

Minutes of the special joint meeting of the Jerusalem Town Board with the Village of Penn Yan Trustees and Municipal Utilities Board held on August 12, 2010 at 4:00 P.M. PRESENT were: Supervisor Jones, Councilpersons Folts, Parson, Simmons, Stewart, Town Engineer Ackart, KPSW Clerk Wheeler, KPSW Water Maintainer Enos.

Guests: Mayor Bob Church, Trustees Chris Christensen, Wayne Davidson and Mike Christensen, MUB Chairman Rom French, MUB Commissioners Dave Payne, Dan Banach and Jerry Nissen, PY Director of Public Works Dick Osgood, PY Assistant Director of Public Works Brent Bodine, Lu Engineer Bob Elliott, PY Secretary Karen Fox

Supervisor Jones called the meeting to order at 4:00 P.M.

Town Engineer Ackart presented the following chronological contractual review:

**KEUKA PARK SEWER DISTRICT(S) – PENN YAN
CHRONOLOGIC CONTRACTUAL REVIEW
JANUARY 31, 2010
Wayne P. Ackart, P.E.
Jerusalem Town Engineer**

On January 25, 2010 in a Joint Meeting of the PY Village Board , Municipal Utilities Board (MUB) and the Town of Jerusalem, MUB Chair Rom French provided a brief verbal history of contractual developments, relations and administration between the Village and Town from 1966 to present. The presentation was largely based on facts and was presented as a start to improved communications between the Village and Town. The Town appreciates this outreach by the Village and is hopeful that it represents the potential for a new era of communication and cooperation by the two parties that are symbiotically and necessarily linked together for the purposes of sewage transport, treatment and disposal for the foreseeable future.

That said, I feel it necessary to provide the following expanded (albeit still brief) historical background to provide a comprehensive chronology of what happened and why during the last 44 years.

The sewage contracts have been recast four times ('67, '70, '75 and '95) and Amended/Appended once in 2002. The 1975 contract provided the following:

1. Provided for the possible annexation of the Indian Pines area into the Village.
2. Provided for a maximum sewage flow from KPSD of 205,000 GPD.
3. Service connections to the Town owned force main on West Lake Road were prohibited. However, connections to the gravity sewer on Old Pines Trail were permissible.
4. KPSD could not be enlarged without the written consent of the Village.
5. KPSD would pay 1.5 times the "in Village Rate".

The Town had problems with conditions 2. through 5., listed above. I believe then Supervisor John Payne so discussed the inequities thereof and the need for a new sewage contract with the Village in the early 1990's.

The negotiations for the new “Regional” Penn Yan Water plant went on for over 2 years in 1993 – 1995. With regards to the State and Federal mandated new water filtration facility, the Village needed Jerusalem to agree to the following in order to fund and proceed with the water plant:

1. Fund a substantial portion of the capital project. Jerusalem agreed to pay for 26% of the capital costs plus an existing facilities payment which the Village used to fund a substantial part of the project. These lump sum payments from the Town to the Village totaled \$1,704,700. In return Jerusalem is entitled to 506,000 GPD of drinking water “at cost” or the in Village rate, as opposed to 1.5 times the Village rate.
2. Allow the annexation of the Plant and West Lake Road Water Tank Sites into the Village.
3. Use of the KPSD sewer, force main, and Indian Pines pump station to process and sanitary convey waste from the Water Plant to the Village sewerage system for treatment and disposal. In 2009 Jerusalem conveyed an average of 500,000 G/month from the Water Plant to the Lake Street sewer.

The '95 water and '95 sewage contracts were signed the same day – November 8, 1995 as Jerusalem would not agree to a water contract accommodating the above 1. – 3. without a new sewage contract rectifying the afore described five inequities in the 1975 sewage contract.

The '95 sewage agreement provides:

- Covers the existing District and Extensions and any expansion thereof - present or future.
- Required a new flow meter at Indian Pines
- Required an I & I Study and repairs to KPSD collection system to reduce extraneous flows
- Required the Town to provide a Bond to the Village covering the cost of the I & I Study and repairs.
- Maximum flow was changed to 205,000 GPD on a 30 basis, since the Village’s Sewage Discharge Permit from DEC was based on a 30 day basis.
- Jerusalem agreed to pay 1.5 times the normal rate for any 30 day period in which it exceeded the 205,000 GPD.
- Eliminated the previous 1.5 times the in Village rate as provided by the '75 contract for up to 205,000 GPD (30 day average).
- Set the '95-'96 fee for sewage treatment and disposal at \$150,000 for up to 205,000 GPD (30 day average). Said annual fee is to be increased annually in proportion to the Village’s next years “sewage treatment budget” compared to the base year '95 –'96 sewage treatment budget.
- The Town agreed to convey (by gravity sewer, pumping at Indian Pines and force main) waste from the Water treatment plant to the Lake Street sewer at no cost to the Village.

The Village has described the 205,000 GPD as a “ceiling”. While it is a maximum flow that can be sent to the Village without incurring a penalty or surcharge, it is best described as a minimum cost or fee, since the fee is the same whether the Town sends one gallon or 205,000 GPD to the Village. Please note our total sewage flows sent to the Village for 2009 averaged ~108,000 GPD.

Once the '95 sewage agreement was signed, the Village went four years just charging \$150,000/year – never escalating nor reconciling the fee with the increased Village costs as provided for by the contract. In ~ 2000 the Village brought in an accounting firm to calculate what should have been the

proper sewage charges for the past four years. The \$150,000 for 205,000 GPD represented 25.13% of the '95-'96 sewage disposal budget. The accounting firm revisited the '95-'95 actual Village costs and retroactively determined that the \$150,000 base years payment represented 32.36% , not 25.13%. The MUB then magnanimously reduced the 32.36% to 31.0%. I recommend reading the disclosure statement the proceeds said Village accountants work on this matter. Jerusalem then made a catch up payment for '95-'96 through '99-'00 and the Village has proceeded to bill on the basis of 31.0% since. The difference between 25.13% and 31.0% currently represents an ever escalating \$55,000 + / year.

Carrie Wheeler came up with a great analogy for this situation – based on something that many of us are familiar with – an auto lease.

Let's say you signed an auto lease agreement for 6 years. Then 2 years into the agreement, the dealer says "Sorry, but we didn't fully understand what the car cost us when we signed the lease. It cost us 25% more now that we look back at it , so you owe us 25% more for two years in arrears and 25% more for the next four years." The lease agreement was never amended/modified and so signed by either or both party. However the monthly bill was increased by 25% and the lessee paid accordingly without any formal written contractual agreement changing the way the fee was calculated.

KPS-PYHISTORY

Jan 30, 2010.

In response to Mr. French's request for copies of documents from the Town, Supervisor Jones stated the Town will provide any information requested and answer any questions the Village has. He asked that these questions be put forth in writing.

Following a brief discussion, it was agreed by both parties that a small committee would be established by Supervisor Jones and Mayor Church, including the two engineers to come to an agreement regarding the interpretation/understanding of the contract terms.

Village Trustee Christensen questioned the Town paying the Village additional monies the Judge conceded that the Town owed, but could not order us to pay as it was outside of the statute of limitations. Supervisor Jones addressed this issue in his letter to Mayor Church dated July 27, 2010. A copy of this letter received by Councilperson Parson was given to the Mayor as Mayor Church stated he never received Supervisor Jones' letter in the mail.

With there being no further business, on a motion of Councilperson Stewart, seconded by Supervisor Jones, the meeting was adjourned at 4:48 P.M.

Sheila McMichael, Town Clerk