

6/26/06 - (5)

To: Sewer Commissioners
From: Paul Gaboury and Residents of Sylvia Street
Subject: Request to extend the Sewer down Sylvia Street

June 22, 2006

First, I would like to indicate that the request has nothing to do with the development of #7 and 11 Sylvia Street called Colonial Path. Glen Kaufmann and I have identified a practicable alternative to the sewer that, if approved by entities other than the Sewer Commission (which we expect), will allow us to complete the development as envisioned.

Let me repeat, the request of the neighborhood to be added to the Sewer District has absolutely **nothing** to do with the developer and should not be painted as such.

Now, having said that I will run through the key elements of the neighborhood's position. Please refer to the Timeline attached to this memo.

1. This is the third request by the neighborhood to be added to the Sewer District. In each, effort every resident signed a petition to join the District.
 - a. The **first effort** in 2004 was when an affordable development was envisioned. Extension was looked kindly upon but was not concluded because the 40B reason was eliminated because of the neighborhood opposition and resulting ACHC and BOS opposition to the 40B. At the time there was **no** capacity to add the street to the District. The Town was waiting for DEP to conclude its recalculation of the capacity. This was completed in April 2005.
 - b. Acting on the additional capacity released by the DEP, the **second effort** was addressed to the CAC preliminary to their development of priorities to be included in the Comprehensive Water Resources Management Plan (CWRMP). Contacting the CAC was done at the June 2, 2005 recommendation of the Town Manager. Ultimately, while the Maynard town line area was included as a medium priority, deliberations in August failed to address our long standing desire to join the District.
 - c. The **third effort** began in April, 2006 after the CWRMP was approved by Town meeting. At the recommendation of Doug Halley, the neighborhood again met with the CAC to discuss our case. Many issues were raised by the group in opposition to the request. The key one is that the CWRMP priorities have been approved by Town meeting and can't be modified. This position was taken by Lauren Rosenzweig in a May 25th '05 email to me.

We are not asking for priorities to be changed. We are asking for a small street that is within a nitrogen sensitive area to be allowed to use unallocated capacity.

 - i. What is different about this effort is that:
 1. Residents agreed to fund 100% of the construction costs to bring the line down Sylvia Street. No pumping station would be required.
 2. Residents agreed to pay the entire privilege fee in one lump sum.
 3. Plans for the sewer system have been developed by Stamski & McNary.

4. The area is designated Zone II – nitrogen sensitive area – by the DEP. It is environmentally desirable to avoid septic system replacement when sewer service is available.
 - a. In April 2006 our engineers discovered that in 2003 the DEP delineated a Zone II line that encompassed a ½ square mile area of Acton which includes approximately 100 homes. This designation was made because three Maynard wells were approved for use in May, 2003.
5. Three of the six residents of Sylvia Street have thus far failed Title 5.
 - d. Development of the CWRMP by CAC **failed** to consider the Zone II designation in its deliberations in setting priorities. The fact was unknown at the time. Had this been known it is possible that the Maynard town line area might have been given a higher priority.
2. The plans to extend the sewer lines to the high priorities identified in the CWRMP will take funds from the privilege fees for construction. Ours will not.
3. We do not know if privilege fees for the high priority areas not yet completed will adequately cover these costs but, in any case, the revenue to the District will likely be a zero sum game where only usage fees are collected. While it is speculation, we expect residents of these areas will resist paying \$12,000+ at one time just because the Town wants to extend the line. This is not true of Sylvia Street residents. In any case, it could be years before even the next priority areas will be implemented.
4. Per page 5 of the CWRMP Executive Summary, the Middle Fort Pond Brook sewer system **can only address the first three high priority areas.** Having done that there is still adequate capacity to handle Sylvia Street (per Doug Haley). Using that excess capacity doesn't change the priorities. It simply uses it where it is a) welcome b) won't cost the District a penny and c) is in a nitrogen sensitive area and therefore environmentally sound..
5. The designation of areas of Acton as Zone II by DEP is essentially a taking. It eliminates the right of Acton home owners to add bedrooms. Extension of the sewer down Sylvia St. restores those rights. [The DEP has never exempted any home owner within a Zone II area from the restrictions placed on them by Title 5.]

Sincerely,

Paul Gaboury on behalf of the Sylvia Street residents

Sylvia Street

Neighborhood request to extend sewer line

Timeline

- 2004: **First** petition from residents filed
 - Sewer Commission looked favorably on the request partly because an affordable housing project had been proposed.
 - However, on November 15th the BOS would not support the 40B project noting resident opposition and lack of ACHC support for 8 units. 40B project halted.
 - [Per Nancy Tavernier, 2/25/06 “I am sure I am preaching to the choir here but 2 years ago, Sylvia could have had sewers. I think the Selectmen would have added the street for the 40B. I think they will be unable to justify it this time. “]
- 11/23/04 – Informed by Town Manager and Health Director that there was no capacity to add at present. Must wait for the DEP to recalculate capacity.
- Mid 2005: DEP recalculates capacity and frees XXXXX gallons per day
- 5/26/05 **Second** petition by residents to be allowed to connect to the sewer system
 - 6/2/05: Memo from Town Manager advising neighborhood to meet with CAC
 - 6/4/05: Contacted CAC
 - Next meeting in August.
 - Decision unlikely until November, ‘05
 - Prefers a neighborhood over Stop & Shop plaza
 - 8/26/2005: Nancy Tavernier: “The committee really is not organized to make decisions on the current district, which is what you are seeking. That decision is that of the BOS. We are only looking at a comprehensive plan for the whole town and looking ahead to the next expansion in one of 4 discharge locations in town.”

“Last night we set priorities for future expansion areas but this is beyond the capacity of the current system, some time in the future when a new discharge point is found. On that list is Main St. going out to the Maynard line. This is in no way imminent though so if I were you, I would not count on it helping for Sylvia. The request never came up last night.” The neighborhood missed this meeting and despite all efforts, the issue was not raised by anyone.
- **April, 2006 Comprehensive Water Resources Management Plan approved by Town Meeting**
 - Identified and froze priorities for sewer extension – low, medium, high – largely subjective criteria. **Existing capacity can handle only the top three priorities**
 - High priorities:
 - Powdermill Plaza **DONE**
 - Spencer Road/Tuttle/Flint/Mallard
 - West Acton Center
 - Indian Village
 - East Acton Village
 - Medium Priorities

- North Acton Village/Marshall Crossing/Robbins Brook
 - Brucewood Estates
 - **Maynard Border**
 - Nash & Downey Road
 - Colonial Acres/Flagg Hill
- **Fact that Sylvia Street is in a “nitrogen sensitive area” [Zone II] unknown at the time priorities set**
- **New Maynard Wells severely limit South Acton residents development choices**
 - April, 2006: Discovered Sylvia Street and surrounding area classified by DEP as Zone II, Nitrogen Sensitive Area
 - 2000 prox: Maynard sinks three bedrock wells just south of the Acton Town line
 - 2003 USGS completes a study on the area to be considered Zone I, II and III surrounding the wells. It includes portions of Acton.
 - May 2003 DEP finalizes Zone I, II & III delineation and authorizes Maynard’s use of the wells
 - **Residents of affected areas in Acton never informed of the impact of Maynard’s wells on their property.**
 - **Impact:** Approximately ½ square mile of Acton placed under Zone II rules
 - Before: Acton zoned R2: 20,000 sq ft lot. – Could build as many bedrooms as a septic system would allow. Typical: 4 Bedrooms.
 - After: 1 Bedroom per 10,000 sq ft land
 - Prox. 100 Acton residents zoned R2 with less than 40,000 sq ft affected
 - May, 2003: Maynard instructed to notify Acton & Stow to have them re-zone areas in Zone II to limit number of bedrooms.
 - Notice sent to Acton Planning Summer 2003
 - No action taken by Acton
- **5/24/06 Third** petition by residents to connect
 - Met with CAC on advice of Doug Halley
 - Residents agree to pay for 100% construction costs
 - Residents agree to pay the sewer privilege fee in full up front
 - CAC consensus: Notwithstanding new Zone II information, the Comprehensive Water Resources Management Plan set the priorities, was approved by Town Meeting, therefore changes to priorities should not be allowed. Also, complications would arise if priorities changed – other neighborhoods would want in.
 - Opinion from Lauren Rosenzweig: (5/25/06)
 - “Sylvia Street residents can appeal to MEPA (Massachusetts Environmental Policy Act) which is under the Executive Office of Environmental Affairs, to determine if the street can be given a higher priority.”
 - “The issue is that if we hook up Sylvia Street, many others, not just Fletcher will want to be hooked up. In retrospect, I think we would have had the same issue when contemplating hooking up Sylvia Street back when the proposal was for doing the affordable housing. It is a question of fairness and true environmental need. “

Don Johnson

From: Tai Summers-McGuinness [taimichal@earthlink.net]
Sent: Friday, June 23, 2006 1:56 PM
To: Board of Selectmen
Subject: Sewer District-June 26 Meeting

21 June 2006

Dr. Michael & Tai Summers-McGuinness
5 Fletcher Court
Acton, Ma. 01720

Peter Ashton
Chairman Board of Selectmen
472 Main Street
Acton, Ma 01720

Dear Peter Ashton,

We are writing to reiterate our request that our property, 5 Fletcher Court, be included in the sewer district along with the other properties on Sylvia Street, Fletcher Court, and Main Street, including the new development known as Colonial Path located off Sylvia Street.

Our property is clearly within the neighborhood being considered for inclusion in the sewer district. Our house, which is currently served by a private septic system is only 40 feet from the other houses being considered. If our property is not included in the sewer district, it would be the only property in the Sylvia Street-Fletcher Court area that does not have access to sewer.

We also have two licensed businesses on our property, Acton Physical Therapy, PC, and Aaahh Relax, Wholistic Massage, Bodywork, & Hot Tub. These businesses would benefit greatly from our property having access to the sewer.

We feel that Acton residents who have existing homes served by septic systems should be given first consideration for inclusion in the sewer district. We strongly believe there is no rational basis for excluding our property from the sewer district, and we urge the selectmen to vote to include our property in the district.

Sincerely,

Dr. Michael P. Summers-McGuinness

6/23/2006

Mrs. Tai Summers-McGuinness