

The Town Board of the Town of Moreau held a public hearing on 2024 sewer rates on December 21, 2023, at the Town Hall, 351 Reynolds Road, Moreau, New York.

The Supervisor called the public hearing on 2024 sewer rates to order at 4:15 PM.

**Town Board Members Present**

Mark Stewart	Councilmember
Kyle Noonan	Councilmember
Alan VanTassel	Councilmember
John Donohue	Councilmember
Theodore T. Kusnierz, Jr.	Supervisor

**Also present:** Dianne Lewis, Deputy Town Clerk; Brenda Hutter, Town Clerk; Lisa Sperry, Confidential Secretary; Chris Abrams, Highway Superintendent; Leah Cronin, IAO, Assessor; Jeremy Brogan, Recreation Director; Anna Labiak, Water Clerk; Bill Ryan, Special Counsel; Alex Portal, Post-Star; Steve Hutter; Brigid Martin; Ann Purdue; Tom Masso; Greg Hewlett; Charlene Hewlett; Erin Trombley; Beth Wadleigh; Travis Mitchell; Dave Rogge; Liz Bennett; Dominic Tom; Rich Schermerhorn; Allyson Phillips; Maureen Dennis; Gina LeClair; Bob LeClair; Harry Gutheil; Preston Jenkins; Mary Jenkins; Tom Masso; Bruce Lant

Supervisor Kusnierz asked the Deputy Clerk to read the Public Notice of the public hearing into the record. She read:

“Notice of Public Hearing, Town of Moreau

Notice is hereby given that the Town Board of the Town of Moreau, County of Saratoga, State of New York, will hold a public hearing on December 21, 2023, at 4:10 p.m. in the Meeting Room at Town Hall, 351 Reynolds Road, Moreau, NY 12828 on establishing the 2024 sewer rates for the residents in the Moreau Consolidated Sewer District. Capital charges shall be determined as follows: ninety percent (90%) of the annual debt service will be collected on the assessed value of all real property within the consolidated sewer district, while the remaining ten (10%) shall be based upon each parcel’s acreage within the consolidated sewer district. Operation and maintenance expenses shall be divided into district costs and excess treatment costs only to users with an active connection to the sanitary sewer and based upon the usage and the number of equivalent dwelling units of each parcel. Users that do not exceed an average usage of 100 gallons per day allowance during a given billing period, the operation and maintenance expense shall be collected by an equivalent dwelling unit charge and for those exceeding the 100 gallon per day allowance included within the equivalent unit charge an additional treatment cost shall apply. The rate schedule is attached to this Notice of Public Hearing.

All interested parties and citizens will be heard. Written comments may be sent prior to December 21, 2023, to the Town Board, 351 Reynolds Road, Moreau, NY 12828, or email to townclerk@townofmoreau.org. Said hearing may be adjourned and continued from time to time as necessary.

By order of the Town Board of the Town of Moreau  
Dated: November 28, 2023”

The floor was then opened to the public for comments.

Allyson Phillips identified herself as an attorney with Young/Sommer, LLC, Attorneys at Law, representing Schermerhorn Residential Holdings. Ms. Phillips said she had emailed comments earlier in the day and gave a printed copy to the Board. She also said she hoped the Board had had an opportunity to read her remarks, despite their length. She said though they are long, she

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felt she had barely scratched the surface of what had been happening in Moreau. Before leaving her office to attend the meeting she said she looked for the agenda for the day's meetings, but was unable to find them. She added that NY Public Officers law, the materials are required to be published for the public 24 hours in advance of the meeting. She said going back to September, despite Local Laws and rates being passed, the agenda was never made available 24 hours in advance. She said the agenda for the present meeting was released 30 minutes before the meeting. She said as she stood at the podium that she did not have a copy of the agenda at the meeting because none were made available at the door. She said it was a repeated violation of the open meetings law. Ms. Phillips said she wanted to make the public aware of the law because these violations deprive the public of information needed to assess the topics of conversation, to understand the Board's activities, and to comment at meetings.

With regard to sewer rates, she referenced her email comments saying that she has documented a series of actions by the Board that she said constitute illegal activity related to sewer assessments in the prior 2 years. She said in 2022 rates were established in a Local Law, but then they billed Mr. Schermerhorn in violation of that law. Letters to the Board asking for a refund were rebuffed, she said. Ms. Phillips said Mr. Schermerhorn attended a September meeting, which had nothing published referencing sewer or raising rates, at which the Board attempted to, in effect, legitimize the charges they had been billing Mr. Schermerhorn for. She said the EDU rate her client's bills were based on were never justified, and budgets were never prepared for the individual sewer districts. She said this was in violation of Moreau's law as well as NY Town law. She said things were made less clear with the consolidation of districts, including publishing rates for a non-existent district. Ms. Phillips said people don't understand these actions and they don't make sense. The Board did not disclose the basis of these rates to the public, she said. She urged the Board not to move forward with new rates at this time, or to take action on consolidation, and amendment to local law, to stop relying on special counsel and the Town engineering firm, and to look into it themselves.

Travis Mitchell Environmental Design Partnership identified himself as a representative of Schermerhorn holdings and a property owner on Bluebird Road. He wanted to add to Allyson Phillips' comments, saying he had never seen a situation where rate increases were proposed with no supporting documentation. He said the existing districts had existed for 15 years, and in the past two years rates nearly doubled without supporting documentation. He asked the Board to provide the information to the public.

Greg Hewlett asked if this hearing was related to rates related to consolidation. Supervisor Kusnierz said the rates in discussion are without consolidation. Mr. Hewlett asked that if consolidation does not take place, Districts 1-4 not be allowed to take advantage of the Saratoga County sewer connection. He equated allowing all districts to use the connection when only District 5 pays for it to buying a car on person pays for but everyone gets to drive. He suggested that any rate advantages that may be associates with the County connection also be reserved for only District 5 in the event that consolidation does not take place.

Maureen Dennis said the EDU schedule attached to the meeting minutes from September 12, which she believed were published in draft form October 11, states that the calculated EDU usage per day would be 300 gallons. She said under current rates, they had been charged 200 gallons a day per EDU, and the current proposal was for 100 gallons per day. She asked if that meant that the Schermerhorn 694 units would be billed at triple the current rate, or how it would impact the EDUs.

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Harry Gutheil agreed with the others who had spoken with regard to a lack of information. He asked the Board to consider leaving public comments open and to provide more information so people can respond and ask legitimate questions. He said the budget had been passed which included sewer but no extensions. He said each project should have been able to stand on its own, which he said was no longer the case. He also said there was a 10% per month penalty, which he called punitive. He said if people are struggling to pay bills, this just makes it worse. The water penalty, he said, was set at a flat 10%. He wondered when bills could be expected related to capital charges since it was set to one payment a year. For district 1 extension 5 he said this bill would be substantial. He asked if there were fund balances in each extension. He asked where the budget was, and which budget the hearing was based on.

Rich Schermerhorn said there are many unanswered questions and inconsistencies in the sewer rates. He called himself one of the easiest developers to get along with, and said a lot of the rate changes would be paid for by him and his residents. He said he had no issue contributing to the sewer line and thought it was a good thing for the community, but he didn't realize how much pushback there would be in the community based on how it was being executed. He said he thought things should slow down, and that he didn't understand the urgency to get the changes passed before year-end, adding the lines are not near completion, and two pump stations needed repair or upgrade as well, citing the NYSDEC. namely the Ace Hardware and Bluebird Road pump stations, the latter of which he owns. He said he applied for a 100-unit project which had stalled. Attorney Ryan, at one point, told Mr. Schermerhorn that if would allow the Town to make upgrades to the Bluebird pump station, he could resume construction on his project, according to Mr. Schermerhorn, which he said sounded like blackmail. He asked the Board to slow the process a month or two, reminding them that he had paid for all the sewer lines, pump stations, and water lines in his developments. He said he had paid every connection or other fee or charge asked of him. He said at one point word was circulating that he didn't pay a \$1,750 buy-in fee, which was incorrect. It was refunded because the rate never was passed, he said. He said he didn't doubt Mr. Ryan and Mr. Rhodes were advising the Board, but when things go wrong when you have the wrong leadership. He said he thought bad information was being provided, and he thought it in the best interest of the Town to slow down.

Gina LeClair said she knew the Board members well. She urged the Board to listen to the community feedback at recent meetings. She asked them to think and stand up for the residents of the Town. She suggested they take time to get the answers to the questions raise at that hearing.

Bill Ryan, Special Counsel said he wanted to clarify the record, and said he had been retained about 4 years prior to push through extension 5 of the sewer. After the project passed, he said they went into the past, which he described as a mess. Sewer District 1 in the Moreau Industrial Park was paid for with Town funds, according to Mr. Ryan, contrary to what Law 5 and 5a of Town Law, which specify it should be paid for by users. Once the forcemain was installed, he said developers for extensions 2, 3 and 4 used the forcemain without making contributions. He said he considers that an unlawful gift of public funds. Sewer district 3, including The Nest, was a subject of much discussion, he said, calling it a mess; PUD legislation passed, there were numerous Planning Board meetings, revisions were made to the map planning report, approval to create the district was given, but it was never done, for reasons he said escaped him. With regard to the \$1750 Rich Schermerhorn mentioned, he said the approved by the Board, then 3 or 4 years later it was withdrawn for reasons he didn't know. NYS Law said there has to be a benefit between the connection and the charge. He said since then connections had been made for which no payment was made to his knowledge. He said he considers that a gift of public funds also.

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With regard to proposed rates, he said in Districts 1-4 capital rates are calculated based on EDU, and in District 1 it is on flow. He said minimal changes were made to the 2022 map in the current proposal. The rates, he said, are based on assessment, acreage, use and EDUs. He said Mr. Schermerhorn's attorney said there had been no rates or budget, and that that was the point of consolidation, to level the playing field and for everything to be determined correctly and accurately. For clarity, he said he had reached out to Mr. Schermerhorn's first attorney three times to coordinate a meeting with the supervisor. Those contacts were ignored. He then said he reached out to the second attorney, and there was no response. The fourth time he reached out, he said the attorney replied they could meet after the election. He said all this was to try to correct some of the mess made since the Moreau Industrial Park line was installed. Mr. Ryan then referenced a facility use agreement with Glens Falls drafted in 1998, saying it was not a good deal, and attempts to renegotiate it were unsuccessful. To create redundancy, he said they directed the line to go South to Wilton.

To the Board, Attorney Ryan said there was a resolution to consider at the regular Town Board meeting. He said the resolution neither withdraws consolidation nor acts on consolidation. This will allow the next Board to consider all that has transpired so far, he said. General Municipal Law Article 17A establishes a timeline from endorsement, he said, adding this took place October 24, 2023, and that the process must be completed within 180 days. He said the joint consolidation agreement, summary, and revised map planning report can be put before the public again as long as it is within 180 days. He also defended Don Rhodes, saying the criticism was unfair and that all anyone wanted to do was do the project correctly.

Supervisor Kusnierz said though there had been requests to extend public comments, there was no requirement to hold public hearing on sewer rates, but they offered the hearing as a means to get public feedback. He then called for a motion to close the public hearing.

## **ADJOURNMENT**

### **Resolution #2023-381**

A motion was made by Councilmember VanTassel, seconded by Councilmember Stewart, to close the public hearing.

Asked if all were in favor, the responses were:

Councilmember Stewart	Aye
Councilmember Noonan	Aye
Councilmember VanTassel	Aye
Councilmember Donohue	Aye
Supervisor Kusnierz	Aye

The motion carried 5:0

The hearing was closed at 4:45 p.m.

Respectfully submitted,  
*Erin Trombley*  
Erin Trombley  
Town Clerk (July 22, 2024)