



**Meeting:** Village Board  
**Meeting Date:** 2/11/13  
**Agenda Item:** 5a

**Mission Statement**

Delivering quality services in a courteous, cost-effective and efficient manner.

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## VILLAGE BOARD MEETING STAFF REPORT

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**REPORT TO:** Burt R. McIntyre, President  
Village Board of Trustees

**REPORT FROM:** Paul Evert, Village Administrator

**AGENDA ITEM:** Review and discuss the Public Fire Protection fee to non-water customers

**ACTION REQUESTED:**  Ordinance  Resolution  Motion  Receive/File

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### **BACKGROUND INFORMATION**

As part of the 2013 budget process, the Village Board made two decisions regarding the Public Fire Protection Fee. First, \$87,000 of the \$397,000 paid for Public Fire Protection (PFP) in the general fund was shifted to the water utility. The result is that of the total of \$825,000 allotted to the utility annually for Public Fire Protection, \$525,000 is directly billed to property owners and \$310,000 is paid out of the general fund.

The board also determined that all parcels in the Village would be subject to the fee, not just water utility customers as had been the case all previous years the Village had imposed the fee. Village staff sent a letter to the owners of the parcels that are now subject to the fee for the first time in early January. At the Village Board meeting on January 14, three property owners subject to the fee for the first time indicated they felt the fee was unfair because some of the parcels being charged had no improvements on them, the fee does not take into consideration the size of the parcel, and – in one instance – a parcel was being charged the fee even though the parcel was in wetland. Staff was asked to provide additional information regarding the questions raised.

1. **How was the fee determined?** The Wisconsin Public Service Commission (PSC) sets the fee based on the size of the meter serving the property, and in the case of a property with no public water service, the fee charged is the same as the fee charged to the smallest meter size in the community. For example single-family homes have either a 5/8-inch meter or a 3/4-inch meter and are assessed a monthly fee of \$4.86.

Other examples are:

- a. Walgreens: 1-inch meter, monthly fee \$12.00
- b. Alive and Kickin' Pizza: 2-inch meter, monthly fee \$39.00
- c. Omnova: 8-inch meter, monthly fee \$389.00
- d. Canterbury Creek Apartments: 10-inch meter, monthly fee \$583.00

A public hearing was held by the PSC before the rates were implemented.

2. **If a municipality chooses to apply direct charges to noncustomers, do the charges have to apply to all land – improved or unimproved – located in the municipality?**

Staff sent this question directly to Public Service Engineer Steve Kemna of the Public Service Commission. His entire e-mail response is as follows:

“First, let me say that the authority to charge PFP to non-water customers is found in Wis. Stat. 196.03(3)(b)(2), highlighted below.

196.03(3)(b)

Unless the governing body of a city, village or town adopts a resolution providing that the city, village or town will pay the retail charges for the production, storage, transmission, sale and delivery or furnishing of water for public fire protection purposes that are not included in general service charges:

1. A public utility shall include the charges in the water utility bill of each customer of the public utility in the city, village or town.

2. A municipal utility may, in addition to including the charges in water utility bills under subd. 1., bill the charges to any person who meets all of the following conditions:

a. The person is not a customer of the municipal utility.

b. The person owns land that is located in the city, village or town and in an area in which the municipal utility has an obligation to provide water for public fire protection.

As you can see, the statute simply states that the key criteria for charging non-water customers, is that 1. the land is located in the Village of Howard, and 2. that the land is located within an area that the Village has an obligation to provide water for fire protection. It would have been helpful if the author would have been more specific (e.g. not including farm fields, not including wetlands, not including undeveloped subdivisions, only parcels with structures, only parcels adjacent to a water main, only parcels within 500 feet of a fire hydrant, etc.). Unfortunately, the PSC is left to interpret this statute as best we can. When making this interpretation, the PSC must make sure that any municipality that chooses to bill PFP to non-water customers must do so in a way that is non-discriminatory. The PSC must also make sure that all 584 water utilities that we regulate enforce this statute the same way.

PSC staff understands this to mean that if the municipality chooses to apply direct charges to non-customers, it must apply charges to all land, improved or unimproved, located within the municipality.

There are only two exceptions:

1. This rate is not applicable to land declared by the municipality as “unbuildable”.

“Unbuildable” is left up to the Village’s discretion. Examples include parcels that are too small to build on, roadway medians or right-of-way, and public bike paths.

2. Wisconsin Stat. § 196.03(3)(b)2 does not apply to property owned by the state. The exclusive mechanism for recovery of charges for PFP from the state is through Wis. Stat. § 70.119 (utilities used to bill the state including WDNR wetlands, but then the WDNR lawyers overruled our lawyers and made us change our interpretation).

Here are some specific answers to your customer’s questions:

1) **Property owners specifically asked why they have to pay the fee for multiple parcels owned by the same person (an example was a local farmer that owns 6 parcels of approximately 40 acres each).**

If the parcels are contiguous, then the owner may replat them into one parcel and pay one PFP charge. Otherwise, why would you charge only one PFP charge for multiple parcels? I don’t see the logic in this argument. For example, it does not make any sense that if I own twenty-five building lots then I should pay the same PFP rate as someone who owns one building lot? Or if I own ten rental homes with their own wells, then I

should pay the same PFP rate as someone who owns one rental home on its own well? The PFP bill should be tied to the parcel regardless of who owns it (including parks, schools, parking lots, etc).

- 2) **We also had questions from property owners that owned multiple parcels in wetlands wondering why they have to pay the fee on each parcel and why would they have to pay on parcels in wetlands.**

If the Village determines that a parcel is “unbuildable” then you can eliminate the PFP charge. It is up to you whether you want to include a wetland into that category. Just make sure that you apply the exemption consistently.

- 3) **The wetland owners also stated that their tax bills are far less than the new fire protection fee.**

Property tax value is assessed differently than the PFP charge using the equivalent meters method. Each PFP method has its strengths and weaknesses. If the Village wants to use the “property values method” to compute the PFP charge then that method is available as well.

- 4) **Why does the fee include all parcels and none are exempt from the fee?**

As discussed in above, the Village can exempt “unbuildable” lots.”

Village staff did make an attempt to determine how many parcels in the Village are shown on DNR Wetland Maps to be completely contained in a wetland. Our best estimate is that there are 186 such parcels completely contained within a wetland, and as many as 100 other parcels that are 90% wetland.

#### **ATTACHED INFORMATION**

- I. Rate file of monthly public fire protection service charges
- II. Map of wetland parcels

Attachment I

**RATE FILE**

Sheet No. 1 of 1

Schedule No. F-1

**Public Service Commission of Wisconsin**

Amendment No. 24

**Village of Howard Water and Sewer Department**

**Public Fire Protection Service**

Public fire protection service includes the use of hydrants for fire protection service only and such quantities of water as may be demanded for the purpose of extinguishing fires within the service area. This service shall also include water used for testing equipment and training personnel. For all other purposes, the metered or other rates set forth, or as may be filed with the Public Service Commission, shall apply.

Municipal Charge:

The annual charge for public fire protection service to the Village of Howard shall be \$310,000. The utility may bill for this amount in equal monthly installments.

Direct Charges:

Under Wis. Stat. § 196.03(3)(b), the municipality has chosen to have the utility bill the retail general service customers for public fire protection service.

Monthly Public Fire Protection Service Charges:

5/8 -inch meter - \$	4.86	3 -inch meter - \$	73.00
3/4 -inch meter - \$	4.86	4 -inch meter - \$	121.00
1 -inch meter - \$	12.00	6 -inch meter - \$	243.00
1 1/4 -inch meter - \$	18.00	8 -inch meter - \$	389.00
1 1/2 -inch meter - \$	24.00	10 -inch meter - \$	583.00
2 -inch meter - \$	39.00	12 -inch meter - \$	777.00

Customers who are provided service under Schedules Mg-1, Ug-1, or Sg-1 shall be subject to the charges in this schedule according to the size of their primary meter.

Under Wis. Stats. §196.03(3)(b), the Village of Howard has elected to make the charges in this schedule applicable to non-general service customers who own property that is located both within the municipal limits and in an area where the utility has an obligation to provide water for public fire protection. Each parcel shall be billed at the 5/8-inch meter rate under this schedule.

Billing: Same as Schedule Mg-1.

