



Sewer Fairness Alliance of Chelmsford

www.sfa-chelmsford.org

Due Process Civil Complaint Press Release

April 13, 2020

The Sewer Fairness Alliance (SFA) of Chelmsford and the Town of Chelmsford have reached a settlement agreement which resolves a civil lawsuit brought against the Town by Chelmsford homeowners and the SFA of Chelmsford. The lawsuit alleged that the Town denied the homeowners basic due process rights after a 2016 decision by the Town to charge the homeowners for the cost of a grinder pump repair which would have been covered by a Town by-law had there been no negligence on the part of the homeowner. A grinder pump is a sewage pump used by over 500 households in Chelmsford.

The Town agreed to maintain residential grinder pumps, which were imposed on homeowners as part of the Town's sewer buildout, in an ordinance by the Town meeting representatives in 2014. But there was no due process provision in that ordinance permitting a homeowner to challenge the Town's determination that the homeowner was negligent in any particular grinder pump failure. In the case that sparked this suit, the homeowners used their generator during a power-outage in order to keep the grinder pump working, but the grinder pump failed. The technician who came to replace the failed grinder pump noted in his on-site report that the pump might have failed due to the power outage itself, or to the generator having been set to 120V, but he wasn't sure which one. Later, the same technician who came when the grinder pump failed, rebuilt the failed grinder pump and determined that it failed due to normal wear and tear and noted this in a second repair report. But this rebuild repair report was not shown to the homeowners. The homeowners protested their innocence explaining that their generator had been set to 240V and had no such capability to be set to 120V. It was designed to only run at 240V, so that it was physically impossible for them to have done what they were being accused of and the technician had not even inspected the generator when he was on site to replace the grinder pump. Furthermore, the Town refused to call the technician forward to explain his report. This did not prevent the Town from insisting that the homeowners misused their generator and fining them. The fine was added to and collected on the homeowners' tax bill. And so the case went to court.

The settlement was reached with the assistance of the federal court through two mediation sessions between the parties in the lawsuit. As a result of the settlement the Town has adopted a Grinder Pump Appeals Policy in which the homeowner will have specified rights in a grinder pump appeals process. Among these is the right to receive all repair reports for the grinder pump in question in advance of the appeal hearing, the right to question at the appeal hearing the grinder pump technician who filed the negligence report, and the right not to be assessed charges until after the conclusion of the appeals process. In addition, the Town will post the new policy on its website and send a copy to all grinder pump homeowners in Chelmsford. A history of this grinder pump failure and the ensuing lawsuit can be found at the Sewer Fairness Alliance of Chelmsford's website www.sfa-chelmsford.org

The SFA attorney, Alan Jay Rom, said the outcome will be that not many cases will need to be challenged in court. There will always be someone who is negligent, but before any fine can be levied, the homeowner will have the opportunity to see both on-site and rebuild grinder pump reports and confront the determination with evidence to the contrary, including confronting the inspector who allegedly found negligence. The homeowners in this case should never have been fined and the Town will now handle future grinder pump negligence cases with a more complete review of the evidence. The important lesson from this case is that people should fight injustice, wherever it rears its ugly head.

David Foley, President, 978-489-5654

Alan Rom, Treasurer

Pat McGahan, Founder and Clerk

Dan Abate

Bob Chevalier

John Byron

