SECOND TAXING DISTRICT COMMISSIONERS

Appeals Committee Meeting Minutes
March 8, 2017

Present:	Maria Borges-Lopez	Vice Chairperson
	Mary Geake	
	Mary Mann	
Absent:	None	
Also Present:	Paul Yatcko	General Manager
	Lisa Roland	District Clerk
	Tom Villa	Director Water Operations
	Eric Strom	Director of Customer Care
	Kara Murphy	Tierney, Zullo, Flaherty & Murphy
Public Present:	Mr. & Mrs. David Murray	Appellants
	Mr. Rafael Aparicio	Appellant
	Mr. William J. McMorris, Jr., Esq.	Slutsky, McMorris & Meehan, LLP

The meeting was recorded in its entirety.

Call To Order:

Commissioner Borges-Lopez called the Appeals Committee Meeting of The Second Taxing District to order at 6:13 p.m. on Wednesday, March 8, 2017. The meeting was held at South Norwalk Electric and Water, One State Street, Norwalk, Connecticut.

The District Clerk read the legal notice.

1. Acceptance of the Minutes

    1.1 Approve Appeals Committee Meeting Minutes of November 15, 2016.

    Commissioner Mann moved to approve the minutes. Commissioner Geake seconded.

    The Minutes were approved unanimously. (2017-03-08-1.1)

2. Customer Appeal / Enforcement of Water Rules & Regulations

    2.1 *202 – 204 Rowayton Avenue*

    Paul Yatcko: "Commissioners, the subject properties of 202 and 204 Rowayton Avenue are currently in violation of Article 6 of SNEW's rules and regulations for the water business. And I quote directly from those rules and regulations,

'customers shall not supply water to another property or permit any connection to be made on their property for the supply of water to another property. In an emergency, temporary connections can be made by water department personnel or the water department's designated agents only.' Compliant water service is currently being provided to 204 Rowayton Avenue which is owned by the Murrays. The residents at 202 Rowayton Avenue, which is owned by Mr. Aparicio and is operated as a rental property, receives unmetered water service directly from the structure at 204 Rowayton Avenue. As a result, that arrangement is in violation of Article 6. SNEW has advised both owners that the current arrangement is not in compliance and it needs to be remediated. Mr. Aparicio has filed an appeal requesting a waiver of Article 6, and the Murrays have filed an appeal with regard to Article 6 but on different grounds. If I can take a few minutes and run through the chronology of events.

"Prior to 1980 the two buildings were part of a unified real estate parcel with the main home located at 204 Rowayton and an accessory building or cottage at 202. In January of 1981, Norwalk's P&Z department approved a subdivision of the property on behalf of the then owner, and the subdivision map notes that the lots are going to be served by city water and city sewer. In 1980, at that time, Article 6 provided that no customer shall provide water to other persons or permit any connections be made on his premises for supply to other premises. The properties remained in unified ownership until 2012. In June 2001, Mr. Aparicio purchased both lots at 202 and 204 Rowayton, and in 2010 his bank commenced a foreclosure action with regard to the mortgage on 204 Rowayton Avenue. The bank thus obtained title to 204 Rowayton in 2011. Ownership of the accessory building at 202 Rowayton Avenue remained with Mr. Aparicio. On or about March 1, 2012, the bank sold 204 Rowayton Avenue to the Murrays. Thereafter on May 31, 2012, Mr. Aparicio contacted SNEW's customer service department to discuss the installation of a separate water service to his building. He was provided with an application for a new water service and was advised to contact Mr. Tom Villa, who at that time was our Director of Operations. There is no record in our files that Mr. Aparicio followed up and applied for a new water service. During the autumn of 2015, the Murrays required emergency repairs at their home at 204 Rowayton and as a result of this emergency we shut off the water to 204 Rowayton at the curb valve. In doing so, we discovered that the water to 202 Rowayton was simultaneously cut off. An unmetered water line clearly runs from inside 204 Rowayton to 202 Rowayton Avenue, and the Aparicio property at 202 Rowayton does not contain a separate water meter. A second shut off valve within the basement of the Murray's house at 204 Rowayton terminates water solely to 202 Rowayton, and SNEW only has access to the curb valve in the street. On November 24, 2015, SNEW notified Mr. Aparicio of the violation of Article 6 in writing and provided him with the application for a new water service and tap application permit. Mr. Aparicio did not complete those applications. Due to the impending winter – it being late November, early December – SNEW took no action for several months as to not adversely affect the tenants at 202 Rowayton, and Mr. and Mrs. Murray at 204 Rowayton during the winter season. On March 3rd of 2016, SNEW notified both the Murrays and Mr. Aparicio that they did not

comply with Article 6. If they did not comply within 60 days, the water to both premises would be terminated on May 9th. On May 5th, SNEW provided Mr. Aparicio with a final written notice regarding termination of the water service to 202 Rowayton and the termination date was provided at that time, was May 10th. On May 9th 2016, we were served with an injunction by Mr. Aparicio in order to prevent us from terminating the water service. The court granted his request for a temporary injunction on May 9th and a trial was scheduled for October 5th, 2016. On October 5th, 2016, the court dismissed the injunction action as to SNEW stating that Mr. Aparicio failed to exhaust his administrative remedies by failing to comply with our appeals process. Mr. Aparicio had also filed an injunction against the Murrays in May in order to prevent them from shutting off the water from inside their home. The injunction action between the Aparicio and Murray parties remains pending with a trial date of later this month. As a result, the Murrays can't shut off the water from inside their home pending the court's action. As a result of the court's order on October 5th, Mr. Aparicio and Mr. and Mrs. Murray were again notified by SNEW of the violation of Article 6 on October 13th. And the appeals they have made are taken from that notice. Mr. Aparicio's appeal in general is that since the water service was established no later than the early 1960's and the subdivision occurred in 1980, we cannot enforce Article 6 and his property should be grandfathered so as to not require its own water service and meter. He holds that SNEW has in effect waived the right to act now against the current owner and enforce Article 6. The Murrays' position is that they want the water service separated as they are currently bearing the financial responsibility for the water service to both properties absent a private agreement with Mr. Aparicio to pay some share of the bill. However, the Murrays are currently barred from terminating the water service to 202 Rowayton by the court's order. As such, they don't want their water service terminated due to the continuing violation of Article 6.

"Staff has a number of positions and observations on the situation. First, the clear intent of Article 6 of the SNEW rules and regulations for the water business is to avoid situations exactly like this one. Currently the Murrays bear full financial responsibility for water service at a property that they neither own nor enjoy. A sub-meter for 202 Rowayton Avenue is not a feasible solution to this case either. SNEW does not read sub-meters on private property and the Murrays would continue to bear full financial responsibility for the water to both properties. If the Murrays were to fail to pay their invoice, SNEW would have the right to terminate the water service to their home which would automatically terminate the water to 202 Rowayton, which is the situation that exists today. So sub-metering doesn't solve the operational problem. If an adverse event were to occur at the Murray home which would require us to shut off the water, the water to 202 Rowayton Avenue would also be terminated until that situation resolved. Mr. Aparicio was the owner of both properties from 2001 to 2012 and further in May of 2012, he contacted us about installing a separate water service because he knew the water service was shared between the two homes. And he has now enjoyed water service at 202 Rowayton for over four years at the expense of the Murrays. He has had more than adequate time, in our view, to install a new water

service. A water line can be installed at 202 Rowayton Avenue by going through the yard. While a conservation easement does exist and runs through the front of the property, the City of Norwalk Inland Wetlands Agency issued a Declaratory Ruling on May 12, 2016, permitting the water line be installed so long as there is no deposition of fill or permitted above ground structures, conditions which are easy for us to meet. The driveway servicing both houses is a shared driveway that is subject to an easement, and generally SNEW does not permit water service to go through an easement area according to Article 29 of the rules and regulations. If that requirement were enforced, Mr. Aparicio would then need to install the water service through his property, not through the driveway, which may require digging under or through an existing stone wall. Article 35A of rules and regulations permits SNEW to require modification of the metering system for numerous reasons, including but not limited to, a subdivision of the property, and 35A was in effect at the time Mr. Aparicio purchased both properties in 2001.

"Management's recommendation is three-fold. First, Mr. Aparicio and Mr. and Mrs. Murray should be required to comply with Article 6. Second, Mr. Aparicio should be required to install a new water service to 202 Rowayton Avenue independent from the existing service at 204 Rowayton Avenue. And, finally, that the Murrays be permitted to continue to follow the direction of the court until such time that the new service to 202 Rowayton Avenue is installed and operational.

"That's our summary of what we believe the facts are in this case and what our recommendation is. And now if the parties have a position, they are certainly welcomed…."

Commissioner Borges-Lopez: "If the parties have a position, please come forward and state your case. Either one."

Lisa Roland: "Either party."

Attorney Kara Murphy: "Mr. Murray if you would like to speak on this matter, please…"

Mr. Murray: "Certainly. I didn't know if which order we should go in, so thank you very much."

Lisa Roland: "Yup."

Mr. Murray: "Thank you for your time being here tonight. I appreciate it. We appreciate it. Our position is very much in keeping with what was just read as a chronology of what happened. I don't know the plaintiff, defendant, I'll kind of leave that aside even though we do have an adjacent court proceeding underway, we're still under a restraining order from the court. We have our next court date scheduled, in fact, scheduled for next week, next Thursday and Friday. It has already been delayed once because of the unresolved appeal process that, again,

was just described. I personally, for what it's worth, I don't necessarily agree with the judge in the case to characterize Mr. Aparicio as an SNEW customer, deserving of appeal, for the fact that he isn't, and he hasn't been, for four years. Any water that he has been getting, and I'm sorry to use such a harsh word, but he has been stealing from us. There is no paid customer/vendor relationship between Mr. Aparicio and SNEW. That aside, this whole thing has been very much in keeping with the experience we've had, I call it unfortunate to some degree – we love our house so we wouldn't undo what we've done, we love being where we are at and all this will resolve itself over time, without a doubt - but the experience has been a challenge from the first moment, almost, I'd say the first moment, beginning with the driveway easement issue that also dragged through court that was finally settled. The fact that, again, Mr. Aparicio was knowingly taking water from us and would have continued to this day, we wouldn't be here if we didn't have the coincidence of having had something go wrong at our house to discover from tenants that he had at the time that when the water was turned off, it was turned off at 202 also. And, now, where we're at is we are very much looking forward to resolving the rest of this case next week in Superior Court as it relates to the restraint order. Having that resolved next week, but it is our hope that tonight you can help us simplify the process in the very least to follow through on all of the stipulations laid out by SNEW's operating mandates. I can answer any questions, if you'd like, or I could yield to Mr. Aparicio. Whichever you would prefer."

Commissioner Borges-Lopez: "Do the Commissioners have any questions?"

In unison, Commissioners Mann and Geake, "No."

Mr. Murray: "Thank you, again, for your consideration."

Commissioner Borges-Lopez: "Thank you."

Attorney William McMorris: "Thank you for holding off for a few minutes so that Mr. Aparicio could get here. As you mentioned, he had been in an automobile accident and that was why he was late. So I appreciate your…so thank you."

Paul Yatcko: "Thank you for being here under such difficult circumstances."

Attorney William McMorris: "Thank you. My name is Bill McMorris and I am the attorney for Mr. Aparicio. I will be generally outlining our position and Mr. Aparicio may provide additional commentary which is why we are both standing here at this time.

"Looking back at this history of this water situation, this water service has been in place even before there were any regulations. The first regulations that were implemented were implemented in 1968. The two structures were there before 1968, and 1959 is probably when it was installed, if not in '59, no later than the early 60's when the conversion to a lawful studio took place. So everything here

is as it was before there were ever any rules or regulations at all. That's number one. Number two, there is a mention of a provision 35A of the current rules. 35A of the current rules talks about relocating and modifying an existing metering system to meet current metering requirements in the department whenever any of the following events occur. The timing is very important here, it says 'when the following events occur.' This provision 35A did not exist at the time of the subdivision of the property in 1980. It is not, nor is there any other analog to this rule, in place in the prior regulations that the department had which govern events at the time the property was subdivided and the event in question obviously was subsection E subdividing the existing property. So 35A was not in place, and more importantly, 35A doesn't even mention that it can require the installation of additional meters. It talks about modification and relocation of the existing system. Nowhere in 35A does it even say that SNEW has the right to require an additional meter be installed. It just talks about relocation and modification. *(Shuffling noises and documents being placed on the table.)* So as I mentioned timing is very important. 1980 is when the property was subdivided. No action was taken at that time. No comparable regulation existed at that time. In fact, if we take a look back at some of the documents relevant to that subdivision application, it appears at that time that the Taxing District had every opportunity to specifically require the person who subdivided the property, Ms. Kerr I believe her name was, to do so. But if we look at the documents of that time, that requirement was not made a condition of the subdivision approval. On May 29th, 1980, there was a preliminary review sheet for the subdivision application and I can provide some copies. To the Commissioners, I apologize, I don't know if I made enough. I only made five. I'm sorry. I thought I needed three plus one for me. *(More shuffling noises. Lisa Roland offers to make copies. Attorney Kara Murphy indicates they are not needed.)* So one of the things obviously that was done at the time was the Planning and Zoning Commission referred this matter to the Second Water District, Water Department, now for the water service connection issues and so water to the Second District was permitted to participate in this process at that time. Okay, that was on May 29th of 1980. *(Pause. Shuffling of papers.)* And then on September 8th of 1980 there was a Planning and Zoning Commission meeting and it says it was the final…the second page of what I'm handing you which is page 3 of the minutes…there is a reference to the application, 3123 Judith Kerr, and it describes the final review of the two lot subdivision on Rowayton Avenue and in the two paragraphs in that document there is no reference or mention of any additional work needing to be done with respect to the water service on the property. And then finally on October 22nd of 1980, the Planning and Zoning Commission adopted a resolution approving the subdivision request, and once again nothing in the approval was conditioned on the installation of a separate water meter and a separate water line for the property at 202 Rowayton Avenue. And if we…and part of that approval is that an additional plan had to be submitted and the map that was filed, number 8961, in the office of the Norwalk Town Clerk and there are several notations here but it doesn't say here…it says that it is going to be served by city water and sewer, but there is no mention here of a requirement to install a separate water service for 202. So all of the documents that are available to us concerning this

application indicate that the Second Taxing District was provided the opportunity to participate in the process, to impose whatever requirements they wanted to as a condition of the subdivision approval and they did not require at that time that a separate water line be installed at 202 Rowayton Avenue."

Mr. Aparicio: "Nor did any regulations exist at the time. With the subdivision accepted."

Attorney William McMorris continued: "Right. There was no subdivision provision in there. There are also questions raised about Rule 29 relating to the … whether a line could go across an easement area. I believe Mr. Aparicio's belief is that the line running in between the two properties does not go in the easement area. The easement area either terminates and there is a stone wall and his understanding is the water line is beyond that. Is that correct?"

Mr. Aparicio: "Behind the stone wall, as far as I know, based on what I've been told by (inaudible)."

Attorney William McMorris: "Nobody has dug up the property to find out, but that is his understanding."

Mr. Aparicio: "It's not in the easement area."

Attorney William McMorris: "And once again that requirement that it not be in an easement area was not in the corresponding provision to Rule 29 in the prior rules. There is no mention of a restriction…"

Paul Yatcko: "When you say prior rules, are you talking about the 1968 rules?"

Attorney William McMorris: "No, I'm talking about the 1988 rules, if we look at the correspondence….The 1988 rules, I think the corresponding provisions…if you….there was…there are a couple of rules in each one that talk about service pipe responsibilities and service pipe requirements and in the ….so the Rules 29 and 30 in the 1988 regs….and its 29 and I'm not sure what the other one was in the current regulations…but if you look back in the 1988 regulations, 29 and 30 do not contain a restriction that a water line cannot go through an easement area.

"So even if Mr. Aparicio is incorrect and the line between the two properties goes through the easement area, that restriction was not in affect at that time.

"And just to clarify a couple of things in the chronology, in fact when I read it through it the first time, I missed it… and in a more careful review I noticed that the Committee was making, SNEW was making the distinction…it wasn't apparent in the initial read through. When Mr. Aparicio contacted SNEW in 2012, he was simply looking for a meter to be installed on his property so he would have a reading on his property, he would know what his financial obligation was,

and that there would be an accurate way of measuring it and paying for it. That is something he is still interested in having. In response to his request, he was just handed forms saying okay here are the forms you have to fill out which was for a completely new water service, which was not was he was asking for. So to the extent there's the impression that he came in asking for permission for a new water service in the street, Mr. Aparicio has never asked for that. He's only asked for a meter to be installed and somewhere on his property that could read the water usage in his home. There is also an indication that it's an income producing property, I'm not sure whether that's relevant to anything but the income generated by the rent on the property is not even sufficient to cover the ownership and operating expenses of the property."

Mr. Aparicio: "I'm not sure why that's relevant. Maybe an explanation whether it's an income producing property…."

Paul Yatcko: "It is not relevant to the decision, it was simply a fact."

Attorney William McMorris: "Just clarifying the fact that he owns the property at a loss right now."

Paul Yatcko: "Whether it's owner occupied or not is not an issue."

Attorney William McMorris: "I only mention it because I didn't know if whether it was relevant…I didn't think it was relevant to the decision, but since it was in the staff memo I thought I should address it.

"Going to the specific, or some of the specific, points raised or positions taken by the staff. As to number 1, talk about the intent of the rules. The rules, even the earliest rule on this, was implemented after the facts were on the ground and the water lines were installed. There were no rules to abide by, there was no intent of any rules to abide by. On a prospective basis, going forward for new construction and things of that nature now that's what rules are applied to, it's an ex post facto rule which should not vary what people do. I mean there's plenty of non-conforming uses that pre-date all kinds of rules and regulations and certificate housing rules and building codes and just because the newer code or rule is a better rule or a better code doesn't mean you have to go back and retrofit your house to fit satisfy a rule or regulation that did not exist at the time the house was constructed. Number 2, it says a sub-meter for 202 Rowayton Avenue is not a feasible solution in this matter. It says SNEW does not read sub-meters on a single water service. It says that SNEW does not, it doesn't mean that SNEW cannot. Mr. Aparicio would be more than happy to provide access to the property to allow reading of the meter. Frankly, I don't understand what the difference in reading two meters would be if they are coming off of the same line or off of two different lines. You still have a meter at each property that would require somebody to read them theoretically."

Paul Yatcko: "If I can respond to that. If I meter all the water coming into the

property at the Murray meter, they still pay for all the water, and then Mr. Aparicio will pay for his, I'll be collecting for that portion of the water twice. Unless I bastardize my billing process, pull out those two readings out every month and net them out against one another."

Attorney William McMorris: "I understand there's an additional administrative step that would be involved in that. That's something I readily acknowledge that would be the appropriate approach to charge the Murrays for the portion that is above what is on Mr. Aparicio's meter. But that is….I can't imagine there are many other properties like this in the entire City of Norwalk. Are there any other properties like this, that are out there, that you are aware of?"

Paul Yatcko: "Not that I have personal knowledge of. I mean who knows what's out there. I mean this is an old city with a lot of old water services to a lot of old buildings. I wish I knew what was out there."

(Laughter from Attorney William McMorris).

Attorney William McMorris: "So my point would be it's kind of a unique situation and it's one off billing and it is probably something that could easily be managed administratively since it is only affecting two bills as far as we know in the City of Norwalk. As compared to the burden it would place on Mr. Aparicio to construct a brand new water service onto his property which I imagine…what was the estimate you were given?"

Mr. Aparicio: "I think from the Second Water District about $16,000. That doesn't include going through or digging up improvements that are out there, already mentioned stone wall, impact to the driveway etc."

Attorney William McMorris: "And then with respect to number 3, number 3 also dove tails into that. If the Murrays fail to pay their invoice, SNEW would have the right to terminate the water service to 204 Rowayton Avenue. But if you had the separate meters, Mr. Aparicio could still be paying for his portion of it and SNEW would still have the ability to collect separately and pursue separately the Murrays for any deficiency that resulted from…."

Paul Yatcko: "The issue there is not a billing issue, it's an operational issue. The way the situation is now, whether there is a second meter there or not, if we terminate service to the Murrays' property for whatever reason, Mr. Aparicio's property will have no water. That's what the point is in item number 3. So the sub metering doesn't affect that one way or another."

Attorney William McMorris: "I understand that, but what I was getting at is, yes, if the punishment for not paying was termination of the service that would be true. I am suggesting there could be an alternative penalty which is instead of termination you just pursue collection efforts against the Murrays and Mr. Aparicio would still be paying his bill. So you wouldn't necessarily have to shut

off the water. I am assuming the shutting off of the water is a last resort after an extended period of efforts to collect before you shut somebody's water off given…."

Paul Yatcko: "Termination of service is the last step, by definition."

Attorney William McMorris: "I guess I've already addressed number 5 about his knowledge about the water service. He did go in and try to get the meter installed that time. And we've already addressed number 6 about the conservation easement, I'm sorry about the driveway easement. We understand the conservation easement has been cleared away. There's also another drainage easement on that property, it's a drainage and sewer easement and I'm not sure where off the water line his water line would go but it looks like we'd also have to go through another easement area in order to install a line. So there is no option, looking at this map, there is no option coming in from the road that doesn't require going through, in addition to the conservation easement, it would require either going through the driveway easement or this other drainage and sanitary sewer easement. When it comes to that point in the analysis, your rules are being brought into direct conflict by saying you can't install something through easement areas and we would have no choice but to go through easement areas. The simplest approach would be to leave things as they are, since they don't go through existing easement areas and that way there could be … you know, your rules are not in conflict. At least what we are talking about is a variation from a rule that was adopted after the water lines were installed but the recommended solution by the District would necessarily require a violation of another one of its rules. And we have already addressed Article 8 of the rules and regulations as well.

"Briefly with respect to the Murray situation, the Murrays purchased this house out of foreclosure, purchased it as is, they had every opportunity to inspect the house before they bought it, they had every opportunity to inspect the land records to access things for themselves. I'm sure, as everybody else that has ever bought a foreclosed property has experienced, they get a tremendous deal and part of that deal is you gotta do your due diligence and you gotta understand what the problems are. Mr. Aparicio's intent was never that he wouldn't pay for his water. He wanted to pay for his water. He wanted to get a meter installed. He didn't want to have to spend $16,000 in order to pay for the relatively small amount of water that's used by that cottage on the property."

Mr. Aparicio: "And for a regulation that didn't exist or was never enforced, and in the time that it should have been enforced, if it was valid, was at the time of the subdivision in 1980. And here we come along 36 years later and now they are trying to enforce it. It could even go back as to 50 years later because the cottage existed before that."

Attorney William McMorris: "More than 55 years actually."

Mr. Aparicio: "Yeah, more than 55. So to sort of come along and say 55 years

after the fact, you have to do this, or 36 years after the fact after the subdivision saying you have to do this. It makes no sense. And the fact that I went to the Commission and said, 'Look, I want a separate water meter, just so that I can read my usage and I can pay my share of the bill.' And the Town did nothing other than give me an application for a separate service line. That doesn't seem fair because I don't believe I am required to put in a service line because the regulations did not require me to put in a service line because there was a pre-existing condition and all I needed was a water meter.

"Go ahead, continue but I also want to touch upon the Murray issue. The Murray purchase is very relevant, very important, and extremely relevant here. Bill sort of phrased it as an 'as-is' but the as-is purchase isn't just a term, it's a legal term. I don't know if the Commission received a copy of my letter when I asked for the appeal. So you should have that and I'm going to read from this, just so that I don't misspeak. And we also have the sale and purchase agreement. So here we have the situation where it's a foreclosed property, the Murrays come in and they deal with the bank. I am totally out of the picture. When they purchased the property (I am reading from the last page, paragraph 3 of my letter) and I'll just read it.

"'In 2012 the current owners of 204 Rowayton Avenue purchased the property from People's Bank under a Quitclaim deed.' Alright, so that automatically raises some issues with regards to title and other things. And as is. There is an as is provision in their agreement which says they purchased the property as is with all encumbrances and defects and they waive all warranties and all notification rights. So it's as is, it's a legal provision and it also states that the Murrays had every opportunity to inspect the property. So they knew what they were buying. If they didn't know, they should have known. They did their due diligence and went ahead and bought it with the situation as is. So to come here and claim ignorance doesn't seem right. So I'll continue reading.

"'They purchased the property under a Quitclaim deed and with an as is provision in their sales agreement. The legal effect of this is that they purchased the property with all encumbrances and defects. It is well established that real estate purchases under these conditions may carry significant risks. The Murrays performed the appropriate inspections. They knew what they were buying and accepted it' in an as is condition. 'The Murrays waived any notification and disclosure requirements by People's Bank. It would be legally unjust to force a third party (that would be me) to correct a situation caused by the willful act of another party (that would be the Murrays) especially when it is a result of either their' lack of knowledge, their ignorance, or with knowledge or 'willful acceptance of the risks involved.' So there is a couple of effects here. There's…."

Attorney William McMorris: "Let me just…Since Mr. Aparicio has made…I'll just give you copies of the purchase and sale agreement, and paragraphs 3 through 8 of that document spell out all the waivers, all of the inspections that they were entitled to do, and they took it with the full knowledge that they had the right to

do the inspections, not relying on anything the bank was saying, and that they had the ability to do all their own investigating and waived any claims. There is a specific provision in there saying that the provisions of that addendum survive the delivery of the deed. So those are very serious provisions and you know, the Murrays were required to sign off on that rider as well. So I'll just distribute copies of that."

Mr. Aparicio: "And while you do that, I just want to add that there is a pending law suit. That law suit did start with the Murrays. There was testimony that was taken during, in that law suit. And during the testimony the Murrays acknowledged the sales agreement, acknowledged that they purchased it as is, acknowledged that Quitclaim provision, acknowledge all of these facts I just told you. And that is stated in the testimony. The Judge, Judge Tierney, when trying to decide what injunction to keep in place and what case to dismiss because there was also a case, an injunction against SNEW, said I'll release this law suit against SNEW because you need to first go through the Commission and follow that process. Then you can come back to court here if something is not right, but go through that. With regard to the Murray case, that stays in place. And it seems to me, this is, I am paraphrasing Judge Tierney, it seems to me by reviewing the regulations of the Second Taxing District, that you have a pre-existing condition there were probably no rules that existed at the time when there was a subdivision or back when the property, the cottage, was created. So even the judge is presumably under the opinion that the current regulations don't fit the situation. And so I think those are important matters for the Commission to take into place. I think given the situation when there are easements, right, given the situation where to come back after 35 years or 50 years later after not having enforced anything, after several ownership transfers have occurred, and now all of sudden to say this oh and by the way you may have to go through a stone wall just does not make sense. And not to mention the difficulties of going through easements that the City of Norwalk owns with regard to the sewer and sanitation easement."

Attorney William McMorris: "And I just want to address two other points made by the Murrays before wrapping it up. And that is on the point about the customer. The court as acknowledged in the staff's memo, on page 2, 'further the court advised that SNEW may not claim that Mr. Aparicio is not a customer during its appeal hearing, as Mr. Aparicio is receiving the benefit of SNEW water.' So that was the judge's position as to whether or not Mr. Aparicio was a customer and Judge Tierney is a very learned man and in this respect I agree with the judge that is the case.

"There was something that is unfortunately extraneous to the issue here, but as since it was raised by the Murrays, I feel compelled to address it. I am paraphrasing this and I am trying to get it right. But Mr. Murray made a comment to the effect that Mr. Aparicio and this situation is very much in keeping with their ownership experience from the very first day that they acquired the property, that things have been difficult from word one, especially and specifically

cited to an issue concerning the driveway easement. He mentioned that there was litigation relating to the driveway easement that he said was settled with the court. Just to clarify the record, that lawsuit was commenced by the Murrays against Mr. Aparicio, number one. Number two, Mr. Aparicio was awarded a judgement in that case which to date has not been paid by the Murrays and the judgement is approximately a year old."

Mr. Aparicio: "They did just pay it several days ago."

Attorney William McMorris: "Oh, I apologize! He didn't tell me. *(Laughter from Attorney McMorris)* But it has been almost a year since…."

Mr. Aparicio: "The judgement was made a long time ago, in my favor. They removed a gate that belonged to me that the judge agreed they should not have removed. And they, we tried, to collect from them and it was over a year…"

Attorney William McMorris: "I apologize. I did not ask my client today whether he had received payment. I apologize to the Murrays and I apologize to the Commission."

Paul Yatcko: "In any event that's of questionable relevance to the issue that we've got in front of the appeal's board right now."

Attorney William McMorris: "And as I said, I would not have raised it except it was raised by Mr. Murray.

Paul Yatcko: "Thank you."

Attorney William McMorris: "That's the only reason I mentioned it."

Mr. Aparicio: "I would like to make another comment if you will and I don't…I acknowledge that it is somewhat questionable because it was made, the way I was represented here by Mr. Murray, I feel like I need to speak up. Mr. Murray said their ownership period was full of difficulties etc. Bill just clarified the issue with regard to the lawsuit on the easement which in my mind is still very questionable, but these comments that are made before you by the Murrays with regard to me are disparaging. The judge in the courthouse reprimanded the Murrays for making some of these comments and making a gesture. So, again, I think if anyone is going to say that this is inappropriate I think it is me. But I don't feel that it's right to come up here and say disparaging remarks and misrepresent some things."

Attorney William McMorris: "Okay. Just to wrap up. As indicated in Mr. Aparicio's November 11 appeal, Mr. Aparicio is indifferent to the two options he proposed for resolving this matter. And one would be that SNEW if they feel a separate water service has to be installed to satisfy their administrative and other needs, since it should not be required since Rule 6 did not exist at the time the

situation arose, that SNEW should do that at its own expense. Failing that, that a separate water meter that can read the water usage at 202 Rowayton Avenue be installed. Either way it would allow for accurate billing of the water usage for the two properties.

Thank you for your consideration."

Commissioner Borges-Lopez and Paul Yatcko: "Thank you."

Mr. Murray: "Is it possible to add another comment, based on what was just said? I won't make it long, I promise."

Commissioner Borges-Lopez: "I'm sorry?"

Mr. Murray: "I said I won't make it long. I promise.

Mr. Aparicio: "I just want to make sure we follow due process."

Attorney Kara Murphy: "If it is relevant to the appeal. If it's relevant to the interpersonal relationship, I don't…I think the Commission is…understands the situation. If it is just relevant to the actual appeal and not interpersonal…."

Paul Yatcko: "If it addresses the specifics of the appeal itself, yes; if it has to do with the other issues, such as the characterization of Judge Tierney's position on various issues or the relationship between the parties, then it has no purpose in…"

Mr. Murray: "No, Sir, it doesn't."

Paul Yatcko: "Alright."

Mr. Murray: "Thank you. I would like to suggest alternate facts, if you will, with who… I don't think it's SNEW's fault that this happened. I don't think for your lack of administration of rules. I don't think it's our fault for our due diligence and having had an inspection, which we did. I would also suggest that the as is claim Mr. Aparicio's attorney would even … I think everyone would be aware of the fact that an as is claim, a quitclaim deed, is the case of in every transaction of a house that goes into foreclosure. And it isn't something that says as the 202 owner would suggest that you… that if it's as is you can't change that ever again. The as is clause is to protect People's Bank as they sold it to us from us putting in a claim against People's Bank that we had asbestos in the walls or whatever else. So the as is claim has no bearing on what we are talking about. The last thing that I'll say, or a thing that I will say in keeping with your direction just now, sir, is the…when a distinction as we talked about the ownership of 204 and 202 and everything is as it always was, it isn't in this case. The ownership in 1980 when the…when the property was subdivided, it was under a single owner who owned both properties. It went through two more owners who owned both

properties. And then it went to Mr. Aparicio who owned both properties. Through Mr. Aparicio's own action, he lost ownership of one of the two properties and that was the first time in the history of 204 and 202 that they weren't owned by the same owner. So for that reason, to suggest that is was an encumbrance on anyone that preceded him and/or that it should stay the same, things aren't the same. And they aren't going to be the same. These are two distinctly different properties and always will be. I do think that has some bearing on the case and other than that, the idea that, again, you were blamed or we were blamed for being in here. That's not why we are here. And for that, again, I will simply say thank you so much for your consideration."

Commissioners, Paul Yatcko and Lisa Roland: "Thank you. Thank you all."

Commissioner Borges-Lopez: "Who should I call on next?"

Paul Yatcko: "My staff doesn't have anything to add."

Commissioner Borges-Lopez: "No. Okay. Alright. So then…"

Paul Yatcko: "I want to thank everybody for their appearance here tonight. The Appeals Board will consider the arguments as well as the documentary evidence and then they will issue their ruling as soon as possible. So thank you all for being here."

All pretty much in unison: "Thank you."

(The Murrays, Mr. Aparicio and Attorney William McMorris leave the meeting at approximately 7:08 p.m. Prior to leaving, Mr. Aparicio requests from Attorney Kara Murphy a copy of a list of contractors previously provided in one of SNEW's letters to him. She provides a copy.)

The Commissioners, Paul Yatcko, Eric Strom, Tom Villa and Attorney Kara Murphy remained to discuss. Lisa Roland continued to record the remainder of the meeting.

The Committee's discussion on the requested appeal followed.

Commissioner Borges-Lopez asked for clarification on the succession of ownership. Attorney Kara Murphy and Paul Yatcko provided the following information.

Both properties were under one owner up to the foreclosure of 204 Rowayton in 2012. Ms. Kerr sold to another couple. Then at one point Mr. & Mrs. McIlvaine owned it and then sold to Mr. Aparicio in 2001. In 2010 People's Bank foreclosed and took title to 204 Rowayton in 2011. That was the first time the two parcels did not have unified ownership. But the properties had been subdivided prior to this date, in 1980. However, because the properties maintained unified

ownership for a time after the subdivision, even if Article 6 had existed at that time, it (the properties) would not have been non-compliant. And, in any case, there had been a version of Article 6 in effect all the way back to the 1960's.

Attorney Kara Murphy read the 1988 version, Article 6 out loud: "No customer shall supply water to another property or permit any connection to be made on his property for the supply of water to another property. In any emergency, temporary connections can be made by the water department personnel only."

Attorney Kara Murphy continued: "And the water regulations that were effective March 6, 1968 and revised July 1, 1976. So they would have been the water regulations in effect at the time of the subdivision. Article 6 said, 'no customer shall supply water to other persons or permit any connection to be made on his premises for supply to other premises.' So the theme has been the same all the way along."

Commissioner Mann asked if SNEW had approved the water supply configuration at the time the properties were subdivided in May of 1980. Paul Yatcko replied that no one that would have approved that, if in fact SNEW had, are currently available to ask. The current management had no way of knowing what happened back then. Attorney Kara Murphy added that research by two current SNEW employees did not find documentation going back to 1980 to indicate SNEW's approval of the subdivision, and the records provided by Attorney McMorris were obtained from the City of Norwalk. She had not been able to obtain these records. The records had been destroyed by the City of Norwalk before she could obtain them.

Nevertheless, Attorney Kara Murphy's legal position is that what SNEW did or did not do in 1980 makes no difference to the facts of the case which are that ownership of the properties was eventually divided, and Mr. Aparicio has known for four years that he has been obtaining water without paying, while the Murrays have been paying the entire bill. This is not only a violation of SNEW rules, but also a criminal act – theft of utility services. She did not accuse Mr. Aparicio of theft, but did bring up this point to the attention of the court for its consideration.

Kara read Statute 53A-119, Subsection 15 out loud as follows.

> "Theft of utility service. A person is guilty of theft of utility service when he intentionally obtains electric, gas, water, telecommunications, wireless radio communications or community antenna television service that is available only for compensation: (A) By deception or threat or by false token, slug or other means including, but not limited to, electronic or mechanical device or unauthorized use of a confidential identification or authorization code or through fraudulent statements, to avoid payment for the service by himself or another person; or (B) by tampering or making connection with or disconnecting the meter, pipe, cable, conduit,

> conductor, attachment or other equipment or by manufacturing, modifying, altering, programming, reprogramming or possessing any device, software or equipment or part or component thereof or by disguising the identity or identification numbers of any device or equipment utilized by a supplier of electric, gas, water, telecommunications, wireless radio communications or community antenna television service, without the consent of such supplier, in order to avoid payment for the service by himself or another person; or (C) with intent to avoid payment by himself or another person for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical measuring device provided by the supplier of the service, by tampering with such meter or device or by attempting in any manner to prevent such meter or device from performing its measuring function, without the consent of the supplier of the service…"

Both Attorney Kara Murphy and Paul Yatcko expressed that the arguments provided by Mr. Aparicio and Attorney William McMorris were irrelevant 'red herrings' and did not go to the heart of the matter.

Paul Yatcko reiterated that sub-metering wouldn't resolve the issue. Sub metering would not allow for water supply to flow to 202 Rowayton (Aparicio's property) in the case of termination for any reason at 204 (Murrays' property). Additionally, the question is not whether sub metering is possible, but rather if it is appropriate. Sub metering would require SNEW to manually manipulate billing for one customer. This is not a reasonable solution. The crux of the problem is not just that the properties were subdivided, but rather that they were subdivided and are owned by different parties.

Commissioner Mann expressed her position that the properties should have separate water lines however that task may need to be accomplished. Commissioner Geake agreed.

Thus, Commissioner Mann made a motion to accept management's recommendation, as stated at the opening of the meeting, and repeated for convenience below. Commissioner Geake seconded the motion.

> Management's recommendation: First, Mr. Aparicio and Mr. and Mrs. Murray should be required to comply with Article 6. Second, Mr. Aparicio should be required to install a new water service to 202 Rowayton Avenue independent from the existing service at 204 Rowayton Avenue. And, finally, that the Murrays be permitted to continue to follow the direction of the court until such time that the new service to 202 Rowayton Avenue is installed and operational.

The motion passed unanimously. (2017-03-08-2.1)

Motion to adjourn was made by Commissioner Mann, and seconded by Commissioner Geake.

Adjournment

The meeting adjourned at 7:25 p.m.

Attest:

Lisa G. Roland
District Clerk