

December 19, 2013

From: Heather Arcos, Town Manager

To: Mayor and Town Council

Subject: Annexation Agreement and the Public Service Authority

Background: Council has asked staff to obtain an opinion from legal counsel whether providing wastewater processing services to the Public Service Authority (PSA) would harm the Town's position relative to a financial contribution from the developer of the annexed property for expanding plant capacity under the Annexation Agreement (AA). Legal counsel has reviewed and concurred in the following discussion and conclusions.

Discussion: The timing and sequence of plant expansion, participation in the PSA, and development of the annexed property will determine whether the developer is obligated to contribute to the plant expansion.

As indicated in the attached excerpts from the AA, paragraph 10, the developer is financially obligated for the portion of plant expansion necessary to accommodate the additional treatment demands of the annexed property beyond the limits of the Town's current permitted capacity. The developer may also choose to reserve a portion of any expanded plant capacity in proportion to a financial contribution. Therefore, if the plant was expanded solely to accommodate demand of the PSA or another non-annexed property, the developer of the annexed property would have no financial obligation. However, if a portion of the requirement for plant expansion is related to demand from the annexed property, the developer would be financially obligated for that portion.

There is no need to expand plant capacity to provide service to the PSA. There are approximately 800 remaining Equivalent Residential Connections (ERCs) within the existing permitted capacity (same permitted capacity as of 3/13/90). Existing potential PSA customers would consume a maximum of about 160 ERCs, leaving about 640 to serve additional connections. These new connections could come from any source: the Baymark annexed property, the Historic District, the Baymark non-annexation property on the north side of Town, Kings Creek Marina, the south side of the Harbor (South Port, et al), or the PSA. Each new connection contributes at least \$6,600 to a reserve for future plant expansion. Additionally, the Town could specify in the agreement with the PSA a maximum number of allowed ERCs within existing plant capacity.

Conclusion: The Town may be able to obtain payment under the AA if part of a plant expansion is to accommodate increased demand at the annexed property or if part of the plant capacity is reserved for the annexed property by the developer.