

DENNIS WATER DISTRICT

Board of Water Commissioners

Minutes of Meeting held

May 25, 2023

A meeting, having been duly posted, was held this date at the Stone Hearing Room, Dennis Town Hall, 685 Route 134, South Dennis and called to order by Paul F. Prue, Chair, at approximately 10:00 AM. Water Commissioners Peter L. McDowell and Robert M. Perry were present. Also present were David Larkowski, Superintendent.

The Pledge of Allegiance was recited.

Public Information

The Chair called for a moment of silence in remembrance of Edward A. Crowell. Mr. Crowell had served as an elected water commissioner for many years. The Board members and the Superintendent shared their reflections on Mr. Crowell's contributions to the Dennis Water District, Town of Dennis and the community.

Discuss and Consider: Clerk Treasurer or staff shall insert into a next forthcoming meeting agenda any subject matter requested by an elected Water District Commissioner, provided such request is made by "email" or by document delivered to the DWD office at least 2 hours prior to the 24 hour "Open Meeting Law notice deadline of the meeting requested. (Requested by Water Commissioner McDowell)

Mr. McDowell moved that we vote that Clerk Treasurer or staff shall insert into a next forthcoming meeting agenda any subject matter requested by an elected Water Commissioner, provided that such request is made by "email" or by document delivered to the DWD office at least 2 hours prior to the 24 hour Open Meeting Law notice deadline of the meeting requested. Chair Prue seconded. Mr. McDowell said he had spoken with the Clerk Treasurer about this and she outlined certain reasons why he couldn't do that. He said this will allow any commissioner to have any item placed on the agenda and they authority to do so. He said that at most meetings we listen to the Clerk/Treasurer and Superintendent, and we just sit and listen. He said his role as water commissioner is diminished and just doesn't exist and especially things have not been handled well in regards to the roles we commissioners have. He said we just have not had a role in the agendas.

Mr. Perry said he had a difference of opinion. He said he agreed with the concept in that the Board should, and does, have the ability to add items to the agenda. He noted that it was already a part of the Board's policy on Uniform Flow of Communications that was adopted about eight years ago. He said the motion proposed turns it into more of an unregulated process. He said that there are regulations that keep public meetings from becoming chaotic and that is Chapter 30A, Section 20 along with CMR 940 29.03 [Code of Massachusetts Regulations]. The regulations say that the agenda items are filtered through the Chairman. He said that in his opinion agenda items should not be submitted to the Clerk/Treasurer with only two hours before the public notice is required. Instead, it should be prepared and submitted to the Chairman so that they can be worded and be clear. He said agenda items should be the subject matter and stay away from hyperbole.

Mr. McDowell said the sole role of the Chair is to conduct the meeting that has been called. He said despite what other counsel may have shared; the Chair only conducts the meeting. He said there was an attempt by a staff person telling him he could not put certain items on a meeting. He said it had been

suggested to him last month that there was a certain law, the same thing Mr. Perry had described, and that it is false. He asked for a copy of the law and it never came up because it does not exist. He said he did not save the Attorney General's response because it was just dreamed up at the time.

Mr. Perry said he agreed but the one thing we are running rampant over is how any agenda item, coming from any commission, gets on the agenda, and it is not appropriate in his view and according to Chapter 30A, to flood the Clerk/Treasurer with an agenda item and it must, for order purposes, go through the Chairman.

Mr. McDowell said that the three commissioners have the control over the policies of the District. He said that we haven't really been doing our job. He said two-thirds of the commissioners can set policy, but if none of us have the authority to insert a subject matter into a meeting you'll never be able to control the meeting that you are supposed to. Mr. McDowell cited the Town of Dennis Select Board's process.

Mr. Larkowski shared that when Mr. McDowell came into the office about a month ago and wanted something on the agenda, Ms. McMahon did not refuse to put it on, but tried to tell Mr. McDowell that it was up to the Chairman. He relayed that Ms. McMahon had asked the Attorney General, via an email that was shared with the Board members, in which the response was that it is up to the Chairman of the Board that sets the agenda. He said the Board has a policy and in that policy, it says that Board members may timely add agenda items. Mr. Larkowski said that the business items are added by himself and Ms. McMahon. He said he could not remember an instance when the Chair has not allowed an item.

Mr. McDowell said that Mr. Larkowski was wrong. He said Attorney General does not make law, he is the enforcer of law. He said whatever the material was, and he knew what it said, but the Attorney General in law unless he is enforcing something created by the legislature. He said there is no such law that gives the Chairman of a meeting authority over what an elected public body and cannot forbid a subject matter being introduced as a scope of discussion at a public meeting. He said what the Clerk/Treasurer sent to the us is not valid.

Mr. Perry said that Mr. McDowell is asking for the law and that is Chapter 30A, Section 20 and CMR 940 29.03 which makes it very clear that the Chairman has control of the meeting, and what he wanted to make clear is, that for an orderly process there is a hierarchy in that the Chairman receives agenda items and suggested that he and Mr. McDowell submit agenda items for consideration. Mr. McDowell said that it is correct that the Chairman controls the meeting but in no way does he have absolute control over the agenda. Mr. Perry said that the Board's current policy already allows for the timely submission of agenda items.

Mr. McDowell said that the Board sets policy and that begins with putting items on the agenda and that no one has the authority not to allow that so long as it is consistent with Massachusetts law. He said what Mr. Perry has been talking about is not Massachusetts law.

Chairman Prue said that he wanted more information and that Ms. McMahon being the Clerk, that she and Mr. Larkowski are certain that what they are saying is right.

Mr. Larkowski suggested that the Board obtain an opinion from our attorney. He believed that the issue is not that Mr. McDowell's agenda item was not on the agenda, but rather he was being told that the Chairman has powers that he does not agree with.

Mr. Perry moved to table Mr. McDowell's agenda item number three until we perhaps get a legal opinion from our counsel. Chair Prue seconded. Mr. McDowell said that the question that wants to go to counsel is do individual members, is there in interpretation of providing the law the response to his question, can elected policy maker of a municipality, in our case is the commissioner, can we request an agenda item to be placed on to it, period? There was considerable cross talking. Mr. McDowell added 'that the chairman cannot interfere with that.' Mr. Perry stated that it is important that you put that in there. Mr. McDowell said he wanted to see the question before it went to counsel. Mr. Perry said that we are going to have to transcribe this meeting at some point and get that question conveyed accurately.

Mr. Perry restated his motion to table this pending further information. Chair Prue seconded. The Board UNANIMOUSLY VOTED in favor of the motion as most recently stated.

Discussion of the potential adverse effects the huge Town of Dennis Wastewater project requiring most existing Dennis toilets to be disconnected from existing onsite individual septic systems formally constructed according to Mass. DEP regulations and, now to be connected to a pipe out in the street to be piped to a single wastewater treatment facility constructed in our "very sensitive" Swan River Natural Resource Area where a wastewater treatment facility is planned. (Requested by Water Commissioner McDowell)

Mr. McDowell read from prepared statements. He said that the Board of Water Commissioners should step up and question that he has heard no one in the Town of Dennis question this multi-billion-dollar wastewater project. He described a collection system, and that the treatment facility is going to be built inside the Swan River Natural Resource. To his knowledge, no detailed information has been released regarding adverse wastewater materials, pollutants, etc. is to be removed and then releasing the billions of gallons of remaining effluent to be dumped into five specific underground locations forever. Right now, we have 22 wells taking out a billion of gallons of drinking water every year. He said questions are not enough and asked about irrevocable guarantees. Number one, no dumping of this anywhere in the Town of Dennis. Number two, do everything we can to convince the Town of Dennis voters to vote 'no' on any further Dennis wastewater expenditures. He said this could alter the natural flowage of water. He read an announcement that the Environmental Protection Agency is proposing new regulations to limit PFAS (forever chemicals) to no more than 4 parts per trillion (ppt) for drinking water suppliers. He asked if we have any concerns about the quality of our drinking water as he said he did and was hopeful his fellow board members did as well.

Chair Prue asked Mr. Larkowski to provide an update on item seven of the agenda (Update on Callahan Consulting's Review of Town of Dennis Site #2 Wastewater Discharge Report)****

Mr. Larkowski identified Site #2 as being located on Bob Crowell Road and just outside the zone of contribution. There were questions and concerns regarding the Town's report and the District brought onboard a consultant. Two members of the Board agreed to hire the consultant, one did not. The Superintendent, Maura Callahan (consultant), the Town Engineer, a member of the Wastewater Implementation Committee and a member of CDMSmith to go over the District's concerns with the report. He and Ms. Callahan have submitted a letter to DEP (Department of Environmental Protection) expressing concerns about that report and to be on record. He said that during and after the meeting his sense was that everyone including CDMSmith, that discharging effluent will pose a risk to the water quality at the Main Station wells. It was also made clear that the District was not agreeing to limiting pumping to levels below authorized permit withdrawal rates in order to accommodate discharged wastewater as assumed in the report. Mr. Larkowski further explained the District's position and wanted the scenarios to be run at the maximum allowed pumping rate. It was agreed that an addendum

will be made to the Site #2 Report and that they would provide more documentation on the groundwater modeling and running more scenarios, sensitivity analysis, additional calibration statistics and a discussion on the models limitations and uncertainties. A copy of the addendum will be filed with DEP to be included with the original report. DEP has not yet begun to review the Site #2 Report. The work is proposed to include new scenarios run at maximum pumping rates simultaneously with maximum discharge rates. The wastewater treatment is for standard treatment which is mostly for the removal of nitrogen and does not comport with drinking water standards. The concern is dropping that much effluent that is the equivalent of about 3,000 homes that close to the recharge for our wells. He said the District relayed concerns about how the Town was going to monitor the discharge for PFAS, forever chemicals and contaminants of emerging concern. The monitoring program should also include installing monitoring wells. He said that the District will be getting a copy of the addendum for our review. He said it is likely we will have the same issues with Sites 3, 4 and 5, but Site 2 is the only one we have in front of us now. If the Town does build a wastewater system, it will very likely involve the District and they will be coming to us looking for cooperation and that all of our concerns, which have always been there, is that we need assurance that we will not see contamination.

Mr. McDowell said he had not supported this for a lot of reasons. He said he meant no disrespect to the firm that was hired but they are only looking at one discharge area and we have to look at the entire project. His view is that if we can't get assurances right now, we should get the people of Dennis to stop spending the money on the developing and planning the wastewater facility now. He suggested that the Town look to discharging into the ocean because other towns have done it.

Chair Prue said he agreed with a lot of what Mr. McDowell said, but that is why we have hired the consult so we can have answers. Mr. McDowell said what has been done so far is worthless. Mr. Perry said he supported hiring Callahan Consultants and noted that it is just the beginning. He said we are apparently stuck with what has been done so far without the involvement of the water commissioners over the last ten years. He said it would be better if these discharges were significantly down gradient of our Zone IIs. He said he supports Mr. McDowell's concerns 120%, but we can't just sit here and say to the Town Meeting let's not vote for the sewer because then there is the DEP mandate to deal with the estuary management plans and that those contaminants of emerging concern are still emanating from all of those properties universally and they can be more centrally treated at a central treatment plant. He said we have a mission to look at these recharge/discharge zones and, right now, that is what we are doing. There was continued discussion. Mr. Larkowski confirmed that Site 1 is not a concern of the District because it is not in a zone of contribution. It was noted that there are no reports for Sites 3, 4 and 5. Comments continued however, they were essentially the same as previous comments rendered.

Mr. Perry noted that we have discussed Mr. Larkowski's update on the Callahan Consulting review, and we have skipped over a number of items, including item 4 which is out of the purview of the District. Mr. McDowell asked if there would be no decision on item 4. Mr. Perry said there was no decision to make that site is well down gradient of our zones of contribution. Continued discussion about effluent discharge ensued. Mr. Larkowski said he was not aware of any known method of testing for PFAS in treated effluent. There were additional comments all very similar to those having been made previously.

Updates:

- a) Old Bass River Tank Painting Project – The Superintendent reported that the project is completed, and the tarps have been removed. There will be some touchups necessary at the touchpoints for the staging. The cell company is relocating back to the tank. He commended the contractor for their quick work.

- b) Flushing Program – currently doing the southside which begins in the south Dennis area in into Dennisport and West Dennis. He was not sure that all of West Dennis would be completed in time.
- c) Household Hazardous Waste Collection Day – June 3, 2023, which is the District’s annually sponsored collection day and there are two others sponsored by the Town. We do our best to move the line along and he asked for people to be patient.

Discuss and Consider Current Ground Water Levels and any Seasonal Outdoor Watering Restriction.

Mr. Larkowski reminded the Board that last year, along with most other Cape towns, we had a mandatory watering restriction. He said despite the low groundwater the District was able to manage it. January had experienced 12 inches of rain and there was some significant rain in the early spring. The groundwater levels are better than they were last year, but still not back to normal. Surrounding towns are not asking for mandatory or voluntary restrictions and he was not recommending any at this time to the Board.

Update on Callahan Consulting’s Review of Town of Dennis Site #2 Wastewater Discharge Report – **This item was taken out of order in the agenda. ******

Request to Close District office/non-essential operations on July 3rd.

Mr. Larkowski asked the Board to consider granting July 3rd as an additional day-off for District staff and closing the office as nice gesture to the employees. He said that it has been granted in the past. He advised that another employee has left so now there are two vacancies. He noted that the staff has been working hard to keep up in spite of the staffing shortage. There was some discussion relative to the recent vacancy. Mr. McDowell asked if there are any additional “bonus” holidays this year and Mr. Larkowski said there are none. On a motion made by Robert M. Perry, and duly seconded, the Board ***UNANIMOUSLY VOTED: to close the district office and non-essential operations on July 3, 2023.***

Minutes: March 30, April 6 and April 20, 2023

On a motion made by Robert M. Perry and duly seconded, the Board ***UNANIMOUSLY VOTED: to defer the minutes.***

On a motion made by Peter L. McDowell and duly seconded, the Board ***UNANIMOUSLY VOTED: to adjourn the meeting at approximately 11:39 AM.***

Respectfully submitted,

Sheryl A McMahon, Clerk