degree of consanguinity or affinity) (link 3) with Mr. Kurtz and could financially benefit from the new development (in any form). As a recent example of this type of relationship is the property/house directly across from the Kurtz's property in which Matthew Bowman was engaged in the subdivision of said property and construction of the house. I suggest this board member recuse himself from voting on Application 66-14 and in accordance with the civil law method, step away from the rest of the board members while any and all discussions pertaining to the application are discussed. In other words he should become a member of the public and be treated as such."*

In his letter, Mr. Gieseler then quotes sections of the Code of Ordinance, Section 10-1 which had been referenced by Attorney Smith, and Section 9-3.

Having reviewed the letter, Attorney Smith stated that Matthew Bowman has the opportunity to explain his situation.

Vice Chairman Carroll raised a point of order and asked Attorney Smith if this matter is appropriate in a public hearing. Authority members usually do not speak, but listen. When the public hearing is closed, this matter could be taken up in regular session.

The Authority members were told by Attorney Schwartz that the public hearing has been re-opened; it makes sense to address the issue in open public hearing, especially if Mr. Gieseler was present to elaborate on any alleged conflict of interest. The letter lays out the conflict, but does not explain in detail the alleged conflict. From that perspective, it makes sense to address issue in open public hearing. Since Mr. Gieseler is not here, Mr. Bowman should have the opportunity to defend his position.

Mr. Bowman stated that, as declared, when this application came forward, his name appeared on the deed for the Kurtz property on Wallingford Road. He sold this property to Mr. Earl Kurtz; he declared this initially; and this happened 20+ years ago. Mr. Bowman stated he does not have any business relationship with Mr. Kurtz. To the best of his knowledge none of his family has business relationships with Mr. Kurtz. Mr. Bowman pointed out that he has a large family of 8 children and he is the oldest. He does not know of any business entities of other family members. Mr. Bowman asked for Mr. Kurtz to answer whether he has any business relationship with Bowman family members...and to the best of his knowledge knows they do not have such a relationship...and knows he does not have such a relationship with him. Mr. Bowman said he would remain in the decision making decision process for the application.

Attorney Tim Hollister represents the applicants. Mr. Hollister stated he knows nothing about Mr. Bowman's situation or any of the particulars of the request for disqualification. He pointed out in the Gieseler letter he says "*Mr. Bowman could financially benefit from this new development.*" In that regard, Attorney Hollister stated the applicants are not applying for a development...they are applying for an infrastructure cost item which might support future development if approved by the Planning and Zoning Commission (PZC). There are not development plans in front of the WPCA. The Gieseler claim merits its removal from any conflict of interest.

Earl J. Kurtz, Jr., 648 Wallingford Road, stated as an IWW member he goes through the conflict of interest procedure, but never got clarity on the fourth degree of consanguinity, and asked for a definition.

Attorney Smith advised the ordinance does not provide a detailed definition, and without such a detailed definition, the statutes say to use the plain meaning of those words. The dictionary definition has the best meaning of the word "consanguinity".

Mr. Kurtz stated he has no business relationships with Matthew Bowman...that is not to say that Kurtz Farms which his family owns...has not hired White-Bowman to do plumbing work. Both of these families (Kurtz and Bowman) have lived in Cheshire forever, and many people sitting on the WPCA tonight have business relationships as far as a job. He does not see that as being relative to what is being asked at this meeting.

Mr. Bowman stated that he is neither a share-holder, nor an officer or trustee, of White-Bowman, Plumbing and Heating, Inc.

David Schrumm, 369 Sir Walter Drive, stated he has experience in meetings and developments etc. to know this is a charade about no current interest. He cited what the fourth degree of consanguinity means, and noted the chart at the back of the Gieseler letter.

Mr. Schrumm talked about the code of ethics developed 25 years ago by the Town Attorney, and Cheshire has the toughest and tightest code in the State. The problem is that Cheshire does not have an Ethics Commission, as it was up to individual commission/council/board members to make a conscious decision on what is conflict of interest. The rule is "when in doubt, get out". It is rare that an attorney is consulted on what to decide on the proper thing to do. Mr. Schrumm talked about the first WPCA meeting that Mr. Bowman sat on, where he voted in conflict with the ordinance on connection of sewers on a small subdivision on North or South Brooksvale Road put together by his nephew under another corporate name. Following the vote, he said Mr. Bowman advised he consulted an attorney and was able to act on the application. This is violation of the fourth degree of consanguinity. It is probably a true statement that Mr. Bowman does not have an economic interest in the application before the Authority. If the application is approved, Mr. Schrumm thinks if anything is developed on this property there is a good chance someone within the fourth degree of consanguinity to Mr. Bowman will profit. He noted the chart in the Gieseler letter shows the fourth degree of consanguinity and cited the elements. If Mr. Bowman does not recuse himself, and litigation is brought, there will be a thorough vetting of current and past interests and friendship with the applicant. Mr. Schrumm recommended following the tradition...when in doubt, get out.

Authority member Mr. Bowman stated he has no financial interest in this application and will vote on the application. He will not be abstaining.

Attorney Schwartz said that based on Mr. Schrumm's comments and the Gieseler letter it appears someone from the public is requesting Mr. Bowman recuse himself. Per the Code of Ordinance, Section 10-1, it is up to the members of the Authority to consider the evidence heard thus far, and vote as to whether to agree with Mr. Bowman, allowing him to stay on the Commission, or overrule his decision.

Chairman Perrotti clarified that no vote is to be taken. The Authority members will decide on allowing Mr. Bowman to continue, with a motion.

According to Attorney Schwartz the code does not speak to making a proper motion...the members just have to decide on Mr. Bowman continuing in the process.

It was clarified by Mr. Perrotti that Authority members must decide whether to allow Mr. Bowman to take information from the public and act in the normal manner in deciding on the first part of the process...which is the amendment to the Town of Cheshire's Plan.

Mr. Sima commented on a statement by Mr. Schrumm about the future, after the decision is made, if there is a conflict of someone related to Mr. Bowman, either

purchasing the land or developing the land, profit from it. He asked if this, at that point, would make the Authority's decision null and void...what would be the recourse. He needs clarity in his mind.

In response, Attorney Schwartz stated that he could not imagine this policy - or any policy - would be written with a retroactive effect. When the application is before the Commission members, if at that time a personal or financial interest exists, the member would have to recuse themselves. But, if in 5 to 10 years from now, Mr. Bowman or his family member(s) somehow profits or gains a financial interest at that time, there is nothing in the ordinance, in his opinion, that retroactively voids an approval. It is at the time the vote is taken.

Chairman Perrotti stated a vote to be taken presents itself in the business part of the process, the regularly scheduled meeting. It would be the first order of business to be done regarding the allegation of the conflict of interest. He asked for the town attorney's opinion on this. Mr. Perrotti asked if the conflict of interest action taken by the members is better served during the regular meeting because that is where deliberation regarding this will be taken.

It was recommended by Attorney Schwartz that this be done now. If Mr. Bowman is going to sit here as a Commission member, even during the public hearing, and there is a conflict he should be sitting with the public. The appropriate time for the members' decision is now.

Chairman Perrotti stated a motion is not necessary, and he will take a consensus of the Authority members on the question of whether Mr. Bowman should be allowed to continue on and interact with the application, as a whole.

Mr. Sima - no; Mr. Carroll - yes; Mr. Perrotti - yes; Mr. Scannell - yes; Mr. Cianci - yes. The consensus of the Water Pollution Control Authority membership was 4-1 in favor of Matthew Bowman continuing as a sitting member for the subject application.

## **5. PRESENTATION ON HEARING SUBJECT.**

Attorney Timothy Hollister, Attorney Amber Sarno, and Ryan McEvoy, P.E. Milone and MacBroom, represented the applicants Mr. Kurtz and Mr. Longo. Attorney Hollister stated the Authority members were given a copy of the supplemental materials package dated January 19, 2017. This package is included for the record.

In this packet there is review of discussion items from the December 21, 2016 public hearing. There are seven sets of comments; Mr. Hollister will discuss five; and Mr. McEvoy will discuss two comments.

Attorney Hollister said one of the main discussion items on December 21st was...were the State Plan of Conservation and Locational Guide Map being the designation of the Kurtz and Longo property back as far as 2005, as so called conservation areas...the

green color on the State map. Were those the primary reason why Area 13 was not recommended for sewers in the 2012 Facilities Plan. This was explained that the whole system of 2005 and guide map had been replaced and repealed in 2013.

Attorney Hollister noted, in 2012 when the Facilities Plan was adopted, the Kurtz and Longo property were undeveloped. The WPCA in numerous documents and regulations, Section 12.10, said "if land is designated conservation on the State POCD and Locational Guide Map it is ineligible for sewers for new development. If it is green, conservation area, it is not eligible for a sewer extension. For this reason, Mr. Hollister said he was trying to explain the soil characteristics, septic failures, etc. really did matter because this was not discussed due to the green color, the conservation designation, and concern Cheshire would lose State funding if sewers were extended into conservation area. As to undeveloped land, the 2012 Facilities Plan had the conservation designation, and from looking at all the documents, Attorney Hollister said this issue is taken off the table.

As to soils data, the ability of the Kurtz and Longo property to be developed with on-site septic systems, Mr. Hollister said we can agree from the Chesprocott letter and data from Milone and MacBroom, we do not have a comprehensive high intensity soil survey to determine what the ideal would be on the Kurtz and Longo property. It is clear that Kurtz and Longo have enough acreage under the zoning regulations to make an application for a cluster subdivision...smaller lots concentrated in the more developable, less environmentally sensitive portions of the site...setting aside a substantial piece of property as open space. The request is to let the PZC consider that type of application, asking the Authority to not derail or preempt this. The role of the WPCA is to manage the sewer system, but not determine things like lot sizes.

Attorney Hollister took issue with the other letter from Mr. Gieseler dated 1/24/17, where he says "*What I am asking to be considered is the parcel be subdivided into lot sizes similar to Lot 12 (1 acre lots) and to have individual private sewer systems.*" Mr. Hollister said he thinks it means "septic systems", and this is not the job of the WPCA, whose job is to manage the sewer system.

The next point which came up on December 21st is the septic systems and some evidence of septic failures on Charles Drive and Sir Walter Drive. Attorney Hollister restated that the Kurtz and Longo application is not based on septic failures within Charles and Sir Walter Drives. The application has offered to the Town of Cheshire a route and easement by which Area 12 could be sewerred, if the WPCA and neighbors say this is what they want to do. If the Authority and neighbors do not want to do this, that is fine with the applicants...they are offering a cost savings route and easement to get it done, if it is wanted.

Attorney Hollister stated the WPCA should not deny sewers to the Kurtz and Longo property, which the zoning regulations allow, because residents of Charles and Sir Walter Drives do not want sewers in their neighborhood. This is not fair, and the decision should be based on the property of the applicants. Mr. Hollister also said if

residents of Charles and Sir Walter Drives do not want sewers, this could be formalized, and take the allocation of sewer capacity designated for this area and move it over to Area 13. The subject application is not based on a demand or recommendation...it is only making it possible if it is what everyone else wants to do.

In December, Attorney Hollister noted the feasibility portion of the application is conditioned upon approval of a subdivision by PZC. If the PZC does not allow development of the sewers, then they cannot be installed. There is the option to make them conditional by WPCA, but if the PZC does not approve the next stage, then sewers cannot be installed.

Ryan McEvoy, P.E. Milone and MacBroom, submitted copies of the display boards and handouts to the Authority members. They became part of the record.

In response to discussions from the public hearing, Mr. McEvoy said the applicants have demonstrated ways the Town, if it chose to, could provide sewers to Area 12 via existing Town roadway networks. There is no easement present from Copper Beach Drive HOA to Clearview Drive, as well as the wetland and environmental impacts. There was a plan shown on how, technically, Area 12 could be sewerred if these hurdles were overcome. In review of the design plans for Copper Beach Drive it was found that the sewer stub elevation is 295.5 plus 15 feet higher in elevation than the point proposed by the applicants adjacent to Mr. Longo's property. Using the similar design criteria and methods for Area 12, using minimal slopes and pitch from houses to the sewer main, it was determined that the particular layout (on the plans) and connection point to Copper Beach Drive would reasonably sewer 28 properties in Area 12. Mr. McEvoy said the proposal to provide sewers through Mr. Kurtz's property would result in 30 lots, Area 12 being sewerred by gravity. Any additional lots desired by the Authority in the future would require grinder pumps and forced mains. The primary area where lots are lost is along Wallingford Road. There are three lots at the end of Charles Drive not able to be served by gravity from Clearview Drive.

Mr. McEvoy said the purpose of this exercise was to demonstrate how that option compares to what the applicant is proposing to the Kurtz parcel. He feels it is lesser ability to serve what is proposed. Regarding precedent setting potential as it pertains to providing sewer across a property not recommended for sewer in order to enhance the ability for the Town to provide sewers to other areas where it is recommended...Mr. McEvoy cited one site/area/region is Area 20B near Doolittle Elementary School. On the display Area 20 is in green; Area 20A is an open space parcel; Cornwall Avenue is on the bottom; Oak Avenue is north and south. This particular area would possibly be served by extension of the Sewer along Fairfield Court, which could also work to provide sewer for Area 20B, sewerred by gravity to the north, across the back of Francis Court northern properties. Mr. McEvoy pointed out the open space area, and said it is not considered because it is a pond, wetlands flood plain. Other areas that are recommended for sewers in conservation areas do not have any benefit to provide sewerred through non-recommended areas. The properties on Francis Court are already developed. He said Mr. Kurtz and Mr. Longo properties enable to enhance the

ability for the Town to provide gravity sewers to an area that is recommended for sewers.

Mr. Sima stated his confusion on statements made. He asked Attorney Hollister about discussion of not sewer Area 12 per this application, and yet we are talking about sewer Area 12 and possibly Area 20 on the other side of town.

Attorney Hollister agreed it is confusing. His point for clarification is the application of Kurtz and Longo is not based on granting a sewer extension across their property so Area 12 can be sewer. This is up to the residents of Area 12 and the WPCA. If it is decided to do this, the applicants are providing a means to do it in terms of both a route and cost savings. This is an extra benefit. The purpose of this application is to allow Mr. Kurtz and Mr. Longo to go to the PZC on their property. The extra benefit can be extended to Area 12, but it is not why the application is before the WPCA.

Chairman Perrotti stated to the Authority members that they are taking this information-- the first part of the application is to amend the map and allow sewers in unsewered areas.

Mr. Sima talked about precedent setting with this amendment. If not, Mr. McEvoy re-said sewer through a non-recommended area. If that is not part of the issue, sewer through a non-recommended area to a recommended area, this is setting a precedent for future people with property in which they want to install sewers. We are not talking about Area 12 anymore; we are talking about Area 13. Mr. Sima wanted to be clear going through the discussion.

Margie Narducci, 389 Sir Charles Drive, read her letter which she submitted to *The Cheshire Herald* into the record. Her letter cites issues of the map change. In closing her remarks, she asked if Mr. Bowman would guarantee that no member of his family with the fourth degree of consanguinity will work in the Kurtz project in the future.

David Schrumm, 369 Sir Walter Drive, commented on the Attorney Hollister's letter of January 19th, and referred to paragraph #1. Mr. Schrumm made a statement for the record. In paragraph #1, Attorney Hollister has a long discussion sections A-G on how the WPCA used the POCD in preparing Cheshire's Facilities Plan including the issue of Area 13, and this is correct. To not it into consideration would have been dereliction of their duties, as it would have meant a loss of funds to the Cheshire system, including the pending \$32 million waste water treatment plant. Just because the State backs off funding does not mean Area 13 should be sewer.

Paragraph #2, Sections A and B...Mr. Schrumm read an excerpt into the record. He stated sewer Area 12 is not necessary, and will not, likely be necessary.

Paragraph #3 State removal of loss of funding; the risk to taxpayers remains by continuing to expand the infrastructure in town, simply at the request of someone who wants it and will profit from it.

Paragraph #4 - The argument that the treatment plant capacity allocated in Area 12 can be used in Area 13 is erroneous on two counts. First, if 13 gets sewers now and 12 gets them in 20 to 30 years down the road, the capacity is still high in the plant. If 12 never needs sewers, and 13 is not sewerred, the overall citizens of Cheshire benefit.

Paragraph #5 - tries to make the point that going around Area 13 Clearview Drive to Copper Beach is not feasible; if its not feasible why did the same engineering company Milone and MacBroom working with the applicant design the stub to sewer Area 12. Now, the implication is that its not feasible. If sewerred Area 12 is necessary securing an easement from Copper Beach HOA would not be difficult, and this would be true if a public health issue in Area 12, in a future date, leaves the condemnation of an easement as a likely alternative for the HOA. Crossing a wetland with a pipe has been done many times before. The final connection for the sewer system which the applicants want to use is a long pipe to the wetlands to Talmadge Road. The argument you can't go through Clearview is bogus. If Area 13 is developed in a conventional way, with no sewers, the Town can require an easement for future sewerred in Area 12 (i.e. Napoli Foods). There are alternatives to solving Area 12 future problems

Paragraph #7 - WPCA takes care of their authority of sewers, IWW takes care of their issues; WPCA cannot use their authority for sewers to deny a developer; that is true; the argument seems to be that because Kurtz is entitled to cluster WPCA should give him sewers. There should be no discussion for the potential of cluster before the WPCA; it is outside of their jurisdiction. Mr. Kurtz and Mr. Longo can develop their land; there is enough information over 20 years about the Kurtz property; at least once, Chesprocott approved a map layout, has done soil testing, and has enough information. The applicants want sewers to build more houses. Changes to the map should be done with more study, look at soils and zoning and issues used to develop the Facilities Plan. Mr. Schrumm said this is spot zoning. The application should be denied as it exists, go back to square one and look at the Area 13 parameters.

Chairman Perrotti stated that Don Chelton from AECOM, will speak as a member of the public, who has provided technical assistance to the Town of Cheshire, and will have no further input after his statement.

It was pointed out by Mr. Bowman that Mr. Chelton is a hired consultant to the WPCA. He confirmed Mr. Chelton will have no further recourse after his statement.

Don Chelton, AECOM, stated there was some confusion of WPCA members on the relationship between the State POCD and Cheshire's Facilities Plan, and said it is important to understand the relationship before taking an important vote. Mr. Chelton reviewed the development of the Facilities Plan which started in 2005; the State published the 2005 Plan of Conservation and Development; DEEP representative explained to WPCA what the Plan meant. The Town was broken up into growth and conservation areas. The State plan encouraged development in growth areas with no prohibition on sewerred these areas; conservation areas were more rural, undeveloped

or partially developed, and sewerage was not allowed in those areas, without losing the risk of State funding.

Mr. Chelton reviewed the development of the Facilities Plan, with two directives to the WPCA. The Town Council insisted the plan be right sized to serve the future needs of the community, because there was going to be one of the largest single capital projects undertaken. DEEP wanted the plan to be right sized, and allowances for future flows had to be based on an environmental need. The State was going to fund this project, the Facilities Plan, and plant upgrade, and wanted to spend money wisely. The DEEP insisted the Facilities Plan include the map showing where sewers could be extended and not extended.

The WPCA adopted the Plan on 7/12/10. The town was aware of the plan and its consequences, and this was taken into consideration. The Plan was developed; the town was broken up into some areas, categorized whether or not they were in a growth or conservation area. Each area was analyzed for environmental needs based on criteria listed in Tab 10, 5-4 of the joint Kurtz and Longo properties. Areas recommended for sewerage, Tab 7, 6-27 of the Kurtz and Longo application. It shows only 3 of the 15 growth areas recommended for sewerage; there were no restrictions from the State for sewers. The needs analysis shows 3 of the 15 areas had potential needs for sewerage. If you wanted to sewer a growth area it would not be in conformance with the Facilities Plan and not recommended.

Conservation Area - Mr. Chelton said 8 of the 33 areas are recommended for sewerage; there are more areas with State restrictions, than growth areas with restrictions. Area 12 is a conservation area recommended for sewers. If WPCA wanted to extend sewers to Area 12, it could not be done without first getting a revision of the map of the POCD.

Chairman Perrotti asked when the plant was re-rated to 4 million gallons per day.

Mr. Chelton said it was before the Facilities Plan.

It was further stated by Mr. Chelton that Area 12 is recommended for sewers, a needs area, and is in a conservation area. To extend sewers there must be a revision of the map, and 2005 rules of the C&D Plan or run the risk of losing State funds. Approval from the State was needed to go into these areas. The C&D Plan was not the criteria used to develop the Facilities Plan. It was recognized and considered as a consequence of the actions but not a criteria for development. There is no environmental need; the only reason to sewer Area 13 is development with higher density allowed by zoning. WPCA can do this; it is up to the discretion of the Authority; however, it opens doors for every section of town designated as a non-needs area, to come in with an argument for promotion of growth which is what this application is doing. This is an important vote for the WPCA, probably the most important in 37 years. Mr. Chelton commented on the easement from Copper Beach Drive which can be done by the town for the public good.

For the record, Chairman Perrotti noted there is a memorandum letter from Attorney Schwartz dated 1/20/17.

A summary for approval of the application was prepared and submitted by Attorney Hollister and given to the Authority. Attorney Hollister stated he has no new information for approval of the application. He raised questions about Mr. Chelton's statement, noting Mr. Chelton works for AECOM in Massachusetts, and testified as a consultant to the WPCA. One incorrect statement by Mr. Chelton is that this application is based on trying to achieve higher density than allowed by zoning...and this is not true. The applicants are here because they have enough acreage to allow them to apply, per the zoning regulations, for a cluster subdivision. They are requesting infrastructure that is expressly allowed by the zoning regulations. Section 42.2.2 Cluster Subdivision requirements.

With regard to the environmental need, Attorney Hollister said the soil characteristics of the property should not be the basis for deciding on sewers; this is using the sewer system to control density and lot size; this is a decision of the Planning and Zoning Commission.

Precedent Setting - Mr. McEvoy responded to the Chelton comments. He said the effort to look at this property and other green areas in the Facilities Plan was to see any similar properties to that of Kurtz and Longo. This would enhance the potential for sewers to the green areas. The prior public hearing discussed providing sewers could make an argument across town, providing sewers to green areas or recommended areas. In the analysis, most of the need areas if they were sewerred it would be through needs areas/green areas into sewer districts or along existing town roadways. The subject property is unique in that sense. As proposed, the sewers provide cost benefit to the town; and enhances the ability to provide sewers to Area 12 from available infrastructure, namely Copper Beach stub.

Attorney Hollister advised the Chairman that that is all the applicant has; the hearing can be closed; and separate votes must be taken by the WPCA on the two parts of the application.

Attorney Schwartz stated that once the WPCA deliberates, it will first be to adopt the amendment, and if approved, they will deliberate on the application. Once the public hearing is closed, no further information can be forthcoming from the public or the applicant, nor can questions be asked on either the amendment or application. Attorney Schwartz clarified the Authority members can ask him legal questions during deliberation, but he cannot opine on any factual questions.

David Schrumm addressed the Authority stating the long detailed study in designing the Facilities Plan map of all the Town, including Area 13 included criteria not just the map, but soils, overall zoning, motion technologies, potential failures, capacity of the plant. He asked if Area 13 is changed what specific criteria, among the things he cited, have been considered by the Authority, when considered, what meeting, and if they are not

considered, the record should show this. The decision should not be made from the pressure of loss of funding, and the record should show all of this for Area 13 to be sewerred.

Don Chelton addressed the Authority and said his comments included that town zoning did not allow for this development...and this is correct. As Attorney Hollister stated, in order for a cluster subdivision the area must be sewerred; this area is not sewerred; and a cluster subdivision is not eligible as currently zoned.

Mr. Carroll asked Mr. Chelton about the final report to Cheshire, CT, tab 10-the chart which assessed the needs and variables. He looked at table 5-2, and areas 12 and 13. 12 is identified as Sir Walter Drive; 13 is identified as Talmadge Road. Zoning - neither is recommended for sewerred; lot size - recommended for sewerred; location - neither; soils - yes, recommended for sewerred; questionnaire - yes; age - yes; Chesprocott Data has Sir Walter Drive is yes, recommended for sewerred; Talmadge Road - no. Mr. Carroll presumes Chesprocott data consisted of sewer failure rates, repairs etc. It would make sense Chesprocott would say "no" to Area 13.

In response, Mr. Chelton said he does not remember specific data from Area 13; it is a broader area than just the Kurtz property.

The Chesprocott consultation was cited by Mr. Carroll who noted Sir Walter is yes and Talmadge is no. He asked what this consultation consisted of.

According to Mr. Chelton, the consultation was the attendance of Chesprocott at workshops with WPCA. The conclusion of the finding of the analysis had a meeting with WPCA and Chesprocott and two long workshops, going through each of the areas, getting Chesprocott's specific recommendations and opinions on sewerred the areas, based on their intimate knowledge of the soils, ratings of the soils the same for 12 and 13. Their opinion is the need for Area 12, not Area 13. Going through the AECOM report there was extra emphasis placed on this criteria; it was a major factor; and 12 has more existing development than 13.

Mr. Carroll said Mr. Kurtz raised a question about his property back in 2001 as to whether it could be reconsidered, and cited tab #8, and read it into the record. The answer from AECOM is confusing...and he cited the answer for the record. Mr. Carroll asked if a mistake was made with classification of this property, or was there a careful, deliberate, careful decision that the area was not recommended for sewerred.

The mistake that was made in the draft facilities plan was made in 2010, and Mr. Chelton said it was brought to attention through the public hearing when Mr. Kurtz asked about his property. The data was reviewed, and this area was missed. The data was reviewed for the area, and AECOM made a recommendation to the Authority on July 15, 2010 that Area 13 should be a no need sewer area. Also stated was future sewerred of this area had different options, for sewerred Area 12...it had not been established if it would come down Wallingford Road/Copper Beach Drive. It was

recognized that there was potential if Area 12 were sewered, it might have to go by Area 13. It was stated that, in the future, if 12 is sewered then go back and reassess the need to sewer 13.

Mr. Carroll wanted the answer that this was a very carefully considered question.

Chairman Perrotti read an excerpt from Chesprocott's letter from Director Maura Esposito, dated 8/16/16 re: 648 Wallingford Road, into the record.

Ryan McEvoy said testing was done in 1987; after 10 years testing data is obsolete; and in this case it had been 20 years. From 1987 to the present the criteria for design systems is different and complex. The disturbance that happened is associated with the house constructed on the property. March 2013, testing was done; percolation results were not good; 80% is unsuitable; health code allows for retesting in a dryer time; but there was no further testing that year.

In looking at the Chesprocott letter of 8/16/16, Mr. Carroll said they evaluated certain areas. Charles Drive and Sir Walter Drive have septic systems with much data on that. The opinion is the area is moderately well drained, has a deep water table suitable for septic. If you move to Talmadge Road 3 lot subdivision area, Chesprocott concluded the property would require sub-surface sewer systems designed by professional engineers. There is an area of concern, and Mr. Carroll draws from this that it is probably suitable for septic as well. 628 Wallingford Road was approved in 2014 by Chesprocott. Mr. Carroll stated he sees property on either side of the subject property as being more or less capable of being served by septic, his inclination is to conclude the area in between could be served by septic as well. Mr. Carroll stated he is a little lost with protocol here on going into the regular meeting with additional comments or questions.

Attorney Schwartz interprets the "regular meeting" as closing the public hearing and deliberation among the WPCA members. During that portion, members can ask each other questions, comment amongst each other on pros and cons of adopting the amendment. Authority members cannot ask the town engineer, town attorney, consultant, applicant, members of the public... anyone not an Authority member... to comment on anything. The members deliberate amongst themselves.

**6. QUESTIONS AT THE DISCRETION OF THE CHAIR.**

**7. PROPONENTS AND OPPONENTS STATEMENTS ALTERNATELY EXPRESSED.**

**8. REBUTTAL AT THE DISCRETION OF THE CHAIR.**

Chairman Perrotti thanked everyone for attending the public hearing, and Attorney Hollister and Mr. McEvoy for their presentations.

**9. ADJOURNMENT**

Chairman Perrotti adjourned the public hearing at 8:45 p.m.

Attest:

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Marilyn W. Milton, Clerk