

SOUTH BRISTOL TOWN BOARD MEETING
June 14, 2021

REGULAR MEETING

The regular meeting of the South Bristol Town Board was called to order June 14, 2021 at 7:04pm at the South Bristol Town Hall, 6500 W Gannett Hill Road, Naples, NY 14512.

PRESENT

Daniel Marshall, Supervisor
Donna Goodwin, Councilwoman
Stephen Cowley, Councilman
Jim Strickland, Councilman

ABSENT

Scott Wohlschlegel, Councilman

RECORDING SECRETARY

Judy Voss, Town Clerk

OTHERS

Jack York, Cathy Colby, Virginia Latke, Brian Hedges, Jeremy Sher,
Ted & Gina Russell, Deb Voorheis, Mike & Donna Buckley, Alan & Kristie Braun, Baird
Couch, Brian Perkins, Glenn Zimmerman, et al

I. ROLL CALL

Supr. Marshall opened the meeting with roll call.

II. PLEDGE OF ALLEGIANCE

III. APPROVAL OF MINUTES

On a motion made by Councilman Cowley and Councilman Strickland, the minutes of the May 8, 2021, Public Hearing minutes were ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Strickland, and Cowley.

On a motion made by Councilwoman Goodwin and seconded by Councilman Cowley, the minutes of the May 10, 2021, Town Board minutes were ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Strickland, and Cowley.

IV. PRIVILEGE OF THE FLOOR

John York, Vardon Drive, Bristol Harbour, spoke: When we talk about a community, it does take a community, our community, the Town of South Bristol, the Bristol Harbour Village community. We really appreciate what this Town has done for this Town and continues to do. Public Service is not an easy task. I served in it for 50 years. I recognize what you are doing and every one of us appreciate it; but I'm going to be very frank about it. We have a community in Bristol Harbour that is being torn to shreds. I've never seen, in 50 years, this kind of evil. I have watched our community and the Finger Lakes Region, being destroyed by 4 people who feel that money and power overwhelms what we feel is appropriate behavior. We have a BHVA meeting tomorrow night and I would love to see some of the members of this Town Board attend our meeting and clearly see firsthand the destruction of our community. To join together in fighting what is happening to 365 of your Town community residences. It is our dreams, it is our hopes, it is our whole life, it is why we moved to the Town of South Bristol. I sound angry; I am finally

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

angry. I didn't have this anger in my life, I'm too damn old, but I'm getting it. Our family is getting it, we are being destroyed. They have received hundreds and thousands of dollars from PPE money for that golf course and took out the 5 prime holes where the residents of Bristol Harbour have their homes. They now started milling a several hundred thousand dollar cart path to destroy it and let the weeds grow around our homes and let every bug that has infested forests infest our homes. They've destroyed the very reason we moved to Bristol Harbour. Your losing residents out of there and I heard you say the value of that property is not decreasing. It is going to begin to decrease. You look out my front door. I know you did the other day. You have got to be sick as we are for seeing what we are seeing. I had 130 gallons of water come out of my front lawn and thanks to two young men they responded and filled the hole and repaired the pipe that shut down the sewer services to our community for 2 days. They have now left a large depression and I have to go get straw to fill the dirt in my front lawn to make the grass grow because our Service Provider doesn't even do as much as seed or spread straw on my lawn. They have now milled and are milling the only 5 holes that have homes on it. They have effectively destroyed the main reason most of us have moved to Bristol Harbour. In 50 years of service, I've never seen this kind of evil. You and we need to ban together to fight this surge that is happening to our community. It is not just happening to us; it has destroyed the Finger Lakes asset, it has destroyed a community. It is destroying the Town. I'm asking for your help. Thank you.

Supr. Marshall said we feel your pain; we truly feel your pain and I intend to be discussing this a little bit further with more than just one of our Town Attorney's. Whatever options the Town has is very complex given that it is a Planned Development, given that you have a Board of Directors, you have a Homeowner's Association, it is very, very complex. The knee-jerk reaction we all seem to have here and have had for a while is that it should be resolved from within. And apparently, we are not getting there, so we are going to have some discussion about it.

Mr. York stated that he has stopped more than 50 people that have driven out here from Rochester; they cannot even believe what's going on. The people that stop and look at that golf course and the travesty that is going on there; even the people from Rochester that used to belong to it cannot even believe it, neither can the prior owners.

Supr. Marshall said he whole-heartedly agrees and said that he and CEO Sommer did go over at the request of Laura Halloran to look at the 10th hole. You could see clearly; it is very, very sad and I'm sorry that you are having to deal with that.

V. COMMITTEE REPORTS:

HIGHWAY

Councilman Cowley read the Highway Report:

Roadside mowing is underway.

- Town properties being mowed.
- Guys are busy wedging and shimming on Gulick Rd. in preparation for oil and stone.
- Stid Hill is marked and ready for shimming for oil and stone.
- Granger Pt. is cut back and trimmed up ready for milling and paving.
- Culverts to be milled/ paved are marked out on Gannett Hill and Torrence Rd
- Stone is all hauled for chip seal.

FINANCE

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

Supr. Marshall reported that all of the Bonding paperwork has been completed. We are basically one bill away from paying the Highway project; until we start paying on the Bond. We did have an Open House a couple of weeks ago; it is a great building and hope you are proud of it as we are. It was long overdue.

VI. OLD BUSINESS:

BRISTOL SEWERAGE DISPOSAL CORP RATE REQUEST

Supr. Marshall said the background of request is that Bristol Sewer Disposal Corp (BSDC) request, last August, a rate increase and as you recall the rate increase came to 44.4%; which would have been about \$30.00 increase over the current \$67.21. It would have been up to right around \$100 a month. You may recall the Town Board voted against the rate increase and we then received an Article 78 proceeding. The Article 78 is simply questions the method in which we came to our determination; not the determination itself and we were required to do it over again. This time, with the advice of counsel, we hired an outside consultant to do so and we hired LaBella Associates and we hired LaBella because we hired them when we went through the same thing in 2015. As what happened in 2015, LaBella Associates retained the services of Mengel, Metzger & Barr to do the forensic accounting of the Sewer Corporation. This evening, we have with us, Brian Hedges from Mengel, Metzger, is the person that did the majority, probably all, of the forensic accounting of the sewer corp. He was able to review the paperwork that was provided with the original request for a rate increase and subsequently we received the annual report that they are required to provide to the Town; that document was sent to Mr. Hedges as well.

Brian Hedges thanked the Board and noted, as Supr. Marshall indicated, there was quite a bit of paperwork that accompanied the rate increase of August 2020. In addition, as a result of our initial review of that, we went, suffice it to say, back and forth with the Sewer Corp. to request additional information so that we could make a determination as to our rate. Just a few days ago, we issued a report which underlines our findings and will, at a high level, go through that report.

As I mentioned, we went back and forth quite a bit, that back and forth began in April of 2021 and my firm was retained back in 2016 and 2017 when the previous rate increase was granted. Bit of a history lesson there. The rate was held at \$39.00 per month for nearly 30 years and that is certainly less than inflation was. There was a consideration, not only for the operating costs needed to run the sewer district itself, but also a look at inflation, which is a decent benchmark to peg a rate increase, too, over time. Generally speaking we are talking 1% to 3% a year in terms of inflation. So we certainly kept that in mind as you have a flat rate for about 30 years and then certainly the rate did increase but over the period of time of our review it kept pace with inflation. We certainly looked at that as a reasonable check as we began our review. So, I certainly put some thought into looking at what inflation was like from 1979 through 2021 and certainly that inflationary bar is much less than the \$101.00 per month rate that was requested. We dug into that rate request quite a bit further and one of the things that I identified in the review, as you had mentioned Supr. Marshall, was a note in the footnotes for the sewer corp's annual financials; I'll read it so that those present understand that adequacy in the sewer corp's words in their annual report of the rate that they currently have, the \$69.21. And I'll quote: *"Management believes that the sewer rate combined with the reduction in legal expenses will allow the company to again generate sufficient cash flows in 2021 and beyond to fund its current operations."* So, I'm certainly not a lawyer here, but it was hammered into my head that you

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

really need to look at three different pieces of a rate increase; is it fair, is it reasonable and it is adequate. To me, in the words of the sewer corp itself, given that there was a slight change in the number of units here, they're identifying the adequacy of the \$69.21 per month rate right here in their footnotes. And certainly that report itself was issued after about a year into Covid so this is March 15, 2021 that this report was issued; so it happened after the rate application. So it is a good data point to assess the adequacy of the current rate; the \$69.21 rate.

That kind of framed the starting point and we dug in quite a bit and I identified in the \$101.00 application a couple of items I thought were, either unfair or unreasonable and I'll just pick out a few of them. The first is a 12% royalty rate and I call it a royalty rate; it is essentially a figure that they plan to pay themselves every year. Certainly, running a small business, as any of you here in front of me, know that there is not guarantee of a profit running a business. You could lose money, you could break even, you could make a profit, where certainly a 12% royalty rate was unreasonable. I looked to several publicly traded stocks in order to determine what a dividend was on your investment, and we are in the 1.0 to 2.4 range: certainly not 12 %. And certainly not a return on their investment itself which is not necessarily the revenue that was generated on an annual basis. There are some other few items but the 12% was really one number that stuck out as unreasonable and to the extent that the sewer corp was using a rate increase to pay themselves that profit, or royalty in arrears, didn't seem reasonable to me either.

So, we did review the application, we made some, what I call adjustments to their application, and it got us back to, very closely, to the result of the prior rate increase. Not only did the sewer corp acknowledge that \$69.21 was adequate to fund its operations but it appeared reasonable. They have staff and they have to pay that staff, and their operating costs associated with it. You have utilities, they are normal costs to running a sewer corporation. And, in the end the rate that we believe is fair, reasonable and adequate represents a slight increase over the \$69.21 rate and that is to reflect the number of units that is different from the September '17 rate application; taking some of the units offline made fewer rate payers to get to the same place, in effect, in terms of the total overall operating costs.

I will leave you with three different components of our rate; one is a fixed rate and I define in my report two temporary components of the rate. The fixed component of the rate is what I call base-operating charge. That base-operating charge is a \$57.46 a month charge. That is to keep the lights on, that is to pay the staff, to run the operation. However, there are 2 components that need to be viewed as a component as well for running the sewer corp and I'll take the third one next: There is a Capital Replenishment charge that is a temporary charge over and above the base rate. The intention of the Capital Charge is to prevent from having to fund, via debt, a full replacement of a very expensive part, component, which is about \$75,000 in capital reserves and once a target reserve figure is met, again with a temporary component of the rate, the Town, the sewer corp, LaBella may opine that that rate component is temporary in nature, may not be required if some certain target is met. I am not here to opine on what that target may be; just to opine that in my review I've identified there is about \$75,000.00 in cash in a bank account. The third component is a component that is a loan payment charge. Over time there have been expenses incurred over and above some of the operations, and the base operating charge and there is a \$6.41 component to that loan reimbursement. In the event that that loan is paid in full, that may not necessarily to be required. Again, it's temporary, it might be reallocated to a Capital Replenishment Fund, but those two components, again, are temporary in nature, are required at this point, but may not be required in the future. The ultimate conclusion when

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

adding the three components up is an increase of about \$4.00 and change, to a \$73.56 per month charge.

Supr. Marshall asked, that is in comparison to the \$101.00 proposed?

Mr. Hedges said that is correct. And this is much closely mirroring what a small, 4-year inflationary increase would yield off of this \$69.21 charge.

Supr. Marshall said the chart shows a unit factor of 1.06, I am assuming that is basically is a 6% increase?

Mr. Hedges said in effect, yes, and that accounts for the 6% decrease in the number of units and rate payers thus getting us to the really to the same place. Same number of dollars with fewer rate payers.

Councilwoman Goodwin asked about the temporary loan payment charge and the temporary Capital Replenishment charge, but we would really never know if that is necessary anymore?

Supr. Marshall said he could answer, we would know by the annual report that we are supposed to receive and we would continue to request that an annual financial document be provided on an annual basis and they have been doing that, annually and on time.

Mr. Hedges said that is a very sound practice to request that.

Supr. Marshall, said rather than have this Board look at it we would probably hand it over to somebody like Mr. Hedges to review it because we are not accountants.

Mr. Hedges suggested that, in addition to the annual report you may ask that the sewer corp provide an accounting of, not only the payment of the loan but also the Capital component. It would be nice to know what that is being used for.

Supr. Marshall agreed and the other discussion we would want to have on the temporary Capital Replenishment, what number constitutes enough? And that is what we need to determine. At one time, 3 to 4 years ago, the one pump at Building One, probably the biggest pump you every saw, the pump all by itself was \$60,000.00. By today's standards it probably \$100,000.00. We need to know what that number is and we can certainly determine that by the County, perhaps or an engineering community. Theoretically, those two thing could possibly be removed at some time.

Mr. Hedges said, if some target is met that the Town and the sewer corp feels is adequate.

Supr. Marshall agreed, it incumbent upon us to watch that and create those targets and make everyone aware of what they are and then we need to live by them.

Mr. Hedges agreed.

Supr. Marshall continued, in conclusion, your comment and suggestion is a \$4.35 increase versus the \$32.00.

Mr. Hedges agreed.

The Board thanked Mr. Hedges and appreciated his thoroughness.

Councilman Cowley thanked Mr. Hedges for pointing out the units reduction; which is really big and was happy to see the \$4.35 increase.

Ted Russell of Bristol Harbour and has lived at Bristol Harbour for about 12 years. When I came to a Board meeting and can't remember when, but it was the fall of last year. An attorney for the sewer company called in as well as Todd Cook and basically gave an explanation to the Board, "It is what it is." I think that was not well received by the residents, the rate payers, I didn't know how the Board reacted to that explanation or justification, but I understood you explanation far better than what I got our sewer company. Did they provide the Town Board an explanation, justification for the 44% increase or was it simply it is what it is?

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

Supr. Marshall said we did receive financial statements from the sewer corporation that we reviewed ourselves and were challenged and told to do it over again all that information went straight over to LaBella. The annual report that they were required to send to us showed up as well and that went for the review as well. All the current information that we have was sent to Mengel, Metzger and Barr.

Jack York said what is going on in our community is not okay. You talk about a Capital Reserve Fund, so we had talked about when the new owners bought South Bristol Resorts and what sat in that Capital Reserve Fund that we had, as a community, put in there over multiple years to provide several hundreds thousands of dollars for a fund balance for a Capital Reserve. That got paid to the owners in a dividend, so is that what is going to happen with this? Has it been taken into account, and I'm not questioning you, I'm just trying to understand, what the PPE money they got for the sewer department, could that offset that \$4 increase. I am not complained about a \$4 increase, I'm complaining about the nickel, dime way this community is being treated an it's self-inflicted. We did not create this demand for that sewer, they created this demand. The Bristol Harbour community is bearing this burden even if it is \$4.00. We didn't inflict that, it was inflicted on them, by them, the owner. If you look at the several hundred thousand dollars the prior owners got, we are talking about a \$75,000 fund balance; use that. Don't pay yourself another dividend. We are just asking this Board to try to take a look at why this \$4.00 increase is necessary. We didn't create that necessity, the owners knocked down their hotel after putting hundreds of thousands of dollars into repairing; never even opened the doors and played music and champagne while knocking it down and cursing our community. They then on Christmas Eve knocked the resort down to tell us Merry Christmas. We didn't inflict that; they inflicted it. We're asking you not to approve any rate increase, I'm asking you. Thank you.

Councilwoman Goodwin said that we didn't approve the rate increase originally and we got turned down; that's why we are back to where we are right now.

Supr. Marshall said it would be unwise of us to hire an outside consultant and lawyer and an engineering firm and then not listen to what they have to say.

Discussion. Inaudible.

Supr. Marshall said that the PPE funds were not part of this review and not sure it should have been.

Mr. Russell asked, if you approve the rate, that the Cook's won't sue you again?

Supr. Marshall said we could talk about that another day, because I'm trying to be very diplomatic and the fact of the matter is, the Transportation Corporation Law is, in my opinion, flawed. Greatly flawed. There is nothing in the law that could convince them from doing that.

Councilman Cowley said the homeowners could sue us too; you sued us 3-4 years ago.

Mr. York said the answer would be for everyone in this town is for the Town to take over the sewer corporation at Bristol Harbour.

Councilwoman Goodwin said we can approve the new rate and in a year they can come back in and ask for another increase?

Supr. Marshall agreed, the way the Transportation Corporation Law is written is, yes, they can. The other thing, sadly, is the Town is required to pay for the review. Previously, during the first rate increase, the sewer corp. had paid for the expenses only to find out that they shouldn't have, so they were very adamant about not paying for this time. In the future, any time they do something like this we will end up paying for it; it is not a good situation, and it is something that needs to be looked at.

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

Councilwoman Goodwin asked if the Board didn't go with the \$4.35 increase, would all this information go to the Judge, and could the court deem an increase themselves? If we decide to leave the rate at \$69.21, could the Judge then overrule that?

Supr. Marshall answered, the Judges do not like to make those kinds of decisions and would most likely throw it back to us.

Jeremy Sher, Town Attorney from Adams + LeClair, said that is what the Judge did the first time around. Supr. Marshall mentioned an Article 78 and that is the name of the legal chapter of a certain set of laws that allow the legal challenge of a Town Board decision. So what happened, the first time this Board denied the increase in full, was BSDC brought out Article 78 proceeding to Supreme Court of Ontario County and the Judge concluded that the denial rate increase had to be annulled. The Town Board's decision had to be thrown out and the matter returned to the Town Board for reconsideration. In other words, as Supr. Marshall said, they had to do it over again. That is why you are here today. And you've heard all the steps taken in response to the order to reconsider. So Supr. Marshall's question was, if this goes out on Article 78 again, which it could if there is a lawsuit, if someone decides to bring a lawsuit, what would the Judge do if the Judge didn't like the Town's decision again? Hypothetically, what could the Judge do, which is your question. If this what up again for a second time and the Judge again found that the Town Board acted arbitrarily in issuing a decision, then it is possible, not necessarily inevitable, but possible that the Court could just issue a rate determination itself. Which is not ideal. The other alternative, if the Judge disagreed and found the Board's decision was arbitrary, was Round 3 of this process. You are back again. That's all that could possibly happen.

Someone asked Mr. Sher a question. Mr. Sher answered, I'm going to refrain from offering further opinions about this because it is just not really a good idea to take Q and A about the Town's legal position.

Councilwoman Goodwin said to be honest that we kind of went down that road the first time, and that wasn't accepted as a reason.

Councilman Strickland agreed, if we deny this when we have this information that might really go against us.

Mr. Sher said that whether the Town's decision was based on rational whether there was evidence, so that's why the Town commissioned LaBella and Mengel, Metzger and Barr to provide an evidentiary basis for a decision.

Ted Russell of Bristol Harbour said that every year, knowing these people as well as I know them, they are going to use their money to take you to task, the Town Board, and whatever you've incurred in cost this year between lawyers and consultants you will spend every year because they are doing that to us as a community within South Bristol.

Councilman Strickland said that is the flaw in the Transportation Corporation Law. If we spent the money we spent, the Town money, all over the Town money, from Gulick Road over to Bristol Harbour, to come up with this and then we turn it down, that is not going to set well.

Ted Russell said there is no guarantee that they are not going to come back and sue you again.

Councilman Strickland agreed, when this going in front of the Judge again, at least we have this document to help settle that process; we had nothing before.

Supr. Marshall said that this last 90-day go round we have done everything humanly possible to make sure that everything was covered; we've gone above and beyond.

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

On a motion made by Councilman Cowley and seconded by Councilman Strickland, the findings of the Mengel, Metzger & Barr forensic review establishing the sewer rate increase of \$4.35 was ACCEPTED. Voting AYE: 3. Voting NAY: 1. Voting AYE: Marshall, Cowley Strickland. Voting NAY: Goodwin.

LOCAL LAW – ELMINATINGAIL PENALTY FROM TOWN CODE

Supr. Marshall said we had our Public Hearing on the Local Law to eliminate the jail time in the Town Code.

On a motion made by Councilman Strickland and seconded by Councilman Cowley, Resolution No. 34-2021 was ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Strickland, and Cowley.

RESOLUTION #34-2021

AUTHORIZING ADOPTION OF LOCAL LAW NO. 3 OF 2021

WHEREAS, a resolution was duly adopted by the Town Board of the Town of South Bristol for a public hearing to be held by said Town Board on June 14, 2021, at 7:00 p.m. at South Bristol Town Hall, 6500 Gannett Hill Road - West, Town of South Bristol, New York, to hear all interested parties on a proposed Local Law entitled, “A Local Law Amending the Criminal Penalty Provisions in the Code of the Town of South Bristol” and

WHEREAS, notice of said public hearing was duly advertised in the official newspaper of the Town of South Bristol, on June 12, 2021 and other notices required to be given by law were properly served, posted or given; and

WHEREAS, said public hearing was duly held on June 14, 2021, at 7:00 p.m. at the South Bristol Town Hall, 6500 Gannett Hill Road - West, Town of South Bristol, New York, and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said Proposed Local Law, or any part thereof; and

WHEREAS, the Town Board of the Town of South Bristol, after due deliberation, finds it in the best interest of the Town of South Bristol to adopt said Local Law.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of South Bristol hereby adopts said Local Law No. 3 of 2021, entitled “A Local Law Amending the Criminal Penalty Provisions in the Code of the Town of South Bristol”, a copy of which is attached hereto and made a part of this resolution, and be it further

RESOLVED, that the Town Clerk be and she hereby is directed to enter said Local Law in the minutes of this meeting and in the Local Law Book of the Town of South Bristol and to give due notice of the adoption of said local law to the Secretary of State of New York.

I, Judy Voss, Town Clerk of the Town of South Bristol do hereby certify that the aforementioned resolution was adopted by the Town Board of the Town of South Bristol on June 14, 2021, by the following vote:

Daniel Q. Marshall
Scott Wohlschlegel
Donna Goodwin
Stephen Cowley
James Strickland

<u>Aye</u>	<u>Nay</u>
<u>x</u>	_____
Absent	_____
<u>x</u>	_____
<u>x</u>	_____
<u>x</u>	_____

Dated: June 14, 2021

Judy Voss, Town Clerk

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

SEAL

LOCAL LAW FILING

New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

(Use this form to file a local law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

City

Town of South Bristol

Village

Local Law No. 3 of the year 2021

A local law "Amending the Criminal Penalty Provisions in the Code of the Town of South Bristol"

(Insert Title)

Be it enacted by the Town Board (Name of Legislative Body)

County

City

Town of South Bristol

as follows:

Village

Section 1. Purpose – The purpose of this local law is to amend the criminal penalty provisions contained in multiple chapters of the Code of the Town of South Bristol to remove all references to imprisonment being a penalty, to change any reference to a violation of a chapter being a misdemeanor to a violation and to amend the amount of the fine for violations of certain chapters.

Section 2. Section 1-10 (Penalties for tampering with Code) in Chapter 1 (General Provisions) of the Code of the Town of South Bristol is hereby repealed and a new Section 1-10 is hereby inserted in its place to read as follows:

§ 1-10 Penalties for tampering with Code.

Any person who, without authorization from the Town Clerk, changes or amends, by additions or deletions, any part or portion of the Code of the Town of South Bristol or who alters or tampers with such Code in any manner whatsoever which will cause the legislation of the Town of South Bristol to be misrepresented thereby or who violates any other provision of this local law shall be guilty of a violation and shall, upon conviction thereof, be subject to a fine of not more than two hundred fifty dollars (\$250.00).

Section 3. Paragraph B. of Section 55-10 (Penalties for offenses) in Chapter 55 (Adult Uses and Entertainment) of the Code of the Town of South Bristol is hereby repealed and a new Section 55-10 is hereby inserted in its place to read as follows:

B. Any person, firm, corporation or entity who shall violate any provision of this chapter shall be guilty of a violation and, upon conviction thereof, shall be fined in an amount not to exceed \$500 for each violation. The continuation of a violation of the provisions of this chapter shall constitute, for each day the violation is continued, a separate and distinct violation hereunder.

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

Section 4. Section 61-11 (Penalties for offenses) in Article 1 (Dog Licensing) of Chapter 61 (Animals) of the Code of the Town of South Bristol is hereby repealed and a new Section 61-11 is hereby inserted in its place to read as follows:

§ 61-11 Penalties for offenses.

A violation of this article shall be punishable by:

- A. A fine of \$25 for a first violation;
- B. A fine of \$50 for a second violation within five years of the first violation; and
- C. A fine of \$100 for a third or subsequent violation within five years of the first violation.

Section 5. Paragraph E (Prosecution of violations) in Section 61-16 (Enforcement; appearance tickets; penalties for offenses) in Article 2 (Dog Control) of Chapter 61 (Animals) of the Code of the Town of South Bristol is hereby repealed and a new Paragraph E is hereby inserted in its place to read as follows:

E. Prosecution of violations. Pursuant to the Penal Law of the State of New York, a violation of this article shall be punishable by a fine of not more than \$25, except that:

(1) Where the person was found to have violated this article or article ____ of the Agriculture and Markets Law within the preceding five years, the fine may not be more than \$100; and

(2) Where the person was found to have committed two or more such violations within the preceding five years, he/she shall be punishable by a fine of not more than \$250.

Section 6. Paragraph A. in Section 61-20 (Penalties for offenses) in Article 3 (Keeping of Animals Other than Dogs) of Chapter 61 (Animals) of the Code of the Town of South Bristol is hereby repealed and a new Paragraph A is hereby inserted in its place to read as follows:

A. Any person who shall violate any of the provisions of this article shall, upon conviction thereof, be subject to a fine not exceeding \$250.

Section 7. Paragraph E. in Section 84-14 (Enforcement; penalties for offenses) of Chapter 84 (Fire Prevention and Building Code Administration) of the Code of the Town of South Bristol is hereby repealed and a new Paragraph E is hereby inserted in its place to read as follows:

E. Any person who shall violate any provision of this chapter, Chapter 148 (Steep Slopes) or of any stop-work order issued hereunder shall be guilty of a violation punishable by a fine not to exceed \$250.

Section 8. Section 88-8 (Penalties for offenses) of Chapter 88 (Flood Damage Prevention) of the Code of the Town of South Bristol is hereby repealed and a new Section 88-8 is hereby inserted in its place to read as follows:

§ 88-8 Penalties for offenses.

No structure shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of South Bristol from taking such other lawful action as necessary to prevent, enjoin, restrain or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

applied for and received an approved variance under §§ 88-18 and 88-19 will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

Section 9. Paragraph A. of Section 99-8 (Penalties for offenses) of Chapter 99 (Junkyards) of the Code of the Town of South Bristol is hereby repealed and a new Paragraph A is hereby inserted in its place to read as follows:

A. Any person violating any provision of this chapter shall be guilty of a violation and, upon conviction thereof, shall be punishable by a fine not to exceed two hundred and fifty dollars (\$250.00) for each violation.

Section 10. Paragraph C. of Section 106-8 (Violations and enforcement) of Chapter 106 (Timber Harvesting) of the Code of the Town of South Bristol is hereby repealed and a new Paragraph C is hereby inserted in its place to read as follows:

C. Any person violating any provision of this chapter shall be guilty of a violation punishable by a fine not to exceed \$250. Each day's continued violation will be considered a separate and distinct offense. Such notice shall be in writing, signed by the CEO, and shall be served upon the person or persons at his or their address listed on the timber harvesting permit application.

Section 11. Paragraph C. of Section 113-8 (Enforcement; penalties for offenses) of Chapter 113 (Noise) of the Code of the Town of South Bristol is hereby repealed and a new Paragraph C is hereby inserted in its place to read as follows:

C. Penalties. For each violation, any person, firm, company or corporation who or which neglects or refuses to do any act required by this chapter shall be punishable as follows:

(1) For the first violation, a fine of up to \$250.

(2) For a second violation committed within three months from the commission of any prior offense, a fine of up to \$500.

Section 12. Section 120-27 (Penalties) of Article IX (Enforcement) in Chapter 120 (On-Site Wastewater Management Systems) of the Code of the Town of South Bristol is hereby repealed and a new Section 120-27 is hereby inserted in its place to read as follows:

§ 120-27 Penalties.

Any person who violates any provision of this chapter shall be subject to a fine not to exceed the sum of \$250. Each week such violation continues after notification to the person in violation shall constitute a separate violation. Such violation notice shall be served by certified mail, return receipt requested, or by personal service.

Section 13. Paragraph D. (Penalties) of Section 139-20 (Enforcement) of Chapter 139 (Sanitary Waste Disposal) of the Code of the Town of South Bristol is hereby repealed and a new Paragraph D is hereby inserted in its place to read as follows:

D. Penalties. The violation of any provision of this chapter shall, for the purpose of conferring jurisdiction to the courts, be deemed a violation. Each separate violation shall be punishable by a fine not to exceed \$250. Each week such violation continues following service of a notice of violation shall constitute a separate violation. Such notice of violation shall be served by certified mail, return receipt requested, or by personal service.

Section 14. Section 143-6 (Penalties for offenses) of Chapter 143 (Skiing) of the Code of the Town of South Bristol is hereby repealed and a new Section 143-6 is hereby inserted in its place to read as follows:

§ 143-6 Penalties for offenses.

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

A. Any person who commits any of the acts described in § 143-4A through E of this chapter is guilty of a violation and shall, upon conviction, be sentenced to a fine of not more than two hundred fifty dollars (\$250.00).

B. Any person who commits any of the acts described in § 143-4F through U of this chapter is guilty of a violation and shall, upon conviction, be sentenced to a fine of not more than one hundred dollars (\$100.00).

Section 15. Paragraph B of Section 146-10 (Penalties for offenses) of Chapter 146 (Solid Waste and Recycling) of the Code of the Town of South Bristol is hereby repealed and a new Paragraph B is hereby inserted in its place to read as follows:

B. The penalties upon a conviction of violating any of the provisions of this chapter shall be a fine not exceeding \$250, except for corporations, limited liability companies, partnerships and other business entities, which shall be subject to a fine not exceeding \$500.

Section 16. Paragraph A of Section 157-6 (Penalties for offenses) of Chapter 157 (Trailers) of the Code of the Town of South Bristol is hereby repealed and a new Paragraph A is hereby inserted in its place to read as follows:

A. The penalty, in addition to any others herein specifically provided for, for each and every violation of any of the provisions hereof shall be and is hereby fixed at the sum of two hundred fifty dollars (\$250.00) and the cost of the proceedings, and each day such violation exists shall constitute a separate and distinct violation of this chapter.

Section 17. Section 162-12 (Penalties for offenses) of Chapter 162 (Vehicles and Traffic) of the Code of the Town of South Bristol is hereby repealed and a new Section 162-12 is hereby inserted in its place to read as follows:

§ 162-12 Penalties for offenses.

Except where a violation of this Article shall have a penalty prescribed therefor by the Vehicle and Traffic Law of the State of New York, any person violating any provision of this Article shall be guilty of a violation punishable by a fine not to exceed two hundred fifty dollars (\$250.00).

Section 18. Paragraph A. (Criminal penalty) of Section 170-97 (Penalties for offenses) of Chapter 170 (Zoning) of the Code of the Town of South Bristol is hereby repealed and a new Paragraph A is hereby inserted in its place to read as follows:

A. Criminal penalty.

(1) Any person who violates or causes to be violated any provision of this chapter shall be guilty of a violation and shall be punishable as follows:

(a) For a first offense, by a fine not exceeding \$350.

(b) For a second offense, both of which were committed within a period of five years, by a fine of not less than \$350 nor more than \$700.

(c) For a third or subsequent offense, all of which occurred within a period of five years, by a fine of not less than \$700 nor more than \$1,000.

(2) For the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed violations. Each week's continued violation shall constitute a separate additional violation.

Section 19. If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been ordered.

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

Section 20. This local law shall take effect immediately upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.),

I hereby certify that the local law annexed hereto, designated as Local Law No. 3 of 2021 of the Town of South Bristol was duly passed by the South Bristol Town Board on June 14, 2021, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer¹.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20__, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____, 20__ in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on 20__, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____, 20__. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____, 20__, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20__, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____, 20__. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____, 20__, in accordance with the applicable provisions of law.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 2005 of the City of _____ of having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____, 20__, became operative.

6. (County local law concerning adoption of Charter.)

¹ Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county- wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or Village, or the supervisor of a Town where such officer is vested with the power to approve or veto local laws or ordinances.

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

I hereby certify that the local law annexed hereto, designated as local law No.

_____ of 20__ of the County of _____, State of New York, having been submitted to the electors at the General Election of November ____, 20__, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the Towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Clerk of the Town
(Seal)

Date: _____

VII. NEW BUSINESS

RESOLUTION OF APPRECIATION – JIM ELY

Supr. Marshall said that, unfortunately, the Chair Person for the Planning Board is leaving the Town. Jim Ely has been the Chairman of the Planning Board for 9 years. A Professor Emeritus of Law from Vanderbilt University; Mr. Ely was highly qualified and brought vast experience to the Board.

On a motion made by Councilman Cowley and seconded by Councilwoman Goodwin, Resolution No. 35-2021 was ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Strickland, and Cowley.

RESOLUTION NO. 35-2021

RESOLUTION OF APPRECIATION

JIM ELY

WHEREAS, Planning Board Chair Jim Ely will be moving out of Town and has offered his resignation, and

WHEREAS, Jim Ely has been an exemplary as Chairman of the Planning Board for 9 years, and

WHEREAS, during his tenure, Chairman Ely has overseen the enactment of Short-Term Rental Law, Noise Ordinance, Solar Energy Regulations and the Town's Comprehensive Plan, and

WHEREAS, Chairman Ely's expertise in Real Estate Law has been beneficial to the Town.

NOW THEREFORE BE IT RESOLVED, that this Town Board expresses appreciation for Chairman Ely's leadership through the years, and

RESOLVED, that this Resolution be a part of the meeting minutes, and

RESOLVED, that a Certified Copy of this Resolution be sent to Chairman Ely.

PLANNING BOARD CHAIR APPOINTMENT – MATT SOUSA

Supr. Marshall said that with Jim Ely leaving the Planning Board we need to have a new Chair of the Planning Board. We've had several discussion about this and the conclusion is that Matt Sousa, who has been a member of the Planning Board for about a year, would be the

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

appropriate person to consider for Planning Board Chair. Mr. Sousa is currently the Senior Planner for Steuben County and brings a lot of experience to the Board. Mr. Sousa has accepted the position of Chair for the Planning.

On a motion made by Councilwoman Goodwin and seconded by Councilman Strickland to appoint Matt Sousa as Planning Board Chair was ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Strickland, and Cowley.

TOWN CLERK RESOLUTION – RECORD OF ACTIVITY

Supr. Marshall explained that the NYS Retirement requirement establishes the Standard Workday which Clerk Voss has submitted for Board approval.

On a motion made by Councilman Strickland and seconded by Councilwoman Goodwin, Resolution No. 36-2021 was ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Strickland, and Cowley.

(Insert Resolution)

VIII. REPORTS:

ASSESSOR

Councilman Cowley read the Assessor's Report.

On a motion made by Councilman Cowley and seconded by Councilman Strickland, the Assessors Report for May 2021 was ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Strickland, and Cowley.

CEO

Councilman Cowley read the CEO Report.

On a motion made by Councilman Cowley and seconded by Councilwoman Goodwin the CEO Report for May 2021 was ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Cowley and Strickland.

Supr. Marshall noted that the last page of the CEO Report includes a letter the CEO has sent to the Town Board basically discussing his concern about the status of the fire hydrants at Bristol Harbour. The current owners claim that they are not fire hydrants but indeed flushing devices. We have, however, found documentation from the past showing plans that included Bristol Harbour Blvd., Lakewood Trail, Evergreen Way, Golfside Circle and Lochcrest Circle and found site plans for Hogan Lane, Vardon Drive, H agen Trail and Andrews Way and another one which includes Bristol Harbour Blvd., Rec Area and the Villas. The Plan specifically call out and show installation instructions for a fire hydrant, C-502 hydrants with the appropriate sizes needed to work that. So, there is documentation in the past that says the fire hydrants were a part of it. We would be addressing this probably by an attorney to the owners of the Waterworks, stating that indeed, they are supposed to be fire hydrants and that something needs to be done about it. Clearly, the Town is concerned about it, Cheshire Fire Department is concerned about it.

The Code Enforcement Officer states in the last paragraph of the letter, "*At this time, I am requesting that all new construction at Bristol Harbor be halted until this situation is rectified.*" Supr. Marshall asked the Board for their thoughts on the matter.

Councilman Strickland said it is a good idea. Councilwoman Goodwin agreed.

Councilman Cowley asked if there is any new construction now underway?

Supr. Marshall said the CEO will not issue any new building permits.

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

On a motion made by Councilwoman Goodwin and seconded by Councilman Strickland to halt all new building permits at Bristol Harbor until the situation with the fire hydrants is resolved was ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Strickland, and Cowley.

TOWN CLERK/TAX COLLECTION

Councilman Cowley read the Town Clerk's Report.

On a motion made by Councilman Cowley and seconded by Councilman Strickland the May 2021 Town Clerk's Report was ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Cowley and Strickland.

Supr. Marshall said that he wanted has one more thing to add tonight. This is a letter that was composed for him by CEO Sommers, however, it is written as if it was written by the Town Board. Supr. Marshall read the letter:

To BHVA BOD,

The Town Board is very concerned regarding your Waterfront Update that was sent out in June. We find it very disturbing that you stated that the issued permit for repair gives you the right to start work on the elevator. In your letter you stated after a series of constructive discussions with BHVA, TSB Code Officer adjusted his prior position, accepted BHVA's permit application, and granted BHVA the permit. In reality it was months of struggle with BHVA and their attorney's to get the proper documents required from BHVA to be able to issue permit. That portion needed to be shared with the community.

We quote "The work on BHVA's elevator will resume in just a few weeks, during Summer, 2021. This major repair is expected to take 2 months. On this proposed schedule, elevator service would be restored by September 2021." It seems that the important part of that statement was left out regarding the Town's requirements were met but that the issue between your group and the Fields needed to be settled as well. Those requirements were proof of insurance with Mr. Fields as certificate holder. Second was Land Use Agreement to be signed by BHVA and Mr. Fields. Lauran Halleron and John Constance were told this when they picked up the permit. They were also sent an email stating the same. With that statement are you suggesting that has been resolved or conveniently left out?

Let it be known that the Town will not permit BHVA to engage in work pursuant to the building permit until these conditions have been met.

Sincerely, TSB Town Board

Supr. Marshall noted that the issuance of the Building Permit to Bristol Harbour Homeowner's Association was simply done because it resolves all the paperwork that the Town required. The issue between the two parties with regards to who owns what is not a Town issue; it is an issue between the two parties and that is what we are stating. We told them that and I was in the room when it happened, we told Laura Halloran and John Constance that the Town needed the OK. A subsequent email was sent to them by CEO Sommers indicating that you are not done yet, you still need to settle your issues between the two parties. This letter is now the third attempt to make everyone aware of that fact that you've got to solve the issue. Lord knows how the issue is going to be solved, but it needs to be solved.

Supr. Marshall continued, clearly the desperation you hear tonight was genuine and obviously it isn't just the sewer, the water, the waterfront. It just has to get solved, and to that end,

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

we hope that we get some progress. I would like to send this letter to the Bristol Harbor Homeowner's Board of Directors tomorrow morning.

Councilman Cowley, Councilman Strickland agreed and stated to send the letter.

IX. ACCOUNTING: SUPERVISOR'S REPORT

Supr. Marshall read from the Executive Summary, as of 5/31 we had \$3,112,371.00 in the bank. Major receipts for the month were \$13,106.00 which included \$7,000 from Charter Communications for Franchise Tax. The \$3 million balance includes the \$2.3 million which was just wired to pay for the Bond Anticipation Note.

Expenditures through May should average about 41% of our annual budget and as of right now the General Fund is at 30% and Highway is at 27%.

On a motion made by Councilman Cowley and seconded by Councilwoman Goodwin, the Supervisor's Report for May 2021 was ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Cowley and Strickland.

BUDGET AMENDMENT

Supr. Marshall explained that the Budget Amendment is because we have brought in Scott Martin and Deputy CEO and this establishes his .2 budget line as required. We've anticipated \$12,000.00 for the budget line which will be pulled from the Unexpended Fund Balance.

On a motion made by Councilman Strickland and seconded by Councilwoman Goodwin the Budget Amendment was ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Strickland, and Cowley.

APPROVAL OF VOUCHERS

On a motion made by Councilman Cowley and seconded by Councilman Strickland, Abstract No. 5, totaling \$135,556.10 was ACCEPTED. Voting AYE: 4. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Cowley and Strickland.

PRIVILEGE OF THE FLOOR

Joe Kohler of Bristol Harbor thanked the Board for this privilege. I rise sir, in one thousand percent support of every single word that the Honorable Jack York said, about the wanton destruction of a beautiful resort that Fred Sarkis built. I also rise in complete support of every single word that my neighbor, Ted Russell, said as the leader of our Utility Task Force. Every single word. And for the Town and Donna Goodwin, I wish to thank you for your vote tonight and I also wish to make the point that the reason that we must look into the PPP money, we must look in to where is the \$75,000.00. In conclusion, Town Board, Clerk Voss, the reason, a big part of my decision to move from Greene County, Windham Mountain to the Town of South Bristol in 1975, May 8th was because of the opportunity to live in Building One Condominiums as President of Bristol Mountain. It wasn't just me that was influenced by the beauty of Bristol Harbour, but there were others in management and ownership that migrated to the Town of South Bristol because of Bristol Harbor Village.

Mike Buckley of Bristol Harbour wanted to say that he and Donna are selling their home on Lakewood Trail and have already moved to an apartment at Pinnacle North in Canandaigua.

SOUTH BRISTOL TOWN BOARD MEETING

June 14, 2021

Mr. Buckley said that he has enjoyed listening to the Board for years and are a bunch of honest, decent individuals and I respect all of you.

The Board thanked Mr. Buckley.

XI. ADJOURN: 8:25pm

Respectfully submitted:

Judy Voss
South Bristol Town Clerk



June 11, 2021

Daniel Marshall
Supervisor, Town of South Bristol
6500 Gannett Hill Road West
Naples, NY 14512

**RE: Bristol Sewerage Disposal Corporation - Proposed Rate Increase
Request to Modify Monthly Sewer Rents Charged to Users of the Bristol Sewerage Disposal
Corporation System Pursuant to the New York Transportation Corporations Law
LaBella Project No. 2211569**

Dear Supervisor Marshall:

On behalf of the Town Board of the Town of South Bristol, we have reviewed the recent documentation regarding the request for an amendment to rent charges of the Bristol Sewerage Disposal Corporation (BSDC). This effort included review of supplemental information provided by Nixon Peabody in response to our follow-up questions and additional information needs.

We were retained by the Town as a licensed engineer to provide an opinion on whether BSDC's requested rate is "fair, reasonable and adequate" under Transportation Corporations Law § 121. We have collaborated on this assessment in conjunction with Mengel Metzger Barr (MMB), a certified public accounting firm. MMB's role includes a financial analysis and forensic accounting. Mengel Metzger Barr was the firm involved in a similar 2017 analysis and has background information and knowledge on the project.

From an engineering perspective, LaBella reviewed the information supplied by BSDC and Nixon Peabody to determine if the expenses related to the physical operation of the wastewater treatment plant (WWTP) and related facilities were reasonable. It is our professional opinion that some of the expenses seemed unreasonable or out of proportion for a facility of this size. Two specific examples of higher than anticipated expenses are the water bills and the budgeted amount for engineering services.

With regard to the water bills, the information supplied by BSDC states that the water use at the WWTP was between 2,000-3,000 gallons per day (gpd) for an extended period of time. Based on our understanding that the wastewater treatment plant utilizes a Rotating Biological Contractor (RBC) treatment system, the stated water use is higher than would be expected for a facility of this size. Typically, the operation of a RBC process does not require the addition of clean water. As such, we would expect to see a daily water use more in the range of 0 to 100 gpd. According to information from BSDC, recent performance issues with the RBC have required occasional hosing off of equipment or the addition of water to meet discharge requirements. However, the reported 3,000 gpd water use would equate to a standard hose running at 4 gpm for 12 hours a day. While this may be a short term issue, it should not be an on-going requirement or expenditure.



With regard to Professional fees, no data was provided by BSDC to support the invoices paid to Venezia and Associates Land Surveyors. A brief explanation justifying other engineering fees was provided. While it is true that a WWTP facility would have on-going engineering expenses, it is our opinion that sufficient justification for the budgeted on-going engineering expenses has not been provided. In our opinion, the engineering expenses budgeted for annually appear to be high relative to the size of the system.

Based upon these concerns and the financial analysis provided by Mengel Metzger Barr, we support MMB's opinion. Please feel free to contact us with any questions.

Respectfully submitted,

LaBella Associates

Jody Allen, Senior Civil Engineer

Kathy Spencer, Principal Environmental Analyst



MENGEL METZGER BARR & CO. LLP

Certified Public Accountants

June 12, 2021

Ms. Kathy Spencer
LaBella Associates, D.P.C.
300 State Street; #201
Rochester, NY 14614

Dear Ms. Spencer:

Mengel Metzger Barr & Co. (herein, “we”) was initially retained by LaBella on October 13, 2015 to aid LaBella in providing consulting to the Town of South Bristol (“the Town”) with the re-mapping of the Bristol Sewer Disposal Corporation (“BSDC”) located in the Town. After our initial review during 2016 and 2017, we authored a letter, dated September 8, 2017, which provided a detailed description of our procedures, as well as a recommendation as to the proposed BSDC rate increase, which was approved by the Town, namely approving the following components of the BSDC rates:

Table 1: September 2017 Approved BSDC Rate Components

Description	Monthly Charge
Base Operating Charge	\$54.06
Temporary Loan Payment Charge	\$6.03
Temporary Capital Replenishment Charge	\$9.12
Total Monthly Rate	\$69.21

We were contacted during April 2021 by LaBella to review BSDC’s application for a rate increase to \$100.67, which I understand was commenced by BSDC during August 2020. I have reviewed the information submitted by BSDC at that time, as well as the December 31, 2020 financial statements, and the Honorable Charles A. Schiano, Jr.’s decision dated March 12, 2021, in the Article 78 proceeding (Index. No.: 128393-2020, NY Supreme Court, Ontario County). We received additional information from BSDC supporting actual expenses incurred for repairs and maintenance, utilities, and professional fees (including but not limited to engineering, legal, and accounting). At this time, based upon the information received, my findings below are made with a reasonable degree of accounting certainty based upon the information that has been provided by BSDC to date.

We have been sub-contracted by LaBella to advise the Town on its decision as to the BSDC rates, which are governed, in part, by Section 121 of the NYS Transportation Corporations Law (MMB’s emphasis added):

A sewage-works corporation shall supply each city, town, village or other municipal area or district wherein such corporation operates, and the inhabitants therein, with facilities or make provision for the collection, treatment and disposal of sewage at fair, reasonable and adequate rates agreed to between the corporation and the local governing body or bodies, and, in addition, in the county of Suffolk, the county sewer agency, notwithstanding the provisions of any general, special or local law.

There is no further definition of the terms “fair”, “reasonable”, or “adequate” in the NYS Transportation Corporations Law. Nonetheless, to follow I have determined that a new rate of \$73.56/month appears fair, reasonable, and adequate for all rate payers, even considering the reduction in the number of units in BSDC. The opinion herein is prepared with a reasonable degree of accounting certainty and a consideration of the information I have had available to me as of the date of this letter.

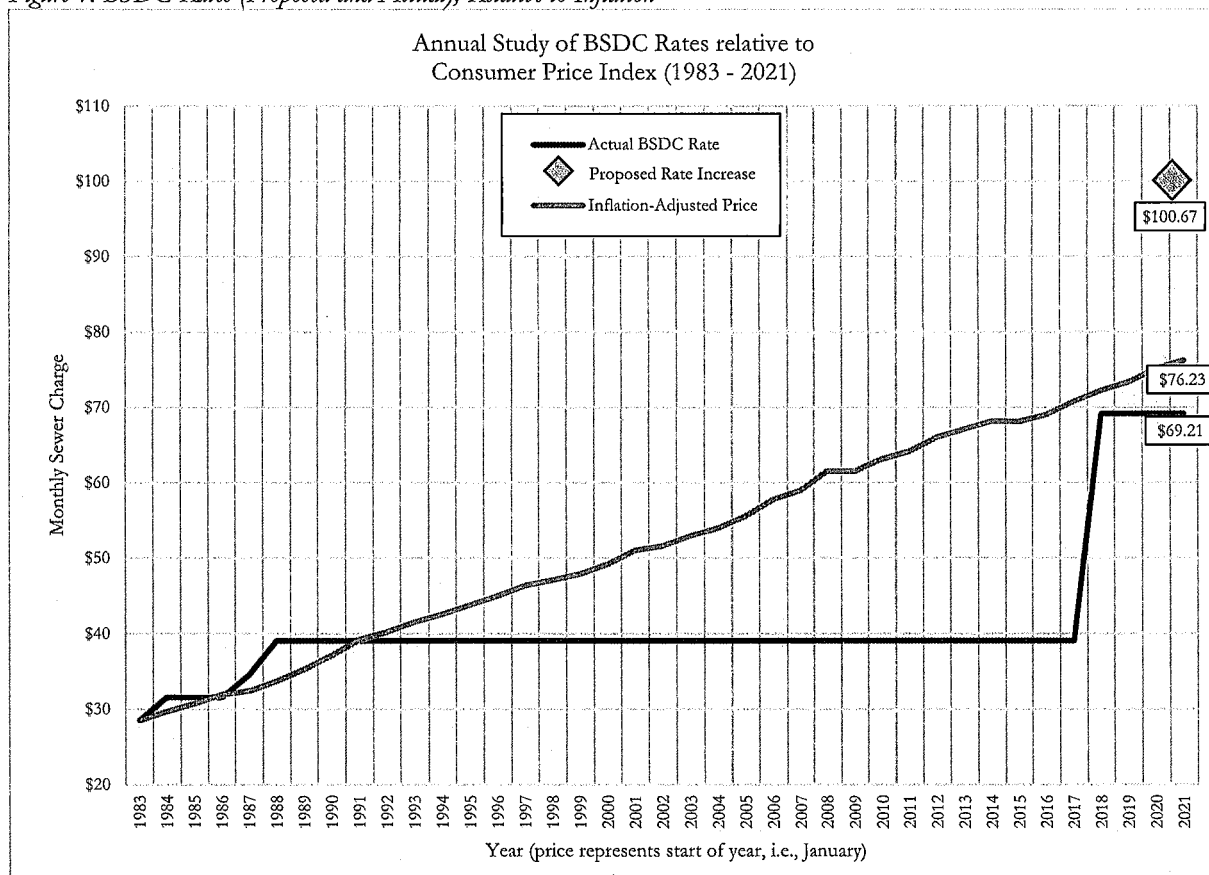
Page 1 of 7

Opening: A History Lesson on Inflation

During our first engagement reviewing the rate increase, we looked at the BSDC rates over a nearly 40-year period. As indicated in a filing with the Town during 1983, then president of the BSDC, Fred Sarkis, detailed a series of BSDC rate increases from 1979 to 1983 of over 91% at the time. Further on in Mr. Sarkis's filing, he noted that "[BSDC], to the best of its knowledge, believes that rates will level off to inflationary annual increases in the future."¹

From 1983 to today, we have modeled out the actual BSDC sewer rates (orange line) to the annual Consumer Price Index ("CPI"). As indicated below, the current rate (of \$69.21) is *less than* the 30-plus year inflationary pressure on the original rates by approximately 10%. However, the \$100.67 rate proposed by BSDC is greater than the 30-plus year inflationary pressure on the original rates by more than 30%.

Figure 1: BSDC Rates (Proposed and Actual), Relative to Inflation



There is nothing to indicate in (1) the most recent externally prepared financial statements for BSDC (explained in more detail below) or (2) the projections put forth by BSDC in its August 2020 application to support the permanent BSDC rate increase to \$100 on an on-going basis. Figure 1 demonstrates, in part, that a rate request of \$100.67, relative to the rate history (and inflation) appears unreasonable on its face. To follow, we provide additional commentary to support that the new \$73.56/month rate is fair, reasonable, and accurate.

¹ It is noted that Mr. Sarkis's son, Wade, requested the final rate increase to \$39.14 (another 24% increase). After the significant rates approved from 1979 to 1987, there were no rate increases for 30 years, until September 2017.

BSDC Acknowledged its Rates are Adequate on March 15, 2021

The Town should have to look no further than BSDC's reviewed financial statements, which are prepared by a third-party accounting firm in Rochester, NY, to draw a conclusion that rates are adequate to support operations for BSDC in the future. The reviewed financial statements include accompanying notes, which as stated by the accounting firm, are: "an integral part of these financial statements."

Later in the notes to the financials, note 10 Management's Plans indicates:

The Company received a sewer rate increase that went into effect in September 2017, as noted in Note 7 above. The rate increase assisted in the Company in generating positive cash flow from operations from 2018 through 2020. Management believes that the sewer rate increase, combined with a reduction in legal expenses that have been driven by community and town board resistance to the Company's proposed rate structure, will allow the Company to again generate sufficient cash flows in 2021 and beyond to fund its current operations, including making the required debt repayments and reserve deposits as noted in Note 7 above. The Company believes that using its reserve account allows it to fund major repairs that arise without requiring the use of operating funds that would otherwise be detrimental to the financial health of the Company. To the extent that material capital needs arise in 2021 or beyond, management has indicated that it may need to review its user charges levied on rate payers to ensure the financial viability of the Company.

Management indicates that they will be able to generate "sufficient cash flows in 2021 and beyond to fund its current operations". This appears as though BSDC acknowledges that its \$69.21 rate is adequate as of a date more recent than the August 2020 rate application (i.e., March 2021, the time of the filing of the financials). However, the new rate that we suggest represents accounting for the changes in the number of units for BSDC.

BSDC Should NOT Plan for Legal & Professional Costs of \$30,000 of More Each Year

Even though, in BSDC's financial statements, that it anticipates a "reduction in legal expenses", BSDC's on-going plan includes professional fees (historically, most of this expense has included legal fees) of over seven percent of total budget. In the August 2020 application for a rate increase to the Town, BSDC planned for professional fees of \$32,655 on an on-going basis against proposed revenue of \$451,500.

Simply put, there should be no reason that an organization of BSDC's size should spend \$32,655 annually on legal and other professional services. If anything, fees of this size may be incurred around significant projects and/or applications – and these would be one-time / non-recurring items.²

There are very few (if any) industries or businesses I have worked with either in my career in business valuation or other consulting where a business expects to incur seven (or more) percent of its annual revenues in legal fees on an on-going basis. This is not a sustainable model and it is one that is unfair to the residents of BSDC in the long-term.³

Additionally, in note 10 to the financial statements for 2020 (quoted above), BSDC expects a "reduction in legal expenses", yet there is not a material adjustment in legal fees for the 2021 projections to account for such a reduction.

² The expenses comprising the \$32,655 used for BSDC's on-going plan both appear to be non-recurring and should be removed from such an application setting on-going rates.

³ In effect, this on-going legal battle is doubly funded by the residents in BSDC: on one side, the residents are funding legal fees for the argument against BSDC (if necessary); on the other side, increased legal fees are included as a cost of running BSDC, which is divided up amongst the residents again.

BSDC's Management Fee of \$60,000 is Unfair to the Residents in 2021 and Beyond

Before the owners of BSDC decided to close Bristol Harbour, there was a Management Fee that was charged to BSDC by Bristol Harbour Resort Management ("BHRM") that included generally the items as follows in Table 2 below:

Table 2: Components of the Management Fee⁴

Description	Est. Monthly Amount	Required on On-Going Basis?
Admin Salary and Benefits	\$1,450	NO
GM Salary and Benefits	\$2,000	PARTIAL
Office Supplies & Accounting/Legal	\$1,550	PARTIAL
Total Monthly Rate	\$5,000	

As indicated above, I estimate that about half of the monthly \$5,000 in expenses that were accrued as payable to BHRM will not be needed on a go-forward basis, with the current application for salary and payroll taxes for an "Operator" and a "Supervisor".⁵ Given these salary applications and other professional fees incurred by BSDC directly (e.g., accounting fees), some appear to be duplicative of the amounts included in the \$60,000 Management Fee. BSDC did not provide adequate documentary support for its \$60,000 annual Management Fee. As a result, some of the amounts included in the Management Fee are unfair to be double charged to rate payers.

What is a Reasonable Rate of Return for BSDC?

As I had indicated above, there is no further definition in the New York Transportation Corporations Law, which provides a definition for a "reasonable" rate of return. However, there is an interpretation that we are relying upon to determine what should be viewed as a benchmark for the reasonable rate of return, which is an excerpt from Hon. Charles A. Schiano, Jr.'s decision dated March 12, 2021:

"[C]ase law provides that sewage companies 'may not be denied a reasonable rate of return on [their] investment.'"

I have consulted dividend rates paid by public entities which are in a similar industry to BSDC. These are public returns that owners (i.e., stockholders) are requiring for their investment in a company like BSDC:

Table 3: Public Sewerage Corporation Dividend Rates (2016 to 2020)

Company Name	Ticker	Dividend Yield Information		
		Minimum	Maximum	Average
Watts Water Technologies, Inc.	WTS	0.80%	1.30%	1.06%
Xylem, Inc.	XYL	1.10%	1.70%	1.29%
Mueller Water Products, Inc.	MWA	1.00%	2.40%	1.59%
Evoqua Water Technologies Corp.	AQUA	N/A	N/A	N/A
Average Dividend Rate (WTS, XYL, MWA only)		0.80%	2.40%	1.31%

⁴ This table represents the best indication as to the support of BSDC's Management Fee charged by BHRM that I have received from previous (2017) rate applications. The communication from BSDC during May 2021 included the representation: "As a small business, the management companies are confident that the usage of the Equipment allocated to BSDC's use is accurate." No additional supporting documentation has been provided to date.

⁵ Many of the Management Fee tasks are those which can be performed by the supervisor of BSDC.

Using these publicly traded companies as a benchmark for BSDC, which are entities that can attract capital, even providing an incremental increase of 100% (which is significant) over and above these public companies, one may conclude that a dividend rate of up to 2.62% (and no less) may be reasonable. Despite this comparison, BSDC is acknowledging that it is entitled to a 12% rate of return (on total revenue⁶) every year since 2016, which is unreasonable.

Is BSDC Entitled to a Guaranteed 12% Royalty in Arrears?

We have been provided with no prior case law dealing with sewerage corporations where an owner of a sewer corp. is *entitled* to a fixed royalty rate (and/or rate of return), as is BSDC's practice historically from 2016 to present.⁷ Nonetheless, each year, BSDC accrues a 12% dividend. Footnote 8 from its financial statements governs this entry that BSDC makes every year in its financial statements:

The Company may pay a maximum dividend equal to 12% of cash basis revenue collected. During 2020, the Company declared a dividend of \$38,982. During the years 2016 through 2019, the Company declared dividends totaling \$133,887. As of December 31, 2020, none of the above dividends have been paid and the total unpaid amount of \$172,869 is included in dividends payable in the accompanying balance sheets. The Company does not intend to pay the dividends during 2021 and, therefore, the dividends payable are classified as a long-term liability in the accompanying balance sheets.

Owning and operating a business does not provide a guarantee of a rate of return; rather, a business owner may pay himself or herself if profits (and/or after-tax cash flows) are generated. In the case of the public companies, included in Table 3 above, such caveats are provided in their publicly filed financial statements.⁸ It is clear that there is no guaranteed dividend. Thus, the guarantee of any rate of return, let alone a rate of return of 12% per annum, may very well be viewed by the Town as unfair to the BSDC residents.

LaBella's Findings and the Impact to the Rate Case

We have reviewed LaBella's June 11, 2021 letter to Town of South Bristol Supervisor Dan Marshall, which indicates that "Two specific examples of higher than anticipated expenses are the water bills and the budgeted amount for engineering services." Our analysis has considered that the legal and professional fees of over \$32,000 per year is unfair to the residents, which is supported by LaBella's engineering opinion (refer to page 3 above). Additionally, the utilities expenses charged to BSDC during 2020 included water bills that included materially more water than should be necessary to run the wastewater treatment equipment that BSDC owns. Even though BSDC did not provide adequate documentary support for its utilities expense in its August 2020 rate application, it appears the utilities expense in the August 2020 rate application may not include all the water consumption that was charged to BSDC during 2020, as indicated in LaBella's June 11 letter.

⁶ It is worth noting that a 12% rate of return to investors in a business not should be paid as a component of 12%, but on the total investment into the project. As computed by BSDC historically, they have essentially charged a 12% royalty to the residents that BSDC is attempting to recoup for many years. This is unreasonable.

⁷ Notwithstanding anything to support BSDC's 12% profit expectation, I have not in my nearly 14-year career as a CPA or CVA seen a situation where a company has *expected and accrued* a 12% profit figure.

⁸ From Xylem, Inc.'s December 31, 2020 10-K statement, filed on February 26, 2021 (page 28): "Dividends are declared and paid on the common stock at the discretion of our Board of Directors and depend on our profitability, financial condition, capital needs, future prospects and other factors deemed relevant by our Board. Therefore, there can be no assurance as to what level of dividends, if any, will be paid in the future."

From Mueller Water Product's December 31, 2020 annual report, filed on (page 22): "Covenants contained in certain of the debt instruments described in Note 8. of the Notes to Consolidated Financial Statements restrict the amount we can pay in cash dividends. Future dividends will be declared at the discretion of our board of directors and will depend on our future earnings, financial condition and other factors."

Loan Repayment Charge Accounting

One of the three components of the sewer rates (refer to Table 1 above) is a \$6.03/month payment intended initially to be used to repay the line of credit balance that BSDC had during September 2017. We have reviewed the transaction detail for the line of credit account and we have confirmed that more than the funds collected via the \$6.03/month payment have been used to repay the line of credit balance, which indicates that in total BSDC has met the minimum requirement to utilize the funds from the \$6.03 monthly charge to repay the line of credit. However, during our review, we have identified three separate uses of funds totaling over \$47,000 from the line of credit. These amounts include, in part, one-time payments of legal and other professional fees, that have increased the line of credit balance during 2021 by over \$18,000.⁹

As indicated below in Table 4, the \$6.03/month loan repayment charge will increase to \$6.41/month.

Capital Replenishment Charge Accounting

Another of the three components of the sewer rates (Table 1 above) is a \$9.12/month charge for each resident to accumulate funds for purposes of future capital needs. As of December 31, 2020, the BSDC externally prepared financial statements indicate that BSDC had approximately \$65,000 in funds held in a separate account. BSDC accounts for this separately and holds the capital funds in a segregated account.

Provided that all residents of BSDC have paid their bills on time from January through April 2021, AND there have been no capital needs, requiring the use of the segregated capital funds, the segregated funds should be approximately \$78,000 in the capital account (assuming one month brings in approximately \$3,360 in funds → \$9.12 per resident x 368 residents = \$3,356 per month) at the end of May, 2021.

BSDC indicated that there was \$75,005 via a communication from its attorney, Jared Lusk, from early May and thus we do not have any concerns regarding the accounting for the Capital Fund.

As indicated below in Table 4, the \$9.12/month capital replenishment charge will increase to \$9.69/month.

Change in the Number of Billing Units

In BSDC's August 2020 rate application, the number of billed units decreased from 391.1 to 368 units. This represents the net change associated with the closure of Bristol Harbour and the associated number of units that BSDC had assigned to the lodge, restaurant, and golf course. With a decline in the number of units, all else being equal, the rate should be increased by approximately 6.28% to account for the decline in the number of units. We have computed this change in Table 4 below.

Conclusion

Based upon the information provided by BSDC in its August 2020 rate application, and several different follow-up communications in May and June 2020, and the findings that I have detailed above, *it is my professional opinion that a rate of \$73.56/month is fair, reasonable, and adequate to the residents of the BSDC.*

As indicated further in Table 4 below, the temporary loan payment charge should remain in force until the line of credit is paid in full (i.e., the \$6.41/month charge), at which point it will no longer be needed in the BSDC rates. Additionally, the temporary capital replenishment charge may be needed until the total capital reserve reaches a limit that BSDC, the Town and/or LaBella believes is adequate (i.e., the \$9.69/month charge, with a current balance of nearly \$80,000).

⁹ At the beginning of 2020, the line of credit balance was approximately \$40,000. At the end of 2020, the balance was over \$58,200.

Table 4: Proposed Rate Increase

Description	Previous Charge	Unit Factor ¹⁰	Resulting Charge
Base Operating Charge	\$54.06	1.06277	\$57.46
Temporary Loan Payment Charge	\$6.03	1.06277	\$6.41
Temporary Capital Replenishment Charge	\$9.12	1.06277	\$9.69
Total Monthly Rate	\$69.21	1.06277	\$73.56

Should the Town require any additional forensic review of BSDC's figures relating to on-going forensic reviews of the rates charged and/or the amounts reimbursed for the capital replenishment and/or the line of credit, please advise and we can develop a work plan accordingly.

I appreciate the opportunity to serve you. I will attend the Town Board meeting on June 14, 2021 to discuss the contents of this report at the Board meeting, should it be necessary.

Best Regards,



Brian C. Hedges, CPA, CFE, CVA
Partner | Transaction Advisory Services

¹⁰ The "Unit Factor" in Table 4 above represents the increase required in the rates to off-set for the decrease in the number of rate payers. It is calculated by dividing 391.1 units (previous number of rate payers) into 368 units (current number of rate payers).