

DW 11-139

THE STATE OF NEW HAMPSHIRE

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July 20, 2011



Debra A. Howland, Executive Director
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: DW 11-139 Lorden Commons Sewer Company, LLC
Petition for Approval of New Franchise Area

Dear Ms. Howland:

On June 13, 2011, Lorden Commons Sewer Company, LLC (LCSC) filed a request for a new sewer franchise in the Town of Londonderry. The franchise would provide sewer service to a proposed housing development known as Lorden Commons, to be constructed by Chinburg Builders, Inc. (Chinburg). The paragraphs that follow are based on information in the filing and in responses provided on June 28, 2011 by LCSC to data requests posed by Staff on June 16, 2011. Those responses are attached.

The development will consist of single family, three bedroom homes. An initial 50 homes will be built in Phase I over a two year period beginning this fall. Initial sewer service is anticipated in spring of 2012. An additional three phases are expected to add 82 homes over an ensuing three to four year time frame. The requested franchise incorporates the overall development and consists of the entirety of Map 16, Lot 38 prior to subdivision into individual house lots.

The sewer system is to be owned and operated by the petitioner, LCSC, of which Chinburg is both the sole member and managing member. The system will collect sewage from the development and deliver it, via gravity and force main, into the City of Manchester sewer system for treatment and disposal under an existing Inter-municipal Agreement between the Town of Londonderry and the City of Manchester for Wastewater Service. The City will bill the Town under the terms of that agreement. The Town in turn will bill LCSC in accordance with the terms of its own Sewer User Charge Ordinance as well as "An Agreement for Sewer Services Related to the Lorden Commons Subdivision" (Agreement). The Agreement was approved by the Londonderry Town Council by Resolution 2011-09 on May 16, 2011. The Agreement and Resolution are both provided in the filing.

While the Agreement references per unit connection, access and user charge fees to be paid to the Town by LCSC (Agreement numbered paragraphs 5 through 7), LCSC will bill its individual customers in the development what are anticipated to be flat monthly rates (Agreement numbered

paragraph 7, response to Staff 1-8 b)) as to be determined in a rate case expected to be filed with the Commission in the near future. Individual customers will not receive a sewer bill from any entity other than LCSC. Prospective customers will be notified of the existence of the private sewer system provided by LCSC and sewage disposal fees payable to LCSC through disclosures in the Purchase & Sale Agreement, the Public Offering Statement, the Declaration of Covenants, Conditions and Restrictions for the subdivision, and in each individual deed (see Agreement numbered paragraphs 4 and 19 and response to Staff 1-9 d)).

Chinburg has extensive development, construction and property management experience in New Hampshire and Maine. See response to Staff 1-6. In addition, LCSC will obtain assistance and expertise to carry out its ownership and operational responsibilities in relation to the sewer system from third parties including:

- a) Jones & Beach Engineers, Inc. for design and engineering services.
- b) Scherbon Consolidated, Inc. for construction of a sewer pump station and operation and maintenance of the overall sewer system, including emergency response. Scherbon has extensive experience building and maintaining sewer pump stations and systems in the northeast, and maintains all of the Town's municipal pump stations.
- c) St. Cyr & Associates for management and administrative services including accounting and financial services, customer billing and relations and oversight of the above O&M contract.
- d) Attorney Anne Crotty, who has experience in development, administrative and corporate law, for legal expertise.

There are no other sewer entities in the area capable of providing service. Other options such as onsite treatment were considered but determined not to be feasible. The NH Department of Environmental Services (NHDES) has approved the proposed service through issuance of a Wastewater Connection Permit on May 3, 2011, as provided in the filing. LCSC will be granted the requisite easements for installation, maintenance and repair of the various sewer facilities. Drinking water in the development will be provided by individual wells.

Staff has reviewed the filing and other information provided by the petitioner and recommends approval of the franchise request. As the franchise concerns a future development with no existing customers, and the Town of Londonderry and NHDES have indicated their support of the proposal, Staff recommends issuance of a Nisi order in this case.

If there are any questions regarding these matters, please let me know.

Sincerely,



Douglas W. Brogan
Utility Engineer

Attachment
cc: Service List

Lorden Commons Sewer Company, LLC
DW 11-139
Company Responses to Staff Data Requests – Set 1

Staff 1-1

Witness: Dave Lauze

Attachments B (map) and D (DES permit) reference a Phase I of construction. In this regard please indicate:

- a) Number of units in phase I.
- b) Anticipated time frames for:
 - i. Commencement of Phase I construction.
 - ii. Service to first customer.
 - iii. Phase I completion.
- c) Number of units and anticipated time frames for any subsequent phases.

Response:

- a) 50
- b) 1. Fall 2011
- 2. Spring 2012
- 3. Fall 2013
- c) 82 units in three phases over 3 – 4 year

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-2

Witness: Dave Lauze

Please indicate the type of dwellings to be built (single family, low income, 55+, etc.)

Response: The units will be single family homes with 3 bedrooms.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-3

Witness: Dave Lauze

Please describe in detail the relationship between Chinburg Builders, Inc. and Lorden Commons Sewer Company (LCSC).

Response: Chinburg Builders, Inc. is the sole member and managing member of LCSC.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-4

Witness: Dave Lauze

Lorden Commons Sewer Company, LLC does not appear to be registered with the NH Secretary of State. Please explain.

Response: The necessary formation documents will be filed with the NH Secretary of State on June 27, 2011.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-5

Witness: Dave Lauze

Petition paragraph 5 indicates LCSC possesses the necessary managerial, legal, technical and financial expertise for the proposed venture.

a) Please provide information on the company's background, experience, principals and other staffing, agreements with third parties, etc. in support of this statement.

b) Please include comments on the company's capabilities in regard to sewer system construction, financing, operation and maintenance, customer relations and billing, emergency response capability, etc.

Response:

- a) Chinburg Builders, Inc. ("CBI") is a fully integrated development and construction company with over 20 years of experience in N. H. and Me. CBI offers general contracting and construction management, renovation and restoration, commercial and residential rentals, and property management. It has built over 50 to 60 homes per year. Eric Chinburg is the founder and president. Dave Lauze is the project manager. CBI has 28 employees from which LCSC can call on if needed.

CBI and LCSC are working with Jones & Beach Engineers, Inc. ("JBE") on this project. For more than 30 years, J&B has provided a multitude of engineering, surveying and construction services to industrial, municipal, commercial and residential clients throughout N. H., Ma. and Me. Jonathan S. Ring, P. E., President, is responsible for the design and engineering of the sewer system.

CBI and LCSC are working with Attorney Anne Crotty. She has extensive experience in development, administrative and corporate law.

CBI and LCSC have engaged Scherbon Consolidated, Inc. (Scherbon") to construct the pump station. Scherbon will also be responsible for the operation and maintenance of the sewer system. Also, see response to 1-6.

CBI and LCSC have engaged St. Cyr & Associates (“St. Cyr”) to provide management and administrative services. St. Cyr provides accounting, tax, management and regulatory services to utilities, primarily water and sewer companies regulated by the PUC. They will be responsible for billing and receivables, customer accounting and relations, bookkeeping and accounting, financial and tax reporting including the PUC Annual Report and the tax returns, oversight of the O&M contract and other administrative matters.

- b) Scherbon will construct the pump station and will be responsible for the operation and maintenance of the sewer system including addressing any emergencies. Also, see response to 1-6.

The project is not yet financed. LCSC anticipates a combination of bank and equity financing.

St. Cyr is responsible for billing and customer relations. See above.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-6

Witness: Dave Lauze

Petition paragraph 6 indicates Scherbon Consolidated, Inc. will operate the system. In this regard please provide information on:

- a) What Scherbon's specific responsibilities will be, including a copy of any contract(s) setting forth these responsibilities;
- b) Scherbon's background, experience, staffing, agreements and other qualifications in this regard; and
- c) How Scherbon Consolidated, Inc.'s operation of the system is consistent with the "Whereas" paragraph contained in the Agreement for Sewer Services Related to the Lorden Commons Subdivision which states that "CBI proposes to provide private sewage disposal services."

Response:

- a) Scherbon will construct the sewer pump station, and will be responsible for the operation and maintenance of the sewer system. Scherbon will also responsible to address any emergency that may occur. One copy of their contract is being delivered to Mr. Naylor under a separate cover letter.
- b) Scherbon has been building and maintaining sewer pump stations and systems for over 30 years throughout the northeast. Scott W. Scherbon, Sr. is the President of the company. The 14 employees routinely inspect and repair systems on regular maintenance schedules and deal with emergency repairs measures as needed 24 hours a day, 7 days a week. For six (6) years, Scherbon has maintained all municipal pump stations in the Town of Londonderry, NH, and they are well-familiar with the local and state requirements.
- c) Scherbon is under contract with LCSC to perform all work as listed above, and as shown in their contract.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-7

Witness: Dave Lauze

Were alternatives to the proposal as outlined in the filing, such as those below or any others, considered? Please explain and provide details.

- a) Extension of town sewer into the development.
- b) On-site treatment.
- c) Transfer of ownership of a private system to a homeowners association.

Response:

- a) The Town of Londonderry refused to extend its sewer system to the development.
- b) It was not feasible to provide on-site treatment given the size of the lots.
- c) It is possible that ownership of the sewer system could be transferred to the homeowners association at a later time.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-8

Witness: Dave Lauze

Regarding rates, please indicate:

- a) When an initial rate and tariff filing might be anticipated.
- b) What rate structure is anticipated (flat rate, rate based on water consumption, etc.).
- c) What the company anticipates a typical customer bill might be at this point in time.
- d) Whether customers will receive a sewer bill from any entity other than LCSC.

Response:

- a) The Company needs more time to compile the costs, to determine what costs will be paid for by the builder and what costs will be paid for by the Company, and to calculate an initial rate. The Company would hope to make an initial rate and tariff filing in a month or two.
- b) The rate structure will be flat.
- c) See response to a) above.
- d) Customers will not receive a sewer bill from any other entity.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-9

Witness: Dave Lauze

Regarding the numbered paragraphs (1 through 21) in the “Agreement for Sewer Services Related to the Lorden Commons Subdivision” (Agreement) in Attachment C:

- a) Please provide the “terms and conditions as set forth in the Intermunicipal Sewer Agreement between Manchester and Londonderry” (paragraph 1).
- b) Please indicate the basis of the connection and access fees identified in paragraphs 5 and 6.
- c) Please provide a copy of the “Sewer User Charge Ordinance, Rate Schedule” referenced in paragraph 8, as well as the “Town Sewer User Ordinance” referenced in the WHEREAS paragraph at the top of page 2 of the Agreement.
- d) Notice to prospective customers is addressed in paragraphs 4 and 19. Please amplify on how the company will ensure prospective customers are made aware before purchase of the existence of a private sewer entity.
- e) Please indicate the status of the homeowners association referenced in paragraph 19, and provide copies of any ByLaws or other documents that currently exist.

Response:

- a) One copy of the Intermunicipal Sewer Agreement between Manchester and Londonderry will be delivered to Mr. Naylor.
- b) The Company does not know the basis of these fees. The fees are required by the Town of Londonderry.
- c) One copy of the Sewer User Charge Ordinance, Rate Schedule and Town Sewer User Ordinance will be delivered to Mr. Naylor.
- d) The developer will notify prospective customers of lots or new homes of the existence of a private sewer entity by disclosing it in the Purchase & Sale Agreement, the Public Offering Statement required to be given each prospective customer by R.S.A. 356-A, and the Declaration of Covenants, Conditions and Restrictions forming the Homeowners Association and Bylaws.
- e) The Declaration of Covenants, Conditions and Restriction and Bylaws have been drafted and approved by the Town of Londonderry. Paragraph 25 of the Declaration addresses the fact that the subdivision is served by a private sewer entity. One copy of the Covenant and Bylaws will be delivered to Mr. Naylor.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-10

Witness: Dave Lauze

Who will provide water service to the development?

Response: Each lot will have its own drilled well.

Lorden Commons Sewer Company, LLC

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Company Responses to Staff Data Requests – Set 1

Staff 1-11

Witness: Dave Lauze

Please state who will own the sewer system assets at the time the system starts providing service?

Response: Lorden Commons Sewer Company, LLC.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-12

Witness: Dave Lauze

If Lorden Commons Sewer Company, LLC will not own the sewer system assets, please state how the sewer system assets will be accounted for.

Response: See response to 1-11.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-13

Witness: Dave Lauze

If Lorden Commons Sewer Company, LLC, Chinburg Builders, Inc., or Scherbon Consolidated, Inc. will not own the sewer system assets, please state how Lorden will secure rights of access to maintain and repair the system assets.

Response: See response to 1-11.

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Company Responses to Staff Data Requests – Set 1

Staff 1-14

Witness: Dave Lauze

Please provide a copy of any deeds showing the ownership of the sewer system assets and land associated with those assets.

Response: One copy of the Easement Deed granting LCSC an easement for the installation, repair and maintenance of the sewer lines and equipment will be delivered to Mr. Naylor.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-15

Witness: Dave Lauze

Please specify the town tax map and lot references for the land that is proposed to be included in this franchise request.

Response: The land that is proposed to be included in this franchise request is identified on town tax map number 16, lot number 38.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-16

Witness: Dave Lauze

Is the franchise sought identified in the filing on Drawing B by the bold-typed dashed line?

Response: Yes.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-17

Witness: Dave Lauze

Will Lorden Commons Sewer Company, LLC, Chinburg Builders, Inc., or Scherbon Consolidated, Inc. treat any of the sewage from the Lorden Commons Subdivision?

Response: No.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-18

Witness: Dave Lauze

The “Agreement for Sewer Services Related to the Lorden Commons Subdivision” states that Chinburg Builders, Inc. “shall petition, and obtain approval, for granting a private sewer utility in the Town of Londonderry from the New Hampshire Public Utilities Commission (NHPUC) to operate and maintain a sewer utility...”

- a) Please explain why Chinburg Builders, Inc. is not a petitioner.
- b) Please explain on what authority Lorden Commons Sewer Company, LLC has filed the petition?
- b) Has this document been executed? If so, please provide a copy.
- c) If this document has not been executed, please state when it will be executed.
- d) Are the terms of this document anticipated to change in the next six months?

Response:

- a) Chinburg Builders, Inc. (“CBI”) is the sole member and managing member of Lorden Commons Sewer Company, LLC (“LCSC”). The Agreement indicates that CBI and LCSC proposes to provide the necessary sewerage disposal facilities and services. The specific provision probably should have included LCSC.
- b) LCSC is the legal entity providing sewer service to Lorden Commons Subdivision.
- c) Yes. The Chairman of the Town Council signed Resolution 2011-09 approving the Agreement.
- d) See response to 1-18c.
- e) No.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-19

Witness: Dave Lauze

If Lorden Commons Sewer Company, LLC is not the correct petitioner, please file a revised petition containing the correct petitioners.

Response: See response to 1-18.

Lorden Commons Sewer Company, LLC
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Company Responses to Staff Data Requests – Set 1

Staff 1-20

Witness: Dave Lauze

Please state how prospective customers will be informed of who provides sewer service in Lorden Commons Subdivision and of the rates to be charged.

Response: See response to 1-9d for how prospective customers will be informed of who provides sewer service in Lorden Commons Subdivision.