

**1. CALL TO ORDER**

Chairperson Beers called the meeting to order at 6:00 p.m.

**2. INTRODUCTORY**

Chairperson Beers read the introductory.

**3. PLEDGE OF ALLEGIANCE**

Chairperson Beers led those present in the Pledge of Allegiance.

**4. ROLL CALL**

Answering the roll call were Chairperson Gary Beers, Vice Chairperson Charles Denault, Councilors Frank Dennett, Russell White, Kenneth Lemont, Judith Spiller, and Jeffrey Thomson.

**5. NEW BUSINESS**

a. (100516-1) The Kittery Town Council moves, pursuant to Council Rules Section 10, to suspend the rule of Robert's Rules of Order, governing the conduct of meetings in order to modify the conduct of these hearings in the due form of quasi-judicial proceedings.

**A MOTION WAS MADE BY COUNCILOR THOMSON TO SUSPEND THE RULE OF ROBERT'S RULES OF ORDER, PURSUANT TO COUNCIL RULES SECTION 10, GOVERNING THE CONDUCT OF MEETINGS IN ORDER TO MODIFY THE CONDUCT OF THESE HEARINGS IN THE DUE FORM OF QUASI-JUDICIAL PROCEEDINGS, SECONDED BY VICE CHAIRPERSON DENAULT. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

b. (100516-2) The Kittery Town Council moves to hold Assessment Hearings for the following applicants:

- Central Maine Power Company (Two Parcels)
- Kathleen C. & Gerald L. Eldridge
- Lady Slipper Properties, LLC; Richard D. Johnson
- Kathryn M. Hawkes
- Michel E. Racine
- Richard E. & Kathy A. Dellapiana

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- Central Maine Power Company (Two Parcels)

Name of the requester: **CENTRAL MAINE POWER CO.**

Map-Lot: **20-04** Street: **91 MARTIN RD** & Map-Lot: **20-24** Street: **92 MARTIN RD**

Basic description of the issue on request:

**Claims lots are deemed unbuildable because they are "a high-voltage transmission line corridor not buildable for a structure that would benefit from the sewer main." Notes adversely and directly affected by "an assessment for services that does not benefit the property."**

**Requests relief from assessment. States that "CMP conveyed rights to install portions of the sewer main over its property by easement dated May 3, 2016. And gave the Kittery Water District rights to**

*store water main pipe for the water main replacement project on its property at the Kittery Substation.”*

Chairperson Beers stated that the request can be heard and a decision rendered based on the evidence presented or deny the request with prejudice due to the absence of representation. Councilor Dennett noted it is not required for the appellant to be present for hearing. Chairperson Beers concurred.

Chairperson Beers read the council’s basis in law and findings of fact for the hearing request into the record.

**COUNCIL’S BASIS IN LAW AND FINDINGS OF FACT FOR THIS MATTER ARE:**

The application [ **is** ] complete; made a part of the record; and, the applicant [ **does** ] have standing.

The applicant’s Burden of Proof [ **was** ] clarified to the Council: **SUBSTANTIAL EVIDENCE**  
Assessment dimensions of the property and other arithmetical calculations used for calculating the assessment [ **are not** ] applicable for this request.

Assessment formula for this assessment [ **is not** ] applicable for this request.

There [ **are no** ] mitigating factors related to this request not considered in the plan.

Key elements of the issue and applicable ordinance(s)/statute(s):

13.1.4.3 Assessment.

**13.1.4.3.1 Determination of Benefits.**

When the sewer line construction has been completed, the municipal officers shall determine what lots or parcels of land, with or without structures thereon, are benefited by said sewer line; and, estimate and assess upon said lots or parcels of land and against the record owner or owners thereof or against a person against whom the taxes thereon are assessed, a sum not exceeding the benefit the municipal officers deem fair and equitable towards defraying the expenses of said sewer construction together with any sewage disposal units and appurtenances that may be necessary for the proper operation of said sewer line.

**13.1.4.3.2 Definitions.**

For the purposes of this Article, the following definitions apply:

**Benefited Parcel:** A property which has gained direct access to a sewer main extension via frontage or an existing public right-of-way less than one hundred (100) feet distant, whether gravity flow is readily achievable or not.

**13.2.2 Unbuildable Parcel Appeals.**

**13.2.2.1 Definitions.**

The following definitions apply to this Section only:

Unbuildable means no structure containing or required to contain sanitary facilities may be legally constructed due to zoning restrictions.

**13.2.2.2 Right to Unbuildable Parcel Appeal.**

Any person owning a property, included in an adopted Assessment Plan for a sewer main extension project, not satisfied with the amount assessed pursuant to §13.1.4.3 may, prior to Assessment Fee payment due date and without limitation of time thereafter, appeal the assessed amount to the Board of Appeals (BoA), as an unbuildable parcel, provided that:

A. The appellant was the record owner of the assessed property and, excepting spousal or trust inclusions or exclusions, remains so without interruption at time of appeal; and

B. The assessed property was vacant, or was improved by structure(s) neither containing nor required to contain sanitary facilities.

The relief sought as noted in the request filing asked the Council to find:

**Request relief from assessment.**

In order to grant the request, the applicant needed to demonstrate that:

**Subject properties did not meet the “benefited parcel” definition/criteria.**

Evidence submitted by the requester beyond what is shown on a plan:

**Properties Area aerial photo. Indenture instrument, May 3, 2016, York Registry Book 17249 Pgs 520-524. Letter, July 28, 2016, RE: Water Main Replacement and Pipe Storage, Kittery, Maine**

Evidence submitted by people other than the requester either for or against the issue: **NONE**

Evidence which Council enters into the record based on the personal knowledge of its members or experts which Council has retained on its own behalf:

**Applicant presented no evidence or argument disputing the definition of a “benefited parcel”, or classification of the lots in question not meeting that criteria.**

**Applicants statement regarding the granting of an easement to the Town for the project is found to have no bearing on the equation. Applicant failed to note that the Town Paid \$5,232.10 for said easement.**

**Applicant’s evidence regarding temporary easement to the Kittery Water District has no bearing as the District is an independent quasi-municipal entity unrelated to the Town.**

**Applicant may appeal to the Board of Appeals on its contention that the parcels are unbuildable lots, pursuant to Town Code Title 13, §2.2.2, Right to Unbuildable Parcel Appeal.**

The applicant’s evidence presented for the matter: [ **was** ] substantial;  
[ **was not** ] credible;

Councilor White disagreed with the Council’s basis in law and findings of fact that the evidence presented was not credible. Chairperson Beers understood that no evidence was presented to support it is not a benefited parcel. He cited the definition of benefited parcel. He clarified that the question as to whether or not it is a buildable parcel could warrant an appeal to the Board of Appeals. However, the parcel meets the criteria of a benefited parcel and no evidence was presented to dispute that fact.

Councilor Dennett concurred with the decision for the easement for water service and the determination as to whether or not it is a buildable lot.

Chairperson Beers continued to read the council’s basis in law and findings of fact for the hearing request into the record.

The applicant’s evidence presented for the matter:

[ **is** ] outweighed by conflicting evidence from the Town; and, the applicant  
[ **did not** ] meet the burden of proof for granting the request.

The sum of the information/circumstances presented and reviewed [ **does not** ] warrant a revision of the Assessment.

What revision to the Assessment is decided upon, or not; and, what is the basis of the decision?

**NONE**

**A MOTION WAS MADE BY CHAIRPERSON BEERS TO HEREBY RESOLVE, PURSUANT**

**TO TOWN CODE TITLE 13, §1.4.3.5, TO AFFIRM THE ASSESSMENT MADE IN THE 2015 SEWER MAIN EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 20 LOT 04 AT 91 MARTIN RD AND MAP 20 LOT 24 AT 92 MARTIN RD, AND OWNED BY CENTRAL MAINE POWER CO., SECONDED BY COUNCILOR SPILLER.**

Chairperson Beers clarified to Councilor Dennett that the application could appear before the Board of Appeals.

Chairperson Beers added that some properties were included in the Assessment simply for the fact that it was suspected they could be waived, which in turn would not increase Assessments for other parcels.

**THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

**A MOTION WAS MADE BY CHAIRPERSON BEERS TO APPROVE THE CONCLUSIONS OF LAW AND FINDINGS OF FACT IN REGARD TO THIS HEARING FOR THE PROPERTIES AT MAP 20 LOT 04 AND MAP 20 LOT 24 AS DISCUSSED AND TO BE RECORDED IN THE MINUTES., SECONDED BY COUNCILOR WHITE. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

**Chairperson Beers advised if the applicant is not satisfied with this decision, pursuant to Town Code Title 13, §1.4.3, appeal may be made within ten (10) days after this hearing, to an independent arbitration panel. Forms are available on the town website and at the Town Clerk's office.**

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- Kathleen C. & Gerald L. Eldridge

Name of the requester: **ELDRIDGE, KATHLEEN C. & GERALD L.**

Map-Lot: **29-08** Street: **131 MARTIN RD**

Basic description of the issue on request:

**Apparently requesting relief to connection requirement due to lack of gravity flow and distance from structure to sewer main.**

Ms. Eldridge stated a deferral was granted from the Town Manager until year 2024. She asked whether or not the property requires connection past the deferral period since no gravity flow exists to pump out.

Chairperson Beers read the council's basis in law and findings of fact for the hearing request into the record.

**COUNCIL'S BASIS IN LAW AND FINDINGS OF FACT FOR THIS MATTER ARE:**

The application [ **is not** ] complete, **but may contain sufficient detail to render a decision**; made a part of the record; and, the applicant [ **does** ] have standing.

The applicant's Burden of Proof [ **was** ] clarified to the Council: **SUBSTANTIAL EVIDENCE**

Assessment dimensions of the property and other arithmetical calculations used for calculating the assessment [ **are not** ] applicable for this request.

Assessment formula for this assessment [ **is not** ] applicable for this request.

There [ **are** ] mitigating factors related to this request not considered in the plan.

**Aerial view shows structure requiring sewage waste disposal to be greater than 100' from project main.**

Key elements of the issue and applicable ordinance(s)/statute(s):

**Title 13, §1.1.11 Installation ..... and Connection to Public Sewer Required.**

**A. Owners of all structures with use requiring the disposal of sewage with public sewer located within one hundred (100) feet** of the property line as measured along any public way are required at their expense to install suitable waste effluent and/or toilet facilities therein, and to connect such facilities directly to the public sewer in accordance with the provisions of this chapter, within ninety (90) days after date of official notice to do so.

**C. When gravity flow cannot be obtained from the building or the property, connection to said public sewer is not required.** However, this does not preclude waste flows from being pumped to the public sewer should the property owner so wish. Properties not required to connect at the time of a main extension project for this reason must do so when the existing septic/leach field system fails or must otherwise be replaced.

The relief sought as noted in the request filing asked the Council to find:

**Exemption from connect requirement due to lack of gravity flow and greater than 100' distance from structure to sewer main.**

In order to grant the request, the applicant needed to demonstrate that:

**Gravity flow cannot be achieved; or, distance exceeds requirement.**

Evidence submitted by the requester beyond what is shown on a plan:

**Superintendent – Project Engineer e-mail, Oct 06, 2016.**

Evidence submitted by people other than the requester either for or against the issue: **NONE**

Evidence which Council enters into the record based on the personal knowledge of its members or experts which Council has retained on its own behalf: **Parcel aerial photo.**

The applicant's evidence presented for the matter: [ **was** ] substantial;

[ **was** ] credible;

[ **is not** ] outweighed by conflicting evidence from the Town; and, the applicant

[ **did** ] meet the burden of proof for granting the request.

The sum of the information/circumstances presented and reviewed [ **does** ] warrant a revision of the Assessment.

What revision to the Assessment is decided upon, or not; and, what is the basis of the decision?

**Relief from Town Code Title 13, §1.1.11C, for connection: Structure greater than 100' distant from the sewer main; gravity flow probably unobtainable.**

Councilor Dennett stated there was no evidence presented that gravity flow cannot be obtained.

Chairperson Beers explained the basis of decision would not be lack of gravity flow, but would be the distance of the structure being greater than 100 feet. He added that the appellant requested relief only from connection.

Ms. Eldridge replied to Councilor Dennett that the septic is twelve years old and that is why the deferral request was made.

**A MOTION WAS MADE BY CHAIRPERSON BEERS TO HEREBY RESOLVE, PURSUANT TO TOWN CODE TITLE 13, §1.4.3.5, TO REVISE THE ASSESSMENT MADE IN THE 2015 SEWER MAIN EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 29 LOT 08 AT 131 MARTIN RD AND OWNED BY KATHLEEN C. & GERALD L. ELDRIDGE, PURSUANT TO TOWN CODE TITLE 13, §1.1.11A, EXEMPTION FROM**

**CONNECTION REQUIREMENT IS GRANTED DUE TO STRUCTURE REQUIRING SEWAGE DISPOSAL LOCATED GREATER THAN 100' FROM SEWER MAIN., SECONDED BY COUNCILOR SPILLER.**

Councilor Dennett understood that the motion is for exemption from the requirement to hook up to sewer and does not change the Assessment. He asked if there was a stub. Councilor Thomson believed that there was reference to a stub that is three feet buried. Chairperson Beers understood that the amount of frontage to the road is irrelevant and that there is a proposed stub for all parcels.

**THE MOTION PASSED BY A ROLL CALL VOTE 6/1/0 WITH COUNCILOR DENNETT OPPOSED.**

**A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE THE CONCLUSIONS OF LAW AND FINDINGS OF FACT IN REGARD TO THIS HEARING FOR THE PROPERTY AT MAP 29 LOT 08 AS DISCUSSED AND TO BE RECORDED IN THE MINUTES., SECONDED BY VICE CHAIRPERSON DENAULT. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

**Chairperson Beers advised if the applicant is not satisfied with this decision, pursuant to Town Code Title 13, §1.4.3, appeal may be made within ten (10) days after this hearing, to an independent arbitration panel. Forms are available on the town website and at the Town Clerk's office.**

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- Lady Slipper Properties, LLC; Richard D. Johnson

Name of the requester: **LADY SLIPPER LLC, RICHARD D. JOHNSON**

Map-Lot: **20-17** Street: **37 ROUTE 236**

Basic description of the issue on request:

**States objection to:**

- 1) Number of units assessed**
- 2) Sewer Stub Location**
- 3) Sewage pump required**

Mr. Johnson explained the reasoning for his request to assess the property based on three units instead of thirteen. Based on the water usage, the three units combined use about 500 gallons less than the average consumption per cubic feet per quarter.

Mr. Johnson explained the location of the existing stub is approximately five feet higher than the outfall. The distance to the proposed stub would reduce the distance from the outfall from 174 feet to 148 feet. The new stub location would allow the force main to run alongside the existing driveway. The current septic has reached less than 50% of useful life and when it fails, he plans to connect to Town sewer. He requests that the Town provide a stub at the proposed location and a pump station. Alternatively, he requests the future connection fee be waived and the Assessment fee be adjusted to offset the cost of grinder pump station. He did receive a response from Mr. George Kathios that the Town would provide a pump, but Mr. Johnson was not sure if that included installation.

Chairperson Beers read the council's basis in law and findings of fact for the hearing request into the record.

**COUNCIL'S BASIS IN LAW AND FINDINGS OF FACT FOR THIS MATTER ARE:**

The application [ **is** ] complete; made a part of the record; and, the applicant [ **does** ] have standing.

The applicant's Burden of Proof [ **was** ] clarified to the Council: **SUBSTANTIAL EVIDENCE**  
Assessment dimensions of the property and other arithmetical calculations used for calculating the assessment [ **are** ] applicable for this request.

**Assessed for 13 units of occupancy.**

Assessment formula for this assessment [ **is not** ] applicable for this request.

There [ **are** ] mitigating factors related to this request not considered in the plan.

- 1. Basis of determining number of units of occupancy.**
- 2. Sewer stub location anticipated sewer line exiting at front, but it exits at rear.**
- 3. Project sewer main level is 5.71' higher than structure outfall level preventing gravity flow.**

Key elements of the issue and applicable ordinance(s)/statute(s):

**UNITS OF OCCUPANCY**

**13.1.4.3.2 Definitions.**

For the purposes of this Article, the following definitions apply:

**Unit-of-Occupancy:** The category of property use which carries the unit charge as found in §13.1.6.5, Sewer Impact Fee.

**13.1.6.5 Sewer Impact Fee.**

**13.1.6.5.3 Categories of Use and Unit Charge.**

The following categories of property use carry the unit charge set forth herein to be used in the computation of the sewer impact fee as provided above:

Minimum charge.....	1/2 unit charge
Single-family dwelling or condominium unit.....	1 unit charge
Multifamily dwelling or condominium per unit.....	1 unit charge
3 hotel units (double occupancy).....	1 unit charge
5 motel units (double occupancy).....	1 unit charge
4 boarding house (double occupancy).....	1 unit charge
7 cabins.....	1 unit charge
15 school students (day school).....	1 unit charge
4 school students (boarding school).....	1 unit charge
2 hospital beds (medical).....	1 unit charge
3 nursing home beds.....	1 unit charge
50 theater seats.....	1 unit charge
30 employees.....	1 unit charge
Retail store per 1,500 gross square feet.....	1 unit charge
30 full service restaurant or function room seats.....	1 unit charge
1 laundromat machine.....	1 unit charge
1 automobile service station.....	3 unit charges
Fast food and/or drive-in service restaurant (15 seats).....	1 unit charge
10 yacht or country club members.....	1 unit charge
50 church members.....	1 unit charge
Industrial and manufacturing use.....	Base minimum on domestic use plus any process water usage

Commercial and retail uses:

5 plumbing fixtures added to existing structures  
and connected to wastewater collection system..... 1 unit charge

For any category of use or change in use not specifically set forth above, the enforcing officer determines the total number of unit charges based upon a per unit load of three hundred (300) gallons per day.

**13.1.6.5.4 Proportional Factors.**

When the number of units within a category of use does not exactly correspond to that listed in the schedule above, a proportional factor is to be utilized to calculate the total sewer impact fee. For example, to compute the total sewer impact fee for a seven-unit motel the following calculation is used:

7 motel units = 1 Unit charge for 5 + 2/5 Unit charge for 2  
= \$3,000 + (2/5 X \$3,000 (\$1,200)) = \$4,200.00

**13.1.6.5.5 Multiple Category Factors.**

If two or more categories of use may apply to a particular proposed use, the sewer impact fee is the higher of the two or more calculations. However, when there are multiple uses within a structure, each such use is subject to a separate sewer impact fee.

**GRAVITY FLOW**

**Title 13, §1.1.11 Installation ..... and Connection to Public Sewer Required. 13.1.1.11**

A. Owners of all structures with use requiring the disposal of sewage with public sewer located within one hundred (100) feet of the property line as measured along any public way are required at their expense to install suitable waste effluent and/or toilet facilities therein, and to connect such facilities directly to the public sewer in accordance with the provisions of this chapter, within ninety (90) days after date of official notice to do so. **Pursuant to Town Code Title 16, Chapter 8, Article VII, Sewage Disposal, connection to public sewer is required for a commercial or industrial development or a residential subdivision, where public sewer, within an abutting public way, is within one thousand (1,000) feet of the property line as measured along said public way.**

C. When gravity flow cannot be obtained from the building or the property, connection to said public sewer is not required. However, this does not preclude waste flows from being pumped to the public sewer should the property owner so wish. **Properties not required to connect at the time of a main extension project for this reason must do so when the existing septic/leach field system fails or must otherwise be replaced.**

D. Owners of properties with a septic tank and leach field system **installed within twenty (20) years of any main extension project completion date may request deferral of connection until the system has reached the twenty-years after installation anniversary.**

The relief sought as noted in the request filing asked the Council to find:

1. **Reduction in number of units assessed to three (3).**
2. **Exemption from connection requirement due lack of gravity flow obtainability and distance in excess of 100’.**
3. **Request the Town install a pump station and maintain it forever; or, waive future Connection and adjusted Assessment Fees to offset the cost of the grinder/pump station and long term maintenance.**



**4. Not articulated as a request in application attachment A: The Town install an additional sewer stub for a short, less intrusive access line trench.**

In order to grant the request, the applicant needed to demonstrate that:

- 1. The assessment of the number of units of occupancy (13) is in error.**
- 2. Gravity flow from the structure to the main is unobtainable and/or structure is located more than 100' distant from the main.**
- 3. That there is an obligation and/or justification for the Town to install a lifting station on a private property and maintain it in perpetuity.**
- 4. That there is an obligation and/or justification for the Town to install an additional connection stub at the owner's preferred location.**

Evidence submitted by the requester beyond what is shown on a plan:

**Drawings; e-mails with Superintendent; dwelling unit comparable water consumption examples.**

**Applicant noted offer of grinder pump from Wastewater Superintendent**

Evidence submitted by people other than the requester either for or against the issue: **NONE**

Evidence which Council enters into the record based on the personal knowledge of its members or experts which Council has retained on its own behalf: **7.48052 gallons / cubic foot.**

**HOW MANY TOILET FACILITIES ARE IN THE BUILDING? Five plus a break room.**

Mr. Johnson replied to Chairperson Beers that the building has five bathrooms and one break room.

Councilor Dennett suggested that the determination of load based on number of gallons per day be verified by the Code Enforcement Officer. Chairperson Beers stated that given the number of toilet facilities, it appears that basis on use is not a decision making criteria. The consideration is for Council to accept the description of the facility and consider reduction to three units for Assessment or develop an alternative formula that is justifiable.

Councilor Dennett questioned why the Code Enforcement Officer would not be allowed to make the determination for number of units and whether or not that determination be based on load in gallons per day. He added that it is also based on occupied units and that would need to be considered.

Vice Chairperson Denault stated the evidence presented clearly supports the criteria in question and the request as presented is fair and reasonable.

Councilor Lemont echoed Vice Chairperson Denault's statement.

**A MOTION WAS MADE BY CHAIRPERSON BEERS TO MOVE TO RESOLVE, PURSUANT TO TOWN CODE TITLE 13, §1.4.3.5, TO REVISE THE ASSESSMENT MADE IN THE 2015 SEWER MAIN EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 20 LOT 17 AT 37 ROUTE 236 AND OWNED BY RICHARD D. JOHNSON, LADY SLIPPER, LLC, TO REDUCE THE NUMBER OF UNITS OF OCCUPANCY ASSESSED TO THREE (3) AND RECALCULATE THE ASSESSMENT FEE., SECONDED BY COUNCILOR SPILLER. THE MOTION PASSED BY A ROLL CALL VOTE 6/1/0 WITH COUNCILOR DENNETT OPPOSED.**

**A MOTION WAS MADE BY CHAIRPERSON BEERS TO RESOLVE, PURSUANT TO TOWN CODE TITLE 13, §1.4.3.5, TO REVISE THE ASSESSMENT MADE IN THE 2015 SEWER MAIN EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 20 LOT 17 AT 37 ROUTE 236 AND OWNED BY LADY SLIPPER, LLC, AND PURSUANT TO TOWN CODE TITLE 13, §1.1.11C, EXEMPTION FROM CONNECTION REQUIREMENT IS GRANTED DUE TO LACK OF OBTAINABLE GRAVITY FLOW, SECONDED BY COUNCILOR DENNETT. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

Councilor Dennett felt that since the exemption for connection was granted, the request for lifting station and maintenance obligations is rendered moot. Chairperson Beers referenced the ordinance stating that properties not required to connect, must do so when the existing septic system fails or otherwise be replaced. Councilor Dennett interpreted that to contradict the exemption from connection based on lack of gravity flow.

Chairperson Beers explained to Councilor White that there was no evidence presented that there is an obligation for the Town to pay for a pump station on a private property.

**A MOTION WAS MADE BY CHAIRPERSON BEERS TO APPROVE INSTALLATION OF A SEWAGE WASTE LIFTING STATION, AND OBLIGATE THE TOWN FOR MAINTENANCE IN PERPETUITY, ON MAP 20 LOT 17 AT 37 ROUTE 236, AS REQUESTED BY RICHARD D. JOHNSON, REPRESENTING LADY SLIPPER, LLC, SECONDED BY COUNCILOR WHITE. THE MOTION FAILED TO PASS BY A UNANIMOUS ROLL CALL VOTE 0/7/0.**

Chairperson Beers cited the fourth item regarding the Town providing an additional sewer connection stub at the owner's preferred location. He concurred with the applicant's position and questioned whether or not this is a function of the sewer department or Council's decision.

Vice Chairperson Denault questioned when the connection would be required given the uncertainty of when the stub would be moved. Chairperson Beers explained if a second stub location is not arranged, the requirement to make the connection would be true. Vice Chairperson Denault did not feel it would be reasonable to make a decision if it could be potentially resolved later.

Councilor White suggested to consult the matter with staff. If a satisfactory resolution cannot be found, then it could come back to Council, if necessary. It is difficult to know what the engineering should be. Chairperson Beers concurred. He added that the issue pertains to proper authority. He thought that the movement of installation or connection of additional stubs is part of administration, not a decision for Council to make. The Council reached consensus to make no action on the matter and request the Town Manager to provide a follow on report.

**A MOTION WAS MADE BY CHAIRPERSON BEERS TO APPROVE THE CONCLUSIONS OF LAW AND FINDINGS OF FACT IN REGARD TO THIS HEARING FOR THE PROPERTY AT MAP 20 LOT 17 AS DISCUSSED AND TO BE RECORDED IN THE MINUTES., SECONDED BY COUNCILOR SPILLER. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

Chairperson Beers advised if the applicant is not satisfied with this decision, pursuant to Town Code Title 13, §1.4.3, appeal may be made within ten (10) days after this hearing, to an independent arbitration panel. Forms are available on the town website and at the Town Clerk's office.

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- Kathryn M. Hawkes

Name of the requester: **HAWKES, KATHRYN M.**

Map-Lot: **29-33** Street: **16 STEVENSON RD**

Basic description of the issue on request:

**Requesting relief to connection requirement due to lack of gravity flow.**

Ms. Hawkes explained why proper connection would require to pump up or lose the downstairs facilities.

Chairperson Beers read the council's basis in law and findings of fact for the hearing request into the record.

**A MOTION WAS MADE BY CHAIRPERSON BEERS TO RESOLVE, PURSUANT TO TOWN CODE TITLE 13, §1.4.3.5, TO REVISE THE ASSESSMENT MADE IN THE 2015 SEWER MAIN EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 29 LOT 33 AT 16 STEVENSON RD AND OWNED BY KATHRYN M. HAWKES, PURSUANT TO TOWN CODE TITLE 13, §1.1.11C, EXEMPTION FROM CONNECTION REQUIREMENT IS GRANTED DUE TO LACK OF OBTAINABLE GRAVITY FLOW, SECONDED BY COUNCILOR SPILLER. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

Councilor Thomson referenced a statement made in an e-mail presented in the application and suggested that each department head should be made aware of Council actions in the regularly scheduled staff meetings.

**Chairperson Beers advised if the applicant is not satisfied with this decision, pursuant to Town Code Title 13, §1.4.3, appeal may be made within ten (10) days after this hearing, to an independent arbitration panel. Forms are available on the town website and at the Town Clerk's office.**

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- Michel E. Racine

Name of the requester: **RACINE, MICHEL E.**

Map-Lot: **20-08A** Street: **11 MARTIN RD**

Basic description of the issue on request:

**Requesting relief to connection requirement due to lack of gravity flow and deferral of connection until current system 20-year anniversary.**

**Noted in Application attachment: Difference in Assessed Area (32,670sf) and 2003 Survey plat (32,271sf) of 399sf.**

Mr. Racine stated the distances to the stub and septic and requested relief from connection and requested deferral.

Chairperson Beers read the council's basis in law and findings of fact for the hearing request into the record.

**COUNCIL'S BASIS IN LAW AND FINDINGS OF FACT FOR THIS MATTER ARE:**

The application [ **is** ] complete; made a part of the record; and, the applicant [ **does** ] have standing.

The applicant's Burden of Proof [ **was** ] clarified to the Council: **SUBSTANTIAL EVIDENCE**  
Assessment dimensions of the property and other arithmetical calculations used for calculating the assessment [ **are** ] applicable for this request.

Assessment formula for this assessment [ **is** ] applicable for this request.

There [ **are** ] mitigating factors related to this request not considered in the plan.  
**Distance from structure to sewer main; Assessed Area calculations in error**

Key elements of the issue and applicable ordinance(s)/statute(s):

**Title 13, §1.1.11 Installation ..... and Connection to Public Sewer Required.**

**A. Owners of all structures with use requiring the disposal of sewage with public sewer located within one hundred (100) feet** of the property line as measured along any public way are required at their expense to install suitable waste effluent and/or toilet facilities therein, and to connect such facilities directly to the public sewer in accordance with the provisions of this chapter, within ninety (90) days after date of official notice to do so.

**C. When gravity flow cannot be obtained from the building or the property, connection to said public sewer is not required.** However, this does not preclude waste flows from being pumped to the public sewer should the property owner so wish. **Properties not required to connect at the time of a main extension project for this reason must do so when the existing septic/leach field system fails or must otherwise be replaced.**

The relief sought as noted in the request filing asked the Council to find:

**Exemption of connection; Approval of deferral to 20 year deadline unnecessary.**

In order to grant the request, the applicant needed to demonstrate that:

**Gravity flow is unobtainable.**

Evidence submitted by the requester beyond what is shown on a plan: **NONE**

Evidence submitted by people other than the requester either for or against the issue: **NONE**

Evidence which Council enters into the record based on the personal knowledge of its members or experts which Council has retained on its own behalf:

**TOWN PROPERTY RECORD; TAX MAP EXCERPT; AERIAL VIEW. Title 13, §1.1.11A.**

The applicant's evidence presented for the matter: [ **was** ] substantial;

[ **was not entirely** ] credible;

[ **is not** ] outweighed by conflicting evidence from the Town; and, the applicant

[ **did** ] meet the burden of proof for granting the request.

The sum of the information/circumstances presented and reviewed [ **does** ] warrant a revision of the Assessment.

What revision to the Assessment is decided upon, or not; and, what is the basis of the decision?

**Relief from Town Code Title 13, §1.1.11 for connection: Structure greater than 100' distant from the sewer main; gravity flow probably unobtainable.**

Councilor Beers stated that the drawing presented does not include professional details and would require a certified soils analysis for proof of gravity flow. It would not be acceptable to find that proof of gravity flow is not obtainable, but rather probable.

**A MOTION WAS MADE BY CHAIRPERSON BEERS TO RESOLVE, PURSUANT TO TOWN CODE TITLE 13, §1.4.3.5, TO REVISE THE ASSESSMENT MADE IN THE 2015 SEWER MAIN EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 20 LOT 08A AT 111 MARTIN RD AND OWNED BY MICHEL E. RACINE, PURSUANT TO TOWN CODE TITLE 13, §1.1.11A, EXEMPTION FROM CONNECTION REQUIREMENT IS GRANTED DUE TO STRUCTURE REQUIRING SEWAGE DISPOSAL LOCATED GREATER THAN 100' FROM SEWER MAIN, SECONDED BY VICE CHAIRPERSON DENAULT.**

Councilor Dennett requested to split the motion to vote separately on the finding that the structure is located greater than 100' from the sewer main.

**THE MOTION PASSED AS AMENDED BY A ROLL CALL VOTE 6/1/0 WITH COUNCILOR DENNETT OPPOSED.**

**A MOTION WAS MADE BY CHAIRPERSON BEERS TO RESOLVE, PURSUANT TO TOWN CODE TITLE 13, §1.4.3.5, TO REVISE THE ASSESSMENT MADE IN THE 2015 SEWER MAIN EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 20 LOT 08A AT 111 MARTIN RD AND OWNED BY MICHEL E. RACINE, PURSUANT TO TOWN CODE TITLE 13, §1.1.11A, TO AFFIRM THE LOT SIZE AT 32,271 S.F. AND THE ASSESSMENT CALCULATION TO BE SO REVISED, SECONDED BY VICE CHAIRPERSON DENAULT. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

**Chairperson Beers advised if the applicant is not satisfied with this decision, pursuant to Town Code Title 13, §1.4.3, appeal may be made within ten (10) days after this hearing, to an independent arbitration panel. Forms are available on the town website and at the Town Clerk's office.**

- 
- Richard E. & Kathy A. Dellapiana

Name of the requester: **DELLAPIANA, RICHARD E.**

Map-Lot: **20-38** Street: **72 MARTIN RD**

Basic description of the issue on request:

**Contests Unit Category; Unit Charge; Total Assessment Amount; Other: Address incorrect and information of 20-38. Indicated 2002 data, not provided.**

Chairperson Beers read the council's basis in law and findings of fact for the hearing request into the record.

**COUNCIL'S BASIS IN LAW AND FINDINGS OF FACT FOR THIS MATTER ARE:**

The application [ **is not** ] complete; made a part of the record; and, the applicant [ **does** ] have standing.

**Number of Units - Town records show five dwelling units / Assessed for four.**

72: 1,687sf

**76A: 600sf**

76B: 980sf

76C: 864sf

76D: 1,064sf

The applicant's evidence presented for the matter: [ **was not** ] substantial;

[ **was not** ] credible;

[ **is** ] outweighed by conflicting evidence from the Town; and, the applicant

[ **did not** ] meet the burden of proof for granting the request.

The sum of the information presented and reviewed [ **does not** ] warrant a revision of the Assessment.

Chairperson Beers confirmed to Councilor Thomson that additional information regarding the purchase of the property was said to be provided in the application, but was not presented before the hearing.

Councilor White felt the application did not appear to be complete and it is the type of property that should connect.

Chairperson Beers stated the Assessment based on the number of units was done correctly because one of the five was less than 650 square feet, the code dimension for a dwelling unit.

Councilor Beers explained to Councilor Dennett that the motion would affirm the Assessment with prejudice and conclude the matter, but could still warrant an appeal.

**A MOTION WAS MADE BY CHAIRPERSON BEERS TO RESOLVE, PURSUANT TO TOWN CODE TITLE 13, §1.4.3.5, TO AFFIRM THE ASSESSMENT MADE IN THE 2015 SEWER MAIN EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 20 LOT 38 AT 72 MARTIN RD AND OWNED BY RICHARD E. DELLAPIANA, WITH PREJUDICE, SECONDED BY COUNCILOR THOMSON. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

**A MOTION WAS MADE BY CHAIRPERSON BEERS TO APPROVE THE FINDINGS OF FACT IN REGARD TO THIS HEARING FOR THE PROPERTY AT MAP 20 LOT 38 AS DISCUSSED AND TO BE RECORDED IN THE MINUTES, SECONDED BY COUNCILOR THOMSON. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

**Chairperson Beers advised if the applicant is not satisfied with this decision, pursuant to Town Code Title 13, §1.4.3, appeal may be made within ten (10) days after this hearing, to an independent arbitration panel. Forms are available on the town website and at the Town Clerk's office.**

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6. ADJOURNMENT

**A MOTION WAS MADE BY COUNCILOR THOMSON TO ADJOURN THE MEETING AT 7:20 P.M. SECONDED BY COUNCILOR LEMONT. THE MOTION PASSED BY A UNANIMOUS VOICE VOTE 7/0/0.**

Submitted by Marissa Day, Minutes Recorder, on November 7, 2016.

*Disclaimer: The following minutes constitute the author's understanding of the meeting. While every effort has been made to ensure the accuracy of the information the minutes are not intended as a verbatim transcript of comments at the meeting, but a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.*