

A Beverly Town Council Special meeting was called on February 25, 2019, in council chambers. Mayor Cindy Karelis called the meeting to order at 6:00 pm. Those present were recorder, Barbara Smith and council members Connie Pingley, Matt Lewis, Becky Weese and Rodney Cooper. Tena Pritt was absent. Visitors included Troy Ware, Donnie Pritt, Dave Simmons, Kenny Weese, David Sturdivant, and David Harper.

UTILITY BOARD ORDINANCE

Mayor Karelis provided council members with several documents. See attachment dated 2/25/2019 #1a. The first is an ordinance providing for the creation of a Sanitary Board, passed by the council dated April 12, 1979. Attachment # 1b is the ordinance providing for the creation of a Water Board passed on final reading June 3, 1980.

See attachment dated 2/25/2019 #2a & 2b. This states "*The Mayor read the ordinance to combine the water board and sewage board.*" This is dated May 6th, 1980. Also included in this set is the minutes from the meeting of June 3rd, 1980 that state "*The second and third reading of the ordinance providing for the creation of a Water Board for the Town of Beverly; was read and approved.*" This led to the conclusion that the Water and Sewer Boards were never joined to form a Utility Board.

The next document was a letter to Mayor Karelis from Attorney, Robert Rodecker, Kay, Casto and Chaney, of Charleston. This letter explains that bonds were issued for a waterworks project and were not issued under the provision which authorized municipalities to own and operate a combined waterworks and sewerage system. He goes on to say, that whatever the board is called water board, utility board, there needs to be an ordinance creating the entity. Otherwise, the Town Council as the governing body is in charge. See attachments dated 2/25/2019 #3.

Notes from the phone conversation between the Mayor and Brandy of Steptoe & Johnson are included which states *"Your debt was never issued as a combined utility-Our bond ordinances would say combined system-it does not"*. See attachment #4 dated 2/25/2019

The next set of documents is from town attorney, Rob Chenoweth. He says *"It is clear from the language of WV Code that the residency of the appointees to the Water Board is not relevant to their appointment. Code does not expressly state that members of the sewer board must be residents of the Town, however it is implied that the residency of sewer board members (other than the engineer member) is in- town residency. This implies that the other members to the sewer board need to be residents of the municipality. See attachment dated 2/25/2019 # 5.*

Attachment #6 dated 2/25/2019 is from Attorney Chenoweth saying that if the two utility boards would be combined, that the sewer board statute would require members to be town residents since it the most restrictive residency requirement.

The Mayor explained all of this to the Council and visitors, but questions remained. It was requested that the town attorney be present at the next monthly Council meeting.

PERSONNEL BOARD ORDINANCE

The personnel Board Ordinance was tabled till the issue with the above has been settled.

UPDATES

The Mayor said we are currently operating under a water board and a sanitary board, in accordance with the 1980 (water) and 1979 (sewer) ordinances.

Motion made to adjourn by Mrs. Pingley, seconded by Mrs. Weese. Meeting adjourned at 7:06 pm.

Mayor: Cindy Zarecki

Recorder: Barbara Smith

AN ORDINANCE PROVIDING FOR THE CREATION OF A
SANITARY BOARD FOR THE TOWN OF BEVERLY; PROVIDING FOR THE
CONSTRUCTION, ADMINISTRATION, OPERATION AND MAINTENANCE OF
THE SEWAGE COLLECTION AND TREATMENT SYSTEM BY SAID BOARD;
AND GRANTING POWER TO SAID BOARD TO ESTABLISH BY-LAWS, RULES
AND REGULATIONS FOR ITS OWN GOVERNMENT.

Sec. 1. Establish; composition; qualification, appointment
and term of members; vacancies.

There is hereby created a sanitary board of the Town,
which shall be composed of the mayor and two persons appointed
by the common council, one of whom, during any construction
period, must be a registered professional engineer, and the
engineer member of the board need not be a resident of the Town.
After the construction of the plant has been completed, the
engineer member may be succeeded by a person not an engineer. The
appointed members of the board shall serve their terms subject
to the will and pleasure of the common council. The appointees
shall originally be appointed for terms of two and three years
respectively and, upon the expiration of each term and each
succeeding term, appointment of a successor shall be made in
similar manner for a term of three years. Vacancies shall be
filled for an unexpired term and such substitutions shall be
made in the same manner as was the original appointment.

Sec. 2. Eligibility of Town personnel.

No officer or employee of the Town holding a paid or
unpaid office or position shall be eligible to appointment on
the sanitary board until at least one year from the expiration
of the term of his public office or employment.

Sec. 3. Officers and by-laws.

The mayor shall be chairman of the sanitary board,
which shall elect a vice-chairman from its members and shall
designate a secretary and treasurer, though the secretary and
treasurer may be one and the same person, who need not be
members of the sanitary board. The vice-chairman, secretary
and treasurer shall hold office, as such, at the will of the
sanitary board. The sanitary board shall have power to establish
by-laws, rules and regulations for its own government.

Sec. 4. Compensation of members and allowances for expenses;
bond of treasurer.

Each member of the sanitary board shall receive such
compensation for his services as the common council may, from
time to time, prescribe, and shall be entitled to payment for
his reasonable expenses incurred in the performance of his
duties. The secretary and treasurer shall be paid such reason-
able compensation for their services as the council may, from
time to time, prescribe, and the treasurer shall give bond in
the amount the council may, at any time, require.

All compensation, as well as expenses incurred by the sanitary board, its officers and employees, shall be paid solely from funds provided under the authority of chapter 16, article 13 of the Code of West Virginia.

Sec. 5. Authority as to supervision and control of sewerage system.

The construction, acquisition, improvement, equipment, custody, operation and maintenance of all works for the collection, treatment and disposal of sewage within or without the corporate limits of the city, the collection of revenues therefrom for the services rendered thereby and the employment of all engineers, architects, inspectors, superintendents, managers, collectors, attorneys and other personnel, as, in the judgment of the sanitary board, may be necessary to the execution of its powers and duties, shall be under the supervision and control of the sanitary board.

Sec. 6. Statutory authority of board.

The sanitary board shall have, in addition to the powers enumerated herein, all other powers provided for such boards by chapter 16, article 13 of the Code of West Virginia.

TOWN OF BEVERLY


Mayor

The foregoing ordinance was passed by the Council at meeting regularly called and held on April 5, 1979, and April 12, 1979.


Recorder

AN ORDINANCE PROVIDING FOR THE CREATION OF A
WATER BOARD FOR THE TOWN OF BEVERLY; PROVIDING FOR THE CONSTRUCTION,
ADMINISTRATION, OPERATION AND MAINTENANCE OF THE WATER SYSTEM
BY SAID BOARD; AND GRANTING POWER TO SAID BOARD TO ESTABLISH
BY-LAWS, RULES AND REGULATIONS FOR ITS OWN GOVERNMENT.

Sec. 1. Establish; composition; qualification, appointment
and term of members; vacancies.

There is hereby created a water board of the Town, which shall be composed of the mayor and two persons appointed by the common council, one of whom, during any construction period, must be a registered professional engineer, and the engineer member of the board need not be a resident of the Town. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. The appointed members of the board shall serve their terms subject to the will and pleasure of the common council. The appointees shall originally be appointed for terms of two and three years respectively and, upon the expiration of each term and each succeeding term, appointment of a successor shall be made in similar manner for a term of three years. Vacancies shall be filled for an unexpired term and such substitutions shall be made in the same manner as was the original appointment. The initial composition of the water board shall be the same as the sanitary board.

Sec. 2. Eligibility of Town personnel.

No officer or employee of the Town holding a paid or unpaid office or position shall be eligible to appointment on the water board until at least one year from the expiration of the term of his public office or employment.

Sec. 3. Officers and by-laws.

The mayor shall be chairman of the water board, which shall elect a vice-chairman from its members and shall designate a secretary and treasurer, though the secretary and treasurer may be one and the same person, who need not be members of the water board. The vice-chairman, secretary and treasurer shall hold office, as such, at the will of the water board. The water board shall have power to establish by-laws, rules and regulations for its own government.

Sec. 4. Compensation of members and allowances for expenses;
bond of treasurer.

Each member of the water board shall receive such compensation for his services as the common council may, from time to time, prescribe, and shall be entitled to payment for his reasonable expenses incurred in the performance of his duties. The secretary and treasurer shall be paid such reasonable compensation for their services as the council may, from time to time, prescribe, and the treasurer shall give bond in such amount as the council may, at any time, require.

All compensation, as well as expenses incurred by the water board, its officers and employees, shall be paid solely from funds provided under the authority of chapter 8, article 19 of the Code of West Virginia.

Sec. 5. Authority as to supervision and control of water system.

The construction, acquisition, improvement, equipment, custody, operation and maintenance of all works for the distribution and treatment of water within or without the corporate limits of the city, the collection of revenues therefrom for the services rendered thereby and the employment of all engineers, architects, inspectors, superintendents, managers, collectors, attorneys and other personnel, as, in the judgment of the water board, may be necessary to the execution of its powers and duties, shall be under the supervision and control of the water board.

Sec. 6. Statutory authority of board.

The sanitary board shall have, in addition to the powers enumerated herein, all other powers provided for such boards by chapter 8, article 19 of the Code of West Virginia.

TOWN OF BEVERLY

Frank Herbert
Mayor

The foregoing ordinance was passed by the Council at meeting regularly called and held on May 6th 1980 and _____.

Alma Hinely
Recorder

1st reading May 6th 1980
2nd - Third & final
June 3rd 1980

#29

May 6th, 1980

Town of Beverly

TOWN OF BEVERLY:PO WIT

The regular monthly council meeting was held Tuesday evening, May 6th, 1980 in the Town Hall. All council persons were present, also Steve Martin, D. K. McWilliams, Harold Phares and Charles McClintic.

The last meetings minutes were read and approved.

The Mayor reported the internal painting is almost completed at the water plant. All supplies ordered to run samples and up date the plant, are in. The much needed cleaning has been done.

The Mayor having talked to Okey Nelson, reports Mr. Nelson will release the private owned water line to the Town. The Mayor will pick up the deed and have Attorney Harner make the new deed. Water meters are to be installed at Nelson's home and each trailer of his trailer court.

The Mayor read a letter from Sam Ludlow, who had reviewed our water plant. He had suggested the same improvements in 1973, of which had not been done. Council requested a copy of his letter to be sent to the State Health Dept in Charleston as a follow up of Clyde Emigh's letter.

The Mayor requested the Water Board committee to meet with the Mayor to write Steve Martin's contract.

The Elks Country club has asked the Town to fill their swimming pool about May 15. The Mayor gave them a price of \$275.00 providing we control when and how many gallon at one time.

Our water operator, Steve Martin will be going to Army Reserve camp May 17 for 2 weeks. Jr. Conley will run the plant during his absence. Steve will leave the telephone number of John Kimbleton, in case of emergency.

A discussion of a water meter now installed at the Fire house building, for their kitchen and bathrooms. No decision was made, as to the billing.

★ The Mayor read the ordinance to combine the water board and sewage board. Joan Hart made the motion to accdpt on the first reading. Eber Conley seconded. All council in favor.

A discussion of where citizens could purchase necessary adapters for their sewer lines. Jim Pritt made the motion for the Town to purchase at least 100 adapters as a convenience for citizens to purchase from the Town. Hubert Rhea seconded the motion. All council were in favor.

The Governor's office has notified us of a summer program for 5 months. We have written asking for at least 2 men.

We have received \$95.00 for our 1969 International truck, that was sold to Dave Marstiller.

of our Town garbage. The clerk was asked to call the Tygart
Cuthbert + #29 2/2-1a

June 3rd, 1980

2b

own of Beverly
TOWN OF BEVERLY: TO WIT

The regular monthly council meeting was held Tuesday evening, June 3rd, 1980, in the Town Hall at 7:30 P.M.

All council persons were present. Also citizens D. K. McWilliams and Woodrow Yokum.

The last minutes were read and approved.

A short discussion was held on the garbage collection. No decision was made to improve this situation.

Joan Hart made a motion for a person to look over items the State will auction before the date of June 21, 1980. Ross Ware seconded the motion. The Mayor, Woody Yokum and Hubert Rhea will drive to Buckhannon Wednesday morning to look over the pick-up trucks.

The Mayor read a letter from the Governor's office. The Governor has designated the month of June as "Statewide Cleanup Month." The Mayor has answered this letter, notifying his office, Beverly will participate in his program, and the week of June 9th through the 13th will be our clean-up week.

The second and third reading of the ordinance providing for the creation of a Water Board for the Town of Beverly; was read and approved. Joan Hart made the motion, with Ross Ware seconding the motion. All members were in favor. Members expressed the desire to have the same persons on the water board as on the sewage board.

Council requested the following statement to be placed in the records: Any employee who belongs to a military unit, such as Guards or Reserve and must leave for military training, will be paid the difference of military pay and his wages from the Town. Joan Hart made the motion. Ross Ware seconded the motion. All persons were in favor. Council also granted all employees 6 Major National holidays as paid holidays and 1 week vacation after employed 1 year. Ross Ware made the motion. Dennis Pritt seconded. All persons in favor.

A discussion of the sidewalks taken up by the Construction Company. Ware and Hart both expressed desires to have walks relaid according to the specks. That concrete, than bricks laid herringbone design.

The Mayor reports an extra manhole is available that perhaps the Town could purchase to repair the deep well at the water plant. The Mayor will check with the Construction Company for a price if they could place the manhole for us.

Dennis Law, representing the Fletcher Real Estate, had asked the Mayor to talk to the Council about opening the edge of Collett Street. They are developing an apartment house on land beside Sloan's and McWilliams and have a right of way.

The Town owns land that is not a street. Ross Ware agreed to a right of way.

04-11-80 # 2b 5/2/80



39

lawyer who has harassed the last money

Cynthia Karelis <ckarelis@mix.wvu.edu>

FW: Town of Beverly

1 message

Robert R. Rodecker <rrodecker@kaycasto.com>

Fri, Dec 14, 2018 at 3:39 PM

To: "ckarelis@mix.wvu.edu" <ckarelis@mix.wvu.edu>

Cc: "John R. McGhee" <jmcghee@kaycasto.com>, "Victoria L. Wilson" <vwilson@kaycasto.com>, Elizabeth Gardner <egardner@kaycasto.com>

Mayor Karelis,

It was good talking to you earlier today. Following our conversation, I reviewed my files to see if I could find anything relating to the organization of the Town's utility board. I am afraid that I was unable to find anything directly on point. However, I did find a copy of the draft of the March 17, 2011 bond ordinance related to the water project. This document was created by the firm of Steptoe & Johnson as bond counsel to the Town and provided to me for filing with the PSC together with the application for approval of the water project.

As you will see in Section 1.01 on the first page of the Ordinance, the authority for the ordinance is derived by reference to WV Code §8-19 and §16-13C. §8-19 refers to Article 19 of Chapter 8 of the Code which authorizes municipalities to own and operate water works. §16-13C relates to the Drinking Water Treatment Revolving Fund Act. Thus, the bonds were to be issued by the Town for its water system and the funds were to be provided by the Drinking Water Treatment Revolving Fund Act.

✓ The significance of the reference to §8-19 relates to the fact that the bonds were to be issued for a waterworks project and were not issued under the provisions of §8-20 which authorizes municipalities to own and operate a combined waterworks and sewerage system and suggests to me that, if the bonds that were issued contained the same reference as in the draft attached hereto, the Town was not operating as a combined water and sewer system.

§8-19-19(a) provides in pertinent part that "any municipality . . . is hereby empowered and authorized to . . . maintain and operate a waterworks system . . . through the supervision and control of a committee, by whatever name called, composed of all or a portion of the governing body, or of a board or commission appointed by such governing body, as may be provided by the governing body, and . . . said board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen [n21n218-16-1 et seq. of this chapter."

§8-20-18(a) contains similar language for the operation of a combined water and sewer system.

Attachment #3A 2/25/19


#3a pg 2

Thus, whatever the board is called (water board, utility board, or something else) there needs to be an ordinance creating the entity. Otherwise, the Town Council as the governing body is in charge.

While I was unable to find any documents in my files regarding the name of the board, John Stump, the bond counsel at Steptoe & Johnson may have documents that would help. His number is 304-353-8196.


Please let me know if you have any questions or if I can help you further.

Bob Rodecker



**KAY
CASTO
& CHANEY** PLLC
Law. Business. Life.

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From: Katy Mallory [mailto:Katy.Mallory@Steptoe-Johnson.com]
Sent: Thursday, March 17, 2011 12:43 PM
To: 'Robert Rodecker'
Cc: Beth Gardner
Subject: Town of Beverly

Attached for the PSC filing is a draft bond ordinance. Let me know if you need anything else

Thanks

Katy

Katy Mallory, P.E.

Attachment #3A^{P.2} 2/25/19

Conversation with Brandy of Steptoe & Johnson – February 25, 2019 – conversation with Bond Lawyer

“YOUR DEBT WAS NEVER ISSUED AS A COMBINED UTILITY – OUR BOND ORDINANCE(S) WOULD SAY ‘COMBINED SYSTEM’ – STATUTE CHAPTER 8 ARTICLE 20 – IT DOES NOT

WE MUST SEEK CONSENT FROM THE MUNICIPAL BOND COMMISSION TO CHANGE OUR ORDINANCE(S) – IN THIS CASE, JOIN THE WATER AND SEWER BOARDS

When the funding process started for sewer and water projects, different WV statutes were applied for each utility (there are different parts of the code that address each):

Sewer:

Projects in 1997 & 2001 – Municipal bonds issued under CHAPTER 16 ARTICLE 13-C – using the original 1979 Sanitary Board ordinance

Federal funds include monies from the **United States Department of Agriculture, Department of Environmental Protection, and Bureau of Public Health**

*Example: Bureau of Public Health – When you make any changes with facilities, the town needs to go to the lenders to get permission granted to make those changes

Water:

1990 Debt secured was under the original 1980 Water Board ordinance – **United States Department of Agriculture** – using the original 1980 Water Board ordinance

Water Development Authority State debt – we have debt on “both sides” – **Drinking Water State Revolving Fund** – need consent from them to change our original Water Board ordinance (Sammy G. is attorney that represents DWSRF)

Federal debt includes – **United States Department of Agriculture and the Bureau of Public Health**

Project 2012 – Municipal bonds issued under CHAPTER 8 ARTICLE 19 – using the original 1980 Water Board ordinance

#5



Cynthia Karelis <ckarelis@mix.wvu.edu>

scan0011 - This code reference references a sect...

Robert Chenoweth <rchenoweth@bztlaw.com>
To: Cynthia Karelis <ckarelis@mix.wvu.edu>

Thu, Jan 24, 2019 at 8:29 AM

Mayor,

I have attached two code sections from W. Va. State Code regarding the requirements of appointees to municipal water and sewer boards.

W. Va. Code § 8-16-4 deals with appointees to the water board, and W. Va. Code 16-13-18 deals with appointees to the sewer board. I have highlighted the relevant language regarding appointees to the respective boards. It is clear for the language of W. Va. Code § 8-16-4 that the residency of the appointees to the Water Board is not relevant to their appointment. W. Va. Code § 16-13-18 does not expressly state that members of the sewer board must be residents of the Town, however it is implied that the residency of sewer board members (other than the engineer member) is in Town residency. This is based on the language that reads: "The engineer member of the board need not be a resident of the municipality." This implies that the other members to the sewer board need to be residents of the municipality. I could not find any case law construing this.

Based on the language of the West Virginia Code, as it exists, it seems that a prerequisite for the two members of the combined utility board, representing the sewer entity, is that they be residents of the Town. This is probably antiquated language that needs changed by the W. Va. legislature. I agree that it makes sense to allow membership to be based on use of the service, not residency. However, that is not what the Code says.

I wanted to bring this code language to your attention, so that you can discuss it with Council, and we can discuss questions that are raised.

Rob Chenoweth

Robert C. Chenoweth, Esq.

BUSCH, ZURBUCH & THOMPSON, PLLC

High & Court Streets

P. O. Box 1819

*As per Bill Phillips, Citizens Bank
Water Checking Acct. opened 11/23/19
Sewer Checking Acct. opened 2/14/1985*

Attachment #5 2/25/19

6



Cynthia Karelis <ckarelis@mix.wvu.edu>

Combined Utility Board

Tue, Feb 5, 2019 at 9:19 AM

Robert Chenoweth <rchenoweth@bztllaw.com>
To: Cynthia Karelis <ckarelis@mix.wvu.edu>

Mayor:

Thanks for jogging my memory. In drafting the combined utility board ordinance, I included the most restrictive residency requirement for board members. The reason being is that the law requires the Town to follow the most restrictive of the two utility board statutes, which in this case is the sewer board statute which requires members to be town residents. In other words, to insure that the town is not violating State Code it must follow the most restrictive of the two statutes. In my mind, since we are combining Boards, and therefore combining State statutes, the ordinance creating the combined utility board would require the most restrictive residency requirement to be applied to all board members; i.e. all board members must be residents of the Town.

In theory, I guess we could require different residency requirements for different members representing the two portions of the combined utility board. However, since we are creating a combined board, it seems more appropriate to have the same residency requirement for all members. As stated earlier, that residency requirement is required to be the most restrictive residency requirement of the two statutes.

That was my rationale in drafting. Please advise of questions you may have and if you would like me to make any additional changes to the ordinance.

Rob Chenoweth

Robert C. Chenoweth, Esq.

BUSCH, ZURBUCH & THOMPSON, PLLC

High & Court Streets

P. O. Box 1819

Elkins, WV 26241

(304) 636-3560

(304) 636-2290 fax

Attachment #6 2/25/19