

**CITY OF BROCKTON  
WATER COMMISSION  
Minutes  
February 24, 2011**

**Present:** Bruce Malcolm, Chairman/Commissioner  
Peggy McGrath, Commissioner  
Ossie Jordan, Commissioner  
Patrick Quinn, Commissioner  
Brian Creedon, Water Systems Manager  
Michael L. Thoreson, DPW Commissioner

**Absent:** Larry Rowley, Superintendent of Utilities  
Alisa Hambly, Secretary

**Attending:** John McCluskey  
Meridith Keene  
Carolyn LaMarre

**Mr. Malcolm called the meeting to order at 6:00 P.M., noting that a quorum is present and the meeting is being recorded.**

Mr. Jordan requested 30 seconds to remember Brian's son Mark.

Silence

Mr. Malcolm opened the meeting for **New Business and Water Connections** and called for discussion of the application for **214 West Elm Street**. Mr. Malcolm recused himself and Mr. Jordan is acting as Chair.

Attorney McCluskey stated that his client has appeared twice and motions were made to approve the application, however the motions were not seconded. It is his understanding that Mr. Quinn has commented that he is opposed to this project and it is also his understanding the purpose of the board is to determine whether water should be sold, and being publicly open to being opposed to this project by passing judgment on the design, this being the case requested that Mr. Quinn recuse himself because if a board member takes a position that exceeds their authority on the board it is a problem on a legal perspective for not only the board member but also the board. The failure to second the motion is costing his client money, this is a matter of law and this needs to go forward, looking at personal liability. Mr. Jordan stated that one of the things that most boards have a problem with is we cannot sit and discuss matters because of the open meeting law and the mission of this board is to grant water as long as the applicant meets all the requirements. The other problem is we only have four members and Mr. Malcolm has to recuse himself due to a conflict, leaving only two members to put this item on the table, if Mr. Quinn is not allowed to be involved then the problem is there is not a quorum. Mr. McCluskey believes that a member of the Executive Committee can be appointed to sit and vote on this project. Mr. Jordan stated that he has requested but has not heard back from the Law Office and a request that another member be appointed to fill the vacancy. Mr. Quinn questioned and stated that he is being requested to recuse himself because of his personal beliefs, if someone else felt the same way would they be asked to recuse also. Attorney McCluskey stated that Mr. Quinn has a sworn obligation to uphold the law and abide by the Rules and Regulation of this commission...Mr. Quinn and Attorney McCluskey argued and Mr. Jordan called the meeting to order. Attorney McCluskey stated that he has been advised that Mr. Quinn has made a statement that he does not like this project, his job is a water commissioner, he is not the zoning board of appeals, not the planning board and they are working with the planning board on the design of the project, but need to move forward to get the water connection to keep this project going and keep people working. Does not think its appropriate to make a public statement that he does not like this project as this is not his job, which is why he is being asked to recuse himself, his personal opinion based upon the law is if a person sitting on a board goes above and beyond his commission that opens himself to personal liability. Mr. Jordan stated that the request before us is just a yes or no to water, not the construction, Mr. Rowley has accepted this project and

normally this ends the discussion with the Commission; if we don't say yes then the project cannot move forward to planning. There is a question as to whether an Executive Committee member can be assigned to vote on this project. Mr. Quinn stated that he would like to see an opinion from the Solicitor and see prior examples, also wants to make it clear that no one said no to the project, it just hasn't received a second to move forward. Attorney McCluskey stated that this is a big problem and is costing his client; respectfully requested that Mr. Quinn recuse himself from this discussion as he believes that Mr. Quinn's request are inappropriate at this point. Mr. Jordan noted that when Mr. Quinn commented he was commenting on the nature of architectural look of the building. Mr. Quinn agreed and stated that he was surprised that the Planning Board would allow a project to go through a neighborhood that was a historically a different type of neighborhood and still has that feel; never said publicly that he doesn't agree the project it does not fit the neighborhood; seems that Attorney McCluskey has a problem with him because he has reasons to say no to this, which is his opinion. Need to get the Solicitor to provide an opinion or the Mayor to appoint another member. Attorney McCluskey noted that if Mr. Quinn recused himself and the Chair appointed someone else; stipulated that if the board so voted and the Solicitor gave the opinion that it was an illegal vote that would be okay, would like to move forward, not saying that Mr. Quinn has a personal opinion concerning his client and they are working with the Planning Board, this Commission does not have jurisdiction over architectural issues. Mr. Quinn stated that in terms with working with other boards, he had previously requested that the letter received from the Assessors be clarified as to the number of townhouses listed. Mr. Jordan noted that it was previously determined that this was a clerical error and that a corrected form was being requested. Attorney McCluskey stated that his request is to whether Mr. Quinn is going to be included. Ms McGrath stated that they should have a vote and if found illegal then we go back to square one, personally does not like the "cookie cutter" projects with older homes, however this is not her place to say no if the planning board has approved it. Mr. Jordan stated that a motion could be made subject to legal review and also are we going to request that the Commissioner join on this vote to get this matter on the table.

**Ms McGrath moved to approve the application for 214 West Elm Street granting them water and for this motion to be reviewed by the City Solicitor.**

Mr. McCluskey noted that his request was for Mr. Quinn to recuse himself and if he doesn't then a motion is made to approve and not seconded, suggested that it may be in Mr. Quinn's best interest to recuse himself, if he does the motion can come back on the table for consideration, with the understanding that if the City Solicitor determines that someone else cannot be appointed then we do not have a vote. Mr. Jordan noted that he would like to have another member join; however there is a question of legality whether Mr. Quinn recuses himself or not; a motion can be made to request a member to sit as a voting member, thereby putting the matter on the table. Mr. Quinn noted that he does not feel he needs to recuse himself legally.

**Ms McGrath rescinded her prior motion and moved to appoint someone from the executive committee to vote on this matter.** Mr. Quinn noted that he would like to obtain the City Solicitors opinion before a vote is taken. Mr. Creedon noted that he does not know if a letter has ever been sent to the previous Solicitor. Mr. Jordan stated that we could have the process reviewed as to whether the vote was legal.

**Ms McGrath moved to have an executive committee member participate in the vote and if the solicitor determines that it is not legal the motion would be rescinded. Mr. Thoreson noted that this vote should be done with the full body.**

Mr. Jordan called for Mr. Malcolm to rejoin the meeting and explained the nature of the discussion/vote. Ms McGrath repeated her motion to have an executive committee member to vote on the matter of 214 W Elm Street; to be reviewed by the City Solicitor and if found illegal the vote would be rescinded. Mr. Jordan clarified stating that the first motion would be to have a non-voting member vote on the matter of 214 W Elm Street. Mr. Creedon noted that in the past this has been done in the case where a member had to recuse themselves and a third person was needed to continue and vote. Mr. Malcolm noted that an affirmative vote of three members of the Commission is necessary for any action taken and that a vacancy in the Commission should not impair the right of a quorum to exercise all the rights and perform all the duties of the Commission.

**Ms McGrath moved to allow a non-voting member vote on the matter of 214 W Elm Street, subject to review by the City Solicitor and if the Solicitor determines that this is not legal the upcoming vote would be**

**rescinded. Mr. Jordan seconded this motion...discussion, and so voted with three voting in the affirmative and one voting in the negative. Motion passed.**

**Mr. Jordan moved that Michael Thoreson be appointed as a voting member. Ms McGrath seconded this motion, and so voted with three voting in the affirmative and one voting in the negative. Motion passed.**

**Mr. Jordan resumed acting as Chair and continued the discussion of the application for 214 W Elm St.**

**Ms McGrath moved to approve the application for 214 W Elm Street. Mr. Thoreson seconded this motion, and so voted with three voting in the affirmative and one in the negative. Motion passed.**

**Mr. Malcolm resumed as Chair of the meeting.** Mr. Creedon noted that we are required to have a **rate hearing** every year in February and that according to previous studies that rate increases should occur every year; however after review our revenues are presently sufficient to support our budget. Mr. Jordan questioned if we are speaking about all or some of the rates. Mr. Creedon noted that a block rate can be voted or all of the block rates can be discussed, it is up to the Commission to make a recommendation to the City Council. Mr. Thoreson stated that based on revenues and budget review, his recommendation is that a general rate increase across all the block rates not occur at this time. Mr. Condon noted that the rate history is there were not many rate increases, sometime during the early 2000 the rates became inadequate and were increased a few times, however not enough to keep up with the rate of inflation; began to see higher capital requirements and less revenue to cover those requirements, as a result a rate study was done and entered into a desal contract, the contract puts an unavoidable obligation on the city to purchase water and there are still unfilled capital needs especially with the distribution system, the 60% increase was supposed to have been followed with two 10% increases, neither of the 10% increases were done, thereafter the city was supposed to be undertaking sufficient rate increases to keep up with inflation and support the capital needs, in a position that we are short on the rates, however the installation of new meters will generally supply additional revenue and he doesn't think with the questions on the billing system that rates should be raised at this time. Should be receiving a certification from the Dept of Revenue on the retained earnings in March, believes the budget should be about \$16-17,000,000, which will mean some of capital items will have to be deferred.

**Mr. Jordan moved that for FY12 that there be no increase in water rates for the City of Brockton. This motion was seconded by Ms McGrath, discussion**

Ms Lamarre requested to make a comment not related to the motion. Mr. Malcolm stated that if this does not relate to the motion, then it is out of order and can be discussed later. Ms LaMarre stated that this is a wrong procedure for having a public hearing everyone should have the opportunity to speak. Mr. Malcolm stated that if the discussion is on the motion people will be allowed to speak.

**Mr. Jordan withdrew his motion. Mr. Malcolm opened the public hearing.** Ms LaMarre noted that she lives at 200 Country Club Lane and is also exec director of the TRWA; would like to make the case for increasing the rates for the highest end users; Brockton has fought to get Aquaria water to this community and it gives the city the opportunity to entertain new industry and business, not saying that anything should effect the average users, however should look at the potential water gluttons who may want to come in because we have water, the high end users should be reviewed and broken down so that large users like the power plant who wants to use portable water would be charged a fee that is appropriate to the expenses that they are forcing the community to take, would like the commission look at the high users rates only. If the city brings in more money from high end users this would reflect the expense on the environment by using Aquaria water. Mr. Creedon noted that the 2008 increase was higher on the larger blocks and that the permit for the Power Plant has expired and they would need to file a new application to obtain water, according to Ordinance anything over 1 million gallons has to be brought before the City Council and not the Water Commission. Ms Keene stated that rates should remain the same and capital projects should be held off.

**Mr. Malcolm closed the public portion of the meeting.** Mr. Quinn questioned if the City Council requested a record of the highest water users. Mr. Creedon noted that this was requested and provided to Councilor Stewart, however there was no action taken. The Commission noted that the Council was looking for a recommendation for a higher block rate.

**Mr. Jordan moved that all the block rates for FY12 remain the same with no increase. This motion was seconded by Ms McGrath. Mr. Quinn questioned if rates could be raised any other time during the year. Mr. Condon stated that rates could be raised at any time, however according to Ordinance a rate hearing has to occur in February. Mr. Quinn noted that he does not want the motion to limit raising the rates in the future and requested that motion be amended not to state the entire fiscal year. Mr. Condon stated that at any point the Commission could petition the City Council to raise the rates. The motion was voted on with all in favor, motion passes.**

Mr. Creedon provided information from the Attorney Generals Office relative to the Open Meeting Law. Also by law we can raise rates for the Gable condominium complex to our highest rates, which is \$6.11. Mr. Condon noted that this is not considered a rate increase as the court order states that they be billed at the highest rate. Mr. Creedon also noted that Mr. Rowley provided the February monthly report.

Mr. Quinn noted that he is aware that a letter was written to Mr. Malcolm, who had requested some public records. Mr. Malcolm noted that Ms Hambly compiled the information and it was provided to the Law Office. Mr. Jordan requested that they should be notified about anything that effects the Commission. Mr. Creedon noted that generally if a letter is addressed to a particular person, it is up to them to instruct as to whether to open the correspondence and whether to forward it. Mr. Jordan stated that if mail enters this building, it shouldn't be personal.

The Commission questioned if anything has been heard about the Audit. Mr. Creedon noted that he has spoken with various individuals, however have not requested to speak with any of the Commissioners.

The Commission decided that the next meeting would be on March 17, 2011.

Mr. Quinn noted that the letter to the City Solicitor needs to be sent regarding the previous vote.

**Ms McGrath moved to adjourn. This motion was seconded by Mr. Jordan.**

**Respectfully submitted:**

Alisa Hambly  
Secretary

**Certified by:**

Brian M. Creedon  
Water Systems Manager  
Clerk of the Commission