

A public hearing of the Town Board of the Town of Moreau was held on January 4, 2021 in the Town of Moreau Municipal Building, 351 Reynolds Road, Moreau, New York, for the purpose of hearing comments from the public pertaining to the Eminent Domain Procedure for Sewer District 1, Ext. 5

The Supervisor called the public hearing to order at 7:03 p.m.

Town Board Members Present

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

Town Board Members Absent

None

Also present: Leeann McCabe, Town Clerk; Karla Buettner, Attorney for the Town; William Ryan, Special Counsel for the Town; Don Rhodes, Laberge Group; Chris Wren, Laberge Group

The Town Clerk read the following notice of public hearing, which was published as a legal ad in the Post Star Newspaper on December 8, 2020:

**NOTICE OF PUBLIC HEARING PURSUANT TO
EMINENT DOMAIN PROCEDURE LAW, SECTION 202**

**SEWER DISTRICT NO. 1, EXT. 5
TOWN OF MOREAU, SARATOGA COUNTY, NEW YORK**

NOTICE IS HEREBY GIVEN THAT the Town of Moreau Town Board will conduct a Public Hearing to determine the need, location and installation of sewer mains and other associated infrastructure with respect to the installation of the infrastructure for Sewer District No. 1, Ext. No. 5, a public project, prior to any acquisition of the real property required for the project.

The Public Meeting will be held on January 4, 2021, beginning at 7:00 p.m. at the Moreau Town Complex, 351 Reynolds Road, Moreau, New York 12828, via videoconferencing as permitted by the NYS Open Meetings Law and Executive Order 202.1 and all extensions. Due to public health and safety concerns, the public will not be permitted to attend at the Town Hall, at remote locations where Town Board members or Department Heads will be situated or in any other location. The public will be able to fully observe the videoconference meeting and will be able to comment during the public hearing. The link for the videoconference hearing is <https://us02web.zoom.us/j/87887277169>.

The installation of sewer mains and other associated infrastructure will improve the sewage conveyance within the Sewer District No. 1, Ext. No. 5, and is a necessary component for the sewer district.

Installation of the sewer mains and other associated infrastructure will require acquisition of easements over and across real property located in the Town of Moreau, the exact location of which will be discussed at the Public Hearing. If easements cannot be obtained voluntarily from landowners, the Town of Moreau shall pursue acquisition through condemnation. The proposed location of the real property to be acquired is as follows: 1458 Route 9 (SBL#: 63.3-1-3.13); 1294 Route 9 (SBL#: 77.1-1-38.1); 1356 Route 9 (SBL#: 77.1-1-4); 1438-1440 Route 9 (SBL#: 63.3-1-26); 1558 Route 9 (SBL#: 63.2-1-19); 1434 Route 9 (SBL#: 63.3-1-3.12); 1606-1608 Route 9 (SBL#: 49.4-2-10); 1616 Route 9 (SBL#: 49.4-2-16); 1535-1541 Route 9 (SBL#: 63-1-14.1); and 2-68 Butler Road (SBL#: 63-4-1.11). There are no other proposed alternate locations for the installation of the sewer mains and associated infrastructure to complete this project.

PLEASE TAKE FURTHER NOTICE that all interested persons appearing at the Public Hearing will be heard. Property owners who may subsequently wish to challenge condemnation of their real

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property via judicial review may do so only on the basis of issues, facts and objections raised at this hearing.

Dated: December 8, 2020
Moreau, New York

Town Board of the Town of Moreau
351 Reynolds Road
Moreau, New York 12828

The Supervisor stated that the public would be able to participate via phone call. He stated that the number is 518-793-6780. The number was also displayed in front of the Supervisor's table for anyone watching. The rules, as adopted at the Organizational Meeting, allows each individual five minutes to comment. They will need to state their name and address for the record. After each person wishing to speak has had their chance to speak, those interested in speaking again will be given time to speak in five-minute increments until everyone has had an opportunity to speak. The Supervisor stated that the engineer for the Town has a power point presentation and that the public will be allowed to speak after the completion.

Resolution #2021-62

A motion was made by Councilmember Hogan, seconded by Councilmember Noonan and carried, to open the public hearing for the Eminent Domain Procedure, per section 202, for Sewer District 1, Extension 5, for the Town of Moreau, in Saratoga County, New York at 7:08 p.m.

Asked if all in favor, the following responses were given:

Councilmember Hogan	Aye
Councilmember Noonan	Aye
Councilmember Donohue	Aye
Councilmember VanTassel	Aye
Supervisor Kusnierz	Aye

Attorney Ryan stated that an affidavit of publication has been submitted by the Post Star Newspaper following the publication of the public hearing notice on December 11, 12, 13, 14 & 15, 2020. In addition, the affected property owners all received, under the eminent domain procedure law, certified letters informing them of the date and time of this public hearing. They were also served personally. Attorney Ryan also corrected the reading of the parcels by the Town Clerk by stating that 1458 Route 9 had a tax map number of 63.3-1-3.13; and 1434 Route 9 had a tax map number of 63.3-1-3.12.

Don Rhodes, Project Manager from Laberge Group, gave a short power point presentation. He explained that there are six properties that the Town hasn't been able to secure easements from and since no viable alternatives exist, eminent domain must be used. He stated that eminent domain is a tool that governments use to secure private property for public purposes in exchange for fair compensation.

Mr. Rhodes first described the purpose of the sewer project by stating it would be for environmental protection. He stated that there was one consent order issued by the Department of Environmental Conservation because of some violations of wastewater discharge. He stated, that although it's been closed, it highlights the need for the project. He went on to say that the soils within the district are well drained, which causes rapid discharge of wastewater into the ground and typically reaches the groundwater without treatment. He stated that it pollutes and follows the groundwater. He stated that economic development and growth are needed, according to the past Comprehensive Plans. The Plans identified the Route 9 Sewer as a critical piece to insight the growth. The sewer infrastructure will create that growth, in creating jobs, increasing sales tax revenue and property tax revenue.

Mr. Rhodes presented the background. Following the public hearing on June 26, 2018, the Town of Moreau Town Board approved the creation of Sewer District 1, Extension 5 based on a map plan produced

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by his office. It was approved with a total project cost not to exceed \$16 million, subject to landowner approval and subject to approval of the State Comptroller. Voter approval was granted on August 27, 2018 and the State Comptroller approved the District creation on April 9, 2019. The Town was able to secure a grant, which will pay for 25% of the project costs. The Town also authorized the use of a lower pressure sewer system to reduce project costs and to minimize right-of-way requirements.

Mr. Rhodes described the current proposal by first displaying a map with the service areas, which include a portion of Route 9 and one parcel off Bluebird Road. The force main will connect to the existing Industrial Park force main, which discharges to the City of Glens Falls.

The low-pressure sewer option was implemented after the map, plan and report was first created. This was selected to minimize costs and right-of-way requirements when compared to gravity piping systems. When the survey came back and they determined where the right-of-way really was along the corridor and with the terrain that occurs along the pipe system, they found out very quickly that it would be costly for right-of-way costs and for restoration costs to do the gravity system, which was originally proposed. As a result, they looked at a different method. Mr. Rhodes showed how the pumps connect to the sewer main. Because they're pumped, they don't have to rely on a line that's constantly sloped downward, which is required in a gravity system. He stated that the pumps will allow you to pump uphill. A conventional gravity system requires a positive flow from the house (typically the basement area) to the street, and then discharge downhill to the discharge point. When you have a flat or gently undulating terrain, like there is on Route 9, it's complicated. As you go along the corridor, you're going deeper and deeper to get gravity flow. As you get further from the discharge point, you get very deep and you end up having to put in a lot of pump stations to lift it up to get to the next gravity section. With the low-pressure system, they were able to minimize the trench depth and eliminate five pump stations, which is a significant cost. The low-pressure system allows for trenchless methods (directional drilling or boring), which will reduce construction cost and minimize surface restoration. He stated that you won't have to cut through driveways, sidewalks or lawns with this method. It also allows them to go under existing utilities such as gas and water.

Right-of-Ways are enhanced by low-pressure sewer. They can minimize what they need for space, since they aren't going as deep. Every depth requires it to be serviced someday. They would need to go deeper and wider with a gravity system. He stated that they'll need an easement for the pump station. They also need sewer service easements for the connections. He explained that those are the individual connections to the Town's sewer main. He stated that there are main easements, which are required to allow construction of sewer main piping along Route 9. He stated that service easements are voluntary and if they don't want to connect to the system, they don't have to give an easement. He stated that the sewer main easements are what's needed as part of the eminent domain process. He stated that the area along Route 9 is very narrow. At some locations the easements are necessary for the piping and in addition you need to have some space on both sides of the pipe to be able to service it in the future, whether it's to tap it or to repair it. The easement covers the installation and the long-term maintenance. The Town needed a total of seventy main easements and to date sixty-four have been obtained. He stated, that because they couldn't secure all seventy, they had to use the eminent domain process as a last resort. Mr. Rhodes stated that they had one gentleman donate a parcel for the pump station at no cost to the Town. He listed the six easements that are still needed: 1558 route 9 – Orkin Exterminating Co.; 1458 Route 9 – Desantis Enterprises; 1606-1608 Route 9 – Frank and Cindy Burt; 1294 Route 9 – Harry & Carol Gutheil; 1535-1541 Route 9 – Niagara Mohawk/National Grid; 2-68 Butler Road – Niagara Mohawk/National Grid. Mr. Rhodes stated that they are working with National Grid for their easements. He stated that they're pretty confident that they'll be able to secure the rights needed to construct. However, since they don't have them at this time, they needed to be included in the process, because it's a statutory requirement.

Mr. Rhodes stated that there are no alternative locations that exist for this project. Room for installation and space on each side of the pipe is needed. NYSDOT requires that the sewer pipe be placed outside the structural zone of the pavement, which means a six-foot deep pipe needs to be six feet away. In addition, there is a water main on the other side of the road, which complicates relocation, since water and sewer piping need to be separated by at least ten feet.

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Mr. Rhodes described each easement needed in detail starting with 1294 Route 9. There is nine feet of right-of-way available. The main needs to be at least eight feet from the pavement (eight feet feet) plus room for maintenance. Constraints on adjacent properties required the main to be placed about twelve feet from the pavement. A sixteen-inch water main is on the opposite side of the road, which prevents relocation.

Next, 1458 Route 9. There is seven feet of right-of-way available. Two mains need to be installed here (low pressure and force main). The mains need to be at least nine feet from the pavement (nine feet deep) plus maintenance space. A sixteen-inch water main is on the opposite side of the road, which prevents relocation.

Next, 1558 Route 9. The sewer main is proposed to be on the right-of-way in this location, which is about eleven feet from the edge of the pavement (eleven foot deep main). A sixteen-inch water main is on the opposite side of the road, which prevents relocation.

Next, 1606-1608 Route 9. There is ten feet of right-of-way available. The main needs to be at least ten feet from the pavement (ten feet deep), plus room for maintenance. A flushing station is also required at this location. A sixteen-inch water main is on the opposite side of the road, which prevents relocation.

Next, 2-68 Butler Road. There is ten feet of right-of-way available. The main needs to be at least ten feet from the pavement (ten feet deep). A sixteen-inch water main is on the opposite side of the road, which prevents relocation.

Next, 1535-1541 Route 9. There is five feet of right-of-way available. The main needs to be at least ten feet from the pavement (ten feet deep) and needs to deflect around utility poles. A sixteen-inch water main is on the opposite side of the road, which prevents relocation.

Mr. Rhodes stated that the next step is to receive oral or written public comment. The Town will prepare determinations and findings. The Town Board will consider adoption and publishing of determinations and findings. Findings and final offers will then be forwarded in a last attempt to purchase easements. Owners will be allowed to accept the payment offer in exchange for the easement, while reserving the right to seek additional compensation through subsequent Court action. Following a thirty-day waiting period for potential grievances, the County Supreme Court will be petitioned for taking by eminent domain.

Mr. Rhodes stated that he hoped to be submitting final plans in the coming weeks, to the NYSDEC, NYSEFC, Saratoga County and NYSDOT for permits and approval to construct. Until easements are secured and approvals are granted, the project can't go out to bid. They're still hoping for a Spring 2021 construction start. Construction is expected to take twenty-four to thirty months to complete. He stated that the time frame will be dependent on the contractor. The pump station, the force main and portions of the low-pressure sewer along Route 9 are expected to be complete and ready to accept flows during 2022. Final completion is expected during 2023.

The Supervisor commented that this has been a long march to the finish line. He stated that the Town couldn't have gotten there without Mr. Rhodes and his staff's assistance, as well as key assistance from Special Counsel, Bill Ryan and the Town Attorney Karla Buettner. The Supervisor stated, that shortly after the public hearing was set, there was some media coverage on the proceeding, which listed the parcels and property owners. He stated that there were three property owners in his office the very next day, willing to sign the easements. He thanked them for their cooperation. He thanked Wallace Supply, Mr. Kloss and Mr. Knoblach for working with the Town. The Supervisor reminded those watching that the call-in number is 793-6780. He also reminded those watching that everyone will have an initial five minutes to participate. The Supervisor opened the meeting to the public and reminded everyone who calls in to state their name and address for the record.

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While awaiting public comment, the Supervisor thanked Lance Hillman from Hillman Brothers, who graciously donated property for the pump station at no cost to the project. He's also willing to provide space for the construction manager's trailer as well.

Mr. Harry Gutheil was the first to speak. The audio was of very poor quality. He stated that he had spoken with the engineer several times about the easements. He stated that he'd learned more tonight from this meeting. He commented that the Town had gone through the SEQRA process and suggested that it would have to be reaffirmed. He commented that he had spoken at a public hearing before the project had been approved. Much of Mr. Gutheil's comments were hard to hear. He did say that he was for having sewer and then spoke about his concern for having a force main project vs. gravity. He suggested that it would be more difficult for the homeowner to hook up. He also suggested that a new map, plan and report would be necessary following the changes from gravity feed to force mains. He also questioned if the answers to the SEQRA would be different following the change. He stated that his vacant property has no water hook-up and his question was inaudible. The Supervisor stated that he had gone past his five minutes and asked if he was close to wrapping up his comments and if not, he would have to call back after others had a chance to speak. Mr. Gutheil understood that he would have to call back, but his comment wasn't clear.

The Supervisor awaited other members of the public to call in. Hearing no others, he advised Mr. Gutheil he could call back in. Mr. Gutheil called back in and stated that he had a concern with future costs for others within the district wishing to hook-up. Councilmember Noonan asked Mr. Gutheil to state his name and address for the record. He stated that he was Harry Gutheil and that he was a property owner of 1294 Route 9. The Court stenographer cut in and stated that she couldn't hear Mr. Gutheil's previous comments and asked that he repeat them. Mr. Gutheil asked, "all the way back to the beginning?". The Court stenographer stated, "yes please". Mr. Gutheil asked the Town Board if they had done anything with the budget. The Supervisor reminded Mr. Gutheil that this was a public comment period and not question and answer. He stated that the hearing was for the public to make comments on the easements, and the process of eminent domain for the easements they haven't secured. Mr. Gutheil stated that he was all done.

The Supervisor invited any other members to make comment on the eminent domain process for the sewer project. He also stated, for those who didn't want to speak publicly, that written comments could be submitted for the record. They should be sent to the Town Clerk for the Town of Moreau.

Being no further comments made, Supervisor Kusnierz thanked all those who viewed and participated in the proceeding.

A motion was made by Councilmember Noonan, seconded by Councilmember Hogan and carried, to close the public hearing at 8:05 p.m.

Asked if all in favor, the following responses were given:

Councilmember Hogan	Aye
Councilmember Noonan	Aye
Councilmember Donohue	Aye
Councilmember VanTassel	Aye
Supervisor Kusnierz	Aye

Respectfully submitted,

Leeann McCabe
Town Clerk