

MEMORANDUM

From: Jessica Draper, Town Planner

To: Josh Arneson, Town Manager, Kendall Chamberlin, Water Resources Superintendent, Water and Sewer Commission, Linda Parent, Town Clerk, Connie Bona, Finance Director

Re: Lavoie Water Usage and Charges Appeal and Abatement

Date: 2/27/19

Pertinent Information: John Paul and Lisa Lavoie appealed their shut off notice to the Water and Sewer Commission on 2/4/19. The shut off notice was due to refusal of full payment of their July-Sept 2018 bill. They informed the commission at their regular meeting that they had no explanation for the steep spike in usage. The commission voted to delay the shut off and have the department test the meter. On 2/19/19, Kendall returned to the commission with a report that the meter tested to be in 100% working order. The commission discussed further explanations for the usage, but delayed any decision making until they could look at other comparable accounts for the same quarter. Following up on the data request, Connie, Josh, and Jessica reviewed other accounts and indicated which accounts had more than a 50% increase in usage over the previous quarter and those that had usage higher than their annual average. After some discussion about abatement, Linda suggested the Board of Civil Authority was the only body that could abate municipal charges. Josh instructed Jessica to review the legal authorities before further action was taken on the data. After researching the charter, ordinances, and state statutes, and conferring with the town attorney we have come to the following conclusions:

Abatements and appeals are independent legal processes as shown below.

Appealing Water-Sewer Disconnection

1. If a rate payer chooses to appeal their notice of disconnection, the selectboard has authority to determine whether a) the amount of a water bill is correct and b) whether the town followed rules, regulations, and policies regarding the disconnection process. Those are the only two allowable reasons for appeal. The appeal from the ratepayer should indicate their chosen reason.
 - a. This means a vote is needed on whether the bill is for the correct amount or a vote on whether our staff followed proper protocol for the “shutoff”.
 - i. If the selectboard votes that “the bill is incorrect” they can adjust the bill (to whatever amount they so choose). The ratepayer would then be required to pay whatever the selectboard decides, and the shutoff process is over if full payment or payment plan with first installment is made. If the ratepayer refuses to pay the new amount, the shutoff process proceeds.
 - ii. If the selectboard votes that “the bill is correct”, they have no further action to take, and the shutoff process immediately proceeds. In the case of rental property, in order to allow for the suggested 3-day notice for tenants of rental property, the notice posted to the door for shut off should include a 3-day period between the posted notice and the actual disconnection of service.
 - iii. If it is determined by the board that the disconnection or “shut off” notice was done incorrectly, the town is then required to properly re-do the process.

Abatement of Water-Sewer Charges

1. Only the Board of Civil Authority has authority to abate water and sewer charges. There is clearly expressed authority in state statute for Boards of Civil Authority to abate water and sewer charges in addition to their authority to abate taxes. If someone seeks an abatement they must formally request abatement to the BCA via the town clerk, and present evidence to, and be heard by, the BCA. The person requesting abatement is responsible for providing evidence to the BCA based on their eligibility criteria listed below (not all criteria apply to water and sewer charges):
 - a. taxes or charges of a person who has died insolvent
 - b. taxes or charges of persons who have moved from the state
 - c. taxes or charges of persons who are unable to pay their taxes, interest, and collection fees
 - d. manifest error or a mistake of the listers
 - e. real or personal property lost or destroyed
 - f. the exemption amount available under 32 V.S.A. § 3802(11) to persons otherwise eligible for exemption who file a claim on or after May 1 but before October 1 due to the claimant's sickness or disability or other good cause as determined by the board of abatement; but that exemption amount shall be reduced by 20 percent of the total exemption for each month or portion of a month the claim is late filed.
 - g. taxes or charges upon a mobile home moved from the town during the tax year as a result of a change in use of the mobile home park land or parts thereof, or closure of the mobile home park in which the mobile home was sited, pursuant to 10 V.S.A. § 6237

The decision of the BCA is final, and there is no method of appeal for a BCA decision. The following decisions are possible:

- If no abatement is allowed, the full amount of the bill shall be due immediately and pre-existing payment procedures and policies shall take effect.
- If a full abatement is allowed, all charges will be removed from the account including interest and other associated fees. Any portion of charges already paid can be returned in the form of a refund or credit to the account.
- If a partial abatement is allowed, then the remaining unabated portion of the bill is due immediately, and the abated portion will be removed from the account. Pre-existing payment procedures and policies shall take effect for the remainder of the charges. Any portion of charges already paid shall be applied to the unabated portion first, and any over-payment can be returned in the form of a refund or credit to the account.

Other notes

Due to the fact that the selectboard, by statute, has to be the body to approve or deny an appeal, it would be best that the selectboard formally appoint the water commission to be “hearing officers” in perpetuity for the purposes of water-sewer disconnection appeals. This is how the town has been functioning historically, and we do not have evidence that this formal appointment has already occurred in the past. The quorum of selectmen that currently exists on the commission could act on their own, but would need a unanimous vote and the other two water commission members would not be able to participate in said vote without being appointed. I also want to reiterate that the water commission selectmen quorum can only adjust the amount of the bill if they determine that the bill amount is wrong.