



October 7, 2009

William Nicholson, Superintendent
Water and Sewer Department
19 County Road
P.O. Box 474
Mattapoisett, MA 02739

Re: Sewer Line Extension
Our File No. 2009-756

Dear Mr. Nicholson:

You asked whether the Mattapoisett Sewer Commissioners can impose sewer assessments on parcels in environmentally sensitive areas of Mattapoisett Neck, while excluding other parcels on the Neck contiguous to planned sewer lines.

By way of background, you have explained that Mattapoisett has no sewerage treatment plant of its own, but has purchased the right to transmit 500,000 gallons of effluent to Fairhaven daily for treatment. The town is currently using approximately 70% of that available capacity. It plans to build a sewer line extension along Mattapoisett Neck Road, with connections to be limited to environmentally sensitive parcels on the Neck within designated "Sewer Service Areas." You indicate that for any given lot to be connected to the extended sewer line, it will be necessary to install a town-owned grinder pump on the parcel to transmit effluent into the planned sewer line. Without the grinder pump, effluent from the parcel cannot drain into the sewer line as an engineering matter. In addition, a new pumping station will be constructed to move the effluent from the Neck service areas into the high pressure main transmission line to Fairhaven. For engineering reasons, the portion of the sewer extension north of the station will also be a high pressure line and no connections can be made to that portion. You state that the proposed extension will consume a large amount of the available unused capacity. Any leftover capacity not used up by the extension will be allocated away from Mattapoisett Neck to provide for the sewer service needs of other parts of the town. You ask whether the sewer commissioners are required to assess all abutters to the planned sewer line extension.

As you are aware, as a general rule, contiguous parcels on Mattapoisett Neck outside the designated Sewer Service Area would be entitled to connect to the sewer line extension along Mattapoisett Neck Road. General Laws c. 83, § 3 provides that "if the owner of ... land [abutting upon a public or private way in which a common sewer has been laid] shall make to the board or officer having charge of the maintenance and repair of sewers application to connect his land with a common sewer, such board or officer shall make such connection." This statute was interpreted in *Clark v. Board of Water & Sewer Commissioners of Norwood*, 353 Mass. 708, 711 (1968) to give abutting landowners "a right to [sewer] connections," enforceable by writ of mandamus. The record in *Clark* established that there was "[r]easonable sewer capacity ... to serve the petitioners' buildings ...". *Id.* The Court explained that the "sewer commissioners are not empowered to postpone presently sought connections to give precedence to connections contemplated for the future." *Id.*

Under G.L. c. 83, communities may assess all or a portion of the cost of laying particular sewer lines, and constructing sewer system general benefit facilities, such as treatment plants and pumping stations, on properties benefited by the sewer system. Given the right to connect set out in G.L. c. 83, § 3, all properties abutting a sewer street are considered to benefit from the system and are to be assessed, not just those that actually connect. G.L. c. 83, §§ 14 and 15; *Stepan Chemical Company v. Town of Wilmington*, 8 Mass. App. Ct. 880 (1979). Properties may not be assessed, however, while they cannot connect to the system due to “grade or level or any other cause.” G.L. c. 83, § 15. We think that provision would apply to those properties that abut, but cannot connect to the high pressure line. Although we are not aware of any case involving parcels unable to connect for that reason, it seems to us that the phrase “grade or level or any other cause” includes topographical as well as other engineering reasons that preclude a system connection. Moreover, we think it can be argued that since the line cannot support connections for engineering reasons, it is not a sewer line for purposes of determining a sewer street under the statute. All other abutting property owners on Mattapoisett Neck would be subject to assessment under G.L. c. 83 because the installation of the town supplied grinder pumps will enable them to connect to the system.

However, you advise that special legislation, Chapter 73 of the Acts of 2002, gives the Mattapoisett Sewer Commissioners the power to deny sewer connections to certain property owners in the interest of allocating Mattapoisett’s limited sewerage treatment capacity. Section 3 of the special act provides that:

Notwithstanding any general or special law to the contrary including other sections of this act, the sewer commissioners of the town of Mattapoisett shall not grant an application to connect land to the town’s municipal sewerage system unless there is at the time of the application unused sewerage capacity in the municipal sewerage system. For purposes of this section, ‘available unused sewerage capacity’ shall mean the daily capacity available to the town under permit or municipal agreement, less (1) the sum of existing daily usage by the town; and (2) the projected daily usage, calculated by the commissioners, that will result from completion of all pending municipal sewer projects, as to which funds have been appropriated at a special or annual town meeting for design or construction. In determining the daily usage expected to result from pending projects, the sewer commissioners may employ reasonable assumptions about the rate at which existing or potential users will connect to the municipal system after completion of those projects, and shall take into account only demand that is foreseeable within 20 years of the date of the calculation.

Under this act, the Mattapoisett Sewer Commissioners, in deciding on future applications for connection to the town sewerage system, may determine the “projected daily usage” upon completion of the Mattapoisett Neck Road extension, and any other pending sewerage construction projects which have progressed at least as far as having a town meeting appropriation for design costs. In doing so, they may “employ reasonable assumptions” as to the rate at which existing or potential users will connect to the town sewerage system upon completion of the pending projects, but may not base their projections on demand not foreseeable within 20 years of the date upon which they calculate anticipated daily usage.

The sewer commissioners do not have unfettered discretion to deny sewer connections to abutting landowners, but they are given control over the allocation of the town's limited sewerage capacity. If they determine that usage of the municipal sewer system over a 20-year period is projected to reach maximum capacity in light of "pending municipal sewer projects," they may deny a landowner's application to connect notwithstanding G.L. c. 83, § 3.

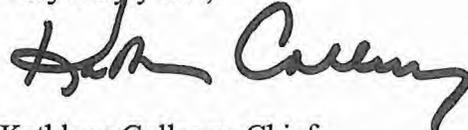
Thus, a determination by the sewer commissioners that no sewerage capacity is available to permit the connection of properties on Mattapoisett Neck outside the designated "Sewerage Service Area"—given pending municipal sewer projects which have progressed at least as far as the stage of an appropriation for design costs—would extinguish the right the owners of those properties would have under the general laws to connect to the system. In that case, the parcels would not benefit from the planned sewer line extension and would not be subject to assessment when it is completed.

In that regard, your special act is similar to local option legislation enacted in 2008 as G.L. c. 83, §§ 1A-1H, and earlier special acts obtained by other cities and towns, that allow restrictions on sewer connections to particular areas or properties when a community has limited sewer system capacity. Under G.L. c. 83, §§ 1A-1D, for example, communities are able to limit connections and sewer assessments to properties within certain delineated areas shown in a Comprehensive Wastewater Management Plan approved by the Department of Environmental Protection. Assessments on any other parcels are only be made when additional capacity becomes available and those parcels actually connect to the system. We assume that this new option was enacted in part to reduce the need for communities with limited sewer capacity, such as Mattapoisett, to have to seek special legislation in order to accomplish the same purposes.

This opinion is issued in the context of our familiarity with the general laws governing special assessments and special acts obtained by other cities and towns to vary the application of those general laws. It is advisory only as the interpretation of your particular special act is a matter for town counsel.

We hope this is of assistance.

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC:DG

CC: Gregory M. Downey, Esq.