

# DENNIS WATER DISTRICT

## Board of Water Commissioners

Minutes of Meeting held

August 3, 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 10:06 AM. Water Commissioners Peter L. McDowell and Robert M. Perry were present. Also present were David Larkowski, Superintendent and Sheryl A McMahon, Treasurer.

The Pledge of Allegiance was recited.

### Public Information

Mr. Val Peter introduced to himself as the new Wastewater Superintendent for the Town of Dennis. He has spent 39 years in the water and wastewater industries.

Deferred from prior meeting: Discuss and Consider Attorney Chamberlain's Response for Legal Opinion on the following:

- (a) ***Can any member of the Board of Water Commissioners independently submit to the Clerk (or staff) an item for the agenda and have it included without further review or approval by the Chair of the Board? – Statutory references requested.***
- (b) ***“Clerk Treasurer or staff shall insert here and after, any forthcoming meeting agenda any subject matter request from 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 such meeting so requested.” (Peter L. McDowell, Water Commissioner)***

Chairman Prue introduced Attorney (Atty.) Chamberlain. Atty. Chamberlain said it was a simple issue and in summary the Chair controls the agenda. He said any member commissioner can suggest items however, the finalizing of the agenda should be by a gatekeeper who has final say on that. He continued to clarify and say that if a topic or item is being blocked by the Chair, a discussion of that could be done at a meeting and by a vote taken, absent any opinions on the subject matter. The initial gatekeeper is the chair of the board. Mr. McDowell said he has participated in public roles since 1965 and he has never before had he seen anything in state law, since the Open Meeting Law was implemented and he asked Atty. Chamberlain if he was suggesting that there was a law that blocked an elected selectman or water commissioner from blocking the subject matter he wishes to submit? He asked if he was saying that the Chairman can block that. Atty. Chamberlain responded by citing Mass. General Law Chapter 30A, Section 20 followed up and supported by the Code of Massachusetts 940 29.02 Section 1 (b). He read the pertinent part of Section 20 which states how and when public notices are to be posted; *“including the topics the Chair reasonably anticipates will be discussed at the meeting.”* Mr. McDowell said in reading Atty. Chamberlain's response of July 28, your opinion is - in reading the substance of his conclusion, Mr. McDowell read from the opinion ***“based on the documents submitted by Ms. McMahon's correspondence, the following should be addressed”***: and it makes reference to certain regulations and laws, ***“Furthermore, it is my [Atty. Chamberlain's] understanding that it has been the long-time custom and practice that the Chair approve draft agendas prior to each meeting and the distribution and posting.”*** Mr. McDowell asked Attorney Chamberlain how does the agenda get put together before the Chairman

ever gets to see it before the two-day posting requirement? How does that work? Atty. Chamberlain said that topics of general business of the District, assuming you have topics to be continued over multiple meetings, and you have commissioners who might reach out to have items added to the agenda that are subject to the approval of the Chair. Atty. Chamberlain clarified that topics for inclusion on an agenda can be discussed in advance of a meeting, but opinions about those topics cannot.

(9:00) Mr. McDowell suggested that a new regulation be built into the bylaws as he said that in fact, and we will be discussing this later, that the bylaws did not even provide for the current meeting. He said that there is nothing in the bylaws that provides for monthly meetings. He said there is no Mass. law that blocks this and he proceeded to read Agenda Item 3(b). He asked Atty. Chamberlain essentially how that fit with his opinion. Atty. Chamberlain said that the Board was free to adopt a policy or bylaw that would outline how they were going to adopt agenda items, that is their prerogative. He said his opinion was a general outline that is available in state law and regulation. Mr. McDowell said it seemed they were talking about two different things. He said his understanding was that the chairperson conducts the meetings, however, deciding what agenda items we are going to have, we elected people, and there is nothing in the law he was aware of, that interferes with adding the subject, he said we are talking about is the chairman interfering with an agenda item that an elected person wants to have. Atty. Chamberlain said that you can use a lot of words, add phrases, and have run-on sentences, but at the end of the day, it doesn't change. He said that if you submit an item as a proposed agenda item, the chair controls if that actually is added to the agenda or not. If you keep submitting items or you do one time, or multiple items, proposed agenda items that are not included on the agenda, you have the right to bring that topic up at a meeting and discuss it to be added to the next agenda. Perhaps, have a vote of the Board. That is your remedy if you do not like the chair's initial setting of the agenda. Mr. McDowell asked is there any law that interferes with submitting an agenda item for a forthcoming meeting to the Clerk/Treasurer, is there any Mass. law that prevents an elected official, the policy maker from submitting such a thing. Atty. Chamberlain said there was nothing to prevent an agenda item being submitted to the chair. Mr. McDowell said he would be speaking later in the meeting about modifying the bylaws to provide and set regulations for the Board meeting which has not existed since the District was created. However, he said that was a separate issue. Mr. McDowell said his question is, our agendas are set, the agenda is put together after it is printed it is given to the Board. He further said that there is no Mass. law that interferes with the subject matter a Board member wants on a forthcoming agenda. Atty. Chamberlain said he has been talking about prior to the posting of the agenda. He said that within the actual context of the meeting is your remedy to deal with the potential of an item not being added to the agenda. He said the majority of what we are talking about is prior to the posting of the agenda. There was continued discussion back and forth between Mr. McDowell and Atty. Chamberlain.

(17:11) Atty. Chamberlain said that if the state statute says that "a listing of the topics that the chair (and he highlighted – chair) reasonably anticipates what will be discussed at the meeting" so to put it in other words; he was aware of no statute that allows a commissioner or board member at-large to simply add agenda items to the agenda absent no oversight. Otherwise, if that was the case, there would be no limit to items added to the agenda. It was his understanding, and the intent of the statute, and his understanding of local government, that there is a gatekeeper to these committees and if you don't like how the gatekeeper is handling it, pick a new gatekeeper. Mr. McDowell said he was going to ask one final time; where in Mass law that it says that a water commissioner or selectman can be blocked from entering onto an agenda a subject matter they wished to have. Atty. Chamberlain responded by saying you can submit as many agenda items as you wish, but at the end of the day, the chairman has final say on whether those items are allowed on the agenda or not. He said if you don't like the result the remedy is at the meeting.

There was continued discussion regarding the statutes and regulations regarding the chair's authority. Atty. Chamberlain said he would send the actual statute and regulation.

(22:00) Mr. Perry said that he and Mr. McDowell discussed Mass. law and he had offered to provide a

copy of Chapter 30A and the CMR to Mr. McDowell, but he said he already had them. Mr. McDowell denied. Mr. Perry it said it sounds more like Mr. McDowell needs a judgement as opposed to a legal opinion. Atty. Chamberlain said Mr. McDowell will probably not find in the statute the exact words he is asking for, but if you read the statute you can reasonably infer, and with past practice and how other boards and committees are held in town, confirms that. There was continued discussion between Mr. McDowell and Atty. Chamberlain regarding their separate positions on the matter.

(24:00) Chairman Prue said he was ready to take a vote. Mr. Perry believed Atty. Chamberlain had done his research and the CMR and Chapter 30A establishes an orderly process for getting agenda items on. We should not try to change that, except Mr. McDowell wants the Board to vote that we somehow alter the process which could be on a future agenda. A motion was made by Robert M. Perry: **to accept Atty. Chamberlain's determination that agenda items are filtered through the chair.** He also knows from discussion with his fellow commissioners that we have actually postponed meetings because certain commissioners did not have a full week to review agenda items, so to put an agenda item on, as suggested in Item (b), that a commission can place anything he wants on the agenda with only two hours prior to the 24 hour OLM deadline, not only is inconsistent with certain commissioner's wishes and practice that it doesn't give other commissioners time to review those agenda items, so for that reason he coupled his with a further motion **not to support Item 3(b).** Chair Prue seconded the motion. Mr. McDowell said Item (b) is not the issue. Item (a) is what we are talking about and he is asking for a copy of the Mass. law that sites and that the other two were saying they didn't care about the existence of the law. Mr. Perry said he had read it and would provide a copy to Mr. McDowell. Mr. Perry said every law is interpretive. He said if it was not satisfactory to have the District's attorney to spend our resources to come to you with an objective and fair determination based on his reading of the law, then he thought his only remedy is to take it to the Board on a separate matter or take it to court and seek a judgement. There was continued quotations from the statute, which is also restated in the regulations. Atty. Chamberlain once again read from his opinion and will provide copies to Mr. McDowell. Chair Prue called for the vote which was found to be: 2-0-1 (PLM). (29:31)

At approximately 10:36 AM, on a motion made by Peter L. McDowell, and seconded by Robert M. Perry, the Board adjourned to Executive Session **in accordance with M.G.L. Chapter 39, Section 23B; Reason 3) to discuss strategy with Attorney Daniel Chamberlain with respect to litigation as the Chair has declared that an open meeting may have a detrimental effect on the litigating position regarding the expiration of an easement running in favor of MHC Old Chatham LLC, 310 Old Chatham Road and Reason 6) to discuss the purchase, exchange, taking, lease or value of real property at this same location. The Chair then called for the vote which was found as follows:**

**Robert M. Perry "aye"**

**Paul F. Prue "aye"**

**Peter L. McDowell "aye"**

Open session resumed at 11:00 AM.

### **Consider Modifying District Bylaws to Define and Authorize Purposes for the Conduct of Regular Monthly Meetings and Special Meetings of the District." (Peter L. McDowell, Water Commissioner)**

Mr. McDowell distributed copies of the District bylaws. He said that there is nothing in the bylaws that defines or provides for monthly meetings. He suggested that we work on modifying, between now and next April, provide for the standards for the monthly Board meetings. He said for example, a meeting a while ago concerned Ms. McMahon and what she could go out and buy. He referred to a meeting with the Superintendent, Treasurer and Bob Lawton pertaining to what their jobs are. Mr. Perry said that the Acts of 1945 establishes the roles of the commissioners. He felt that what Mr. McDowell was suggesting would be one sentence saying that the commissioners shall meet once per month. He said what is more interesting is that we don't always meet once per month. He did not see a large need to modify the bylaws to cement something that the Board is already

doing, but it is something worth talking about. He said there a lot of workings of the District that need our attention and the format of our meetings is secondary. Mr. McDowell said we should vote to proceed to develop over a period of weeks and months, a section for the bylaws that defines the operation of the Water District. He referenced that the last time the bylaws were changed was in 2009 when the boundaries of the District were made the same as the Town and suddenly the District Clerk was relieved of calling elections. Mr. McDowell suggested that it would be away to establish structure that would become a modification of the bylaws to include the provisions, the authority and the operation and the functionality of what we do now. Ms. McMahon responded to Chair Prue's request by saying that after a preliminary review, she could not find anything in the Town of Dennis Codes that provided any regulation or guidance on how the Select Board calls or conducts their meetings. She advised that the Board has already adopted a policy entitled "Policy on Uniform Flow of Communications." She says she tries to follow it as best she can. It was adopted in 2013 and was most recently revised in 2018. She advised that the first paragraph provides the Board with how meetings are called. Mr. McDowell said he had no idea what it was we were talking about and where would he or a member of the public find it. She said it is not posted on the District's website but could post it if that was what they wanted. She said it has been distributed to the Board members via email and paper copies have been provided many times. Mr. Perry said he has read it and said he hasn't seen the problem in the Board or staff function. Before he could vote to support committing the staff and Board's time to delve into format changes on how this Board should function, that would block us in more than it would allow us the freedom we currently have to operate, we have more important issues related to water quality and economics. He said he would like to table this topic until he had time to go through the policy again and read the Act of 1945. Mr. McDowell asked for this document. Ms. McMahon hand delivered a copy of the policy to Mr. McDowell at the dais. Mr. McDowell asked if there was any source or location of other such information. He further asked if there was a way for the public to view it. Mr. Larkowski concurred that this policy has been distributed multiple times to the Board members. Mr. Perry was going to make a motion to table the Item. Mr. McDowell suggested moving on. Mr. Perry agreed that the Board would just pass over it.

**Deferred from prior meeting: Discuss Town of Dennis Wastewater Collection and Treatment System and Concerns Regarding Treated Effluent Subsurface Discharge. (Peter L. McDowell, Water Commissioner)**

**Update on review of Town of Dennis' Site 2 Hydrogeologic Evaluation Report**

(52:32) There was a consensus to discuss Item 5 and Item 6 (listed above) together. Mr. Larkowski reminded the Board that the District had met with the Town to re-examine the Site #2 report. CDM Smith came back to the Town with a cost estimate that seemed high, so the Town was questioning why. Mr. Larkowski said that they sat down with the Town to clarify what it was the District was asking for which was clarification such as hydraulic connectivity values and the groundwater flow model. Basically, they didn't want CDM Smith to do too much work and over charge the Town. He said they wrote a letter to the Town of Dennis clarifying what the District was looking for including the scenarios and models to run whether the District's pumping will pull the effluent towards our wells. The District had not agreed with the values used in the original report. They asked for simulations that used the District's permitted withdrawal not just the past few years of pumping. He had not heard back yet. Chair Prue asked if the state had issued the withdrawal permit yet. Mr. Larkowski said it had not. Mr. McDowell said there were serious concerns as the Town was moving forward with wastewater. He said that the PFAS limitation is being lowered by Environmental Protection Agency. He was asking about data in regards to the effluent that is going to be discharged in five different sites. He said he has asked David Young a number of times for data about what is going to be removed by the treatment plant. He noted a settled claim against CDM Smith years ago. He said we should get absolute assurances from the authorities involved that this wastewater will not increase the threat to our drinking water. He said we should ask that wastewater be stopped until it can all be sent out into the ocean. Mr. Perry said that Maura Callahan is the District consultant and she is taking action and was impressed with her ability to reduce our concerns down to an efficient program that could be afforded by the Town to take another look at Site 2. He said that Site 2 is the first site actively proposed where the District has concerns and the District is taking action. He said we should be proposing alternatives because across-the-board guarantees don't exist. He said that if the wastewater program is slowed down in this Mid-Cape area, then DEP will be stepping in to control the estuary management plants which will require on-site treatment. It is not as reliable as a centralized treatment. Currently, our wastewater is distributed all over and that perhaps the Town

could look at other sites, like perhaps the former 8-acre Bush property near the old town hall. Mr. McDowell and Mr. Perry had an exchange of opinions regarding the discharge of treated effluent.

**Discuss The Development of a Long-Term Planning Strategy to Identify Future Concerns, Priorities and the Future Financing of Infrastructure Updating And Replacement. (Robert M. Perry, Water Commissioner)**

(1:10) Mr. Perry said that he has had conversations with the Superintendent and the Treasurer regarding the long term concerns as they see them on the front line. They have concerns about where the District is going in the long term. Research shows that buried infrastructure is good for 75 to 100 years, but he has seen for himself that things are beginning to break as he has attended several water main breaks and seen crews working on those breaks. He said that staffing is a concern because long-serving staff can't be expected to spend their lives here. He said we need to explore in detail how the District is going to dovetail with the wastewater installations, and it will bring opportunities for conflict. Perhaps, there may need to be an agreement between the District and the Town on how these conflicts will be resolved before it breaks ground. He said that while how the Board conducts its meetings is important, he felt it was more important to be focused on how the District will continue after current management retires. In regard to infrastructure, which may need to expand, water treatment is at a probability of expanding. Mr. Perry said that Ms. Callahan said that the Commission have a plan of action in case it becomes necessary to treat a well due to PFAS contamination. He noted that the PFAS is already out there without wastewater discharge. There is a need to take a look at upgrading meters and he noted technology infrastructure also needs to be maintained. He felt the Commissioners should be aware of and listening to staff so they can take a pro-active view on how the District might coordinate efforts with the wastewater program; look at what the man-power requirements will be to provide drinking water. He felt this was a long term-topic. Because the Board had been getting into a lot of commission-format at meetings, he felt it was important to get something on the agenda that actually addressed what the District needs to be doing physically to continue to supply drinking water to the inhabitants of Dennis.

Mr. Larkowski said it was a good topic and there are many subtopics to discuss. There are many ideas that are in their heads. He said it all comes down to money and everything they are going to talk about is going to be about money. Over the years we have done a lot of planning and saving cash and using our own people to do many projects. The system is nearly 80 years old and is almost too much for us and we have been short handed for a few years. He said costs have skyrocketed and our budget cannot support it without increasing. It is super expensive to hire contractors which might be necessary at some point. Mr. Larkowski said the District isn't what it used to be and we need IT to keep up with things anymore. The District has three mapping applications so we could use a GIS person. Mr. Perry suggested that future agenda items could address concerns about the system and target our discussions about our own system. He said the customers need to know the basis on why they pay the rates they do.

**Discuss and Consider a Financial Planning and Water Rate Forecasting Model Platform – Waterworth Proposal.**

(1:28) Ms. McMahon referenced material about Waterworth she had distributed to the Board previous to the meeting. In her research for developing a scope of work for a water rate study, she came across Waterworth. She said she and Mr. Larkowski have seen demonstrations and talked with representatives from Waterworth. She was recommending the program as a financial planning and communication tool. It would be a means of keeping financial data current while at the same time being able to see capital costs and rate implications in forecasting scenarios. Ms. McMahon said that rate projections can be made years out at incremental increases and be able to see how much revenue it generates. It allows unlimited amount of users and the Commissioner could have a copy of the base model and project for themselves rate increases as well as superimpose debt schedules, etc. It is \$8,600 per years to subscribe. For the cost, they will upload historical financial data and do yearly updates. Ms. McMahon visited the Yarmouth Water Superintendent and she demonstrated the program to Ms. McMahon. She said she was able to see water rate comparisons she had done with other Cape communities. Ms. McMahon explained that part of the original ask was to do an analysis of the District's service rates that are billed. Although service rate assessments are not part of Waterworth's program, for an additional cost not to exceed \$1,000, Waterworth said they will take the data and compile a recommendation for the District

to review and consider. Mr. Perry said it sounds like a high-end Excel spreadsheets, he said seems it will provide similar services that a rate study would. She explained that she would have to give a rate study the same budget history as she would to Waterworth and the same information regarding capital needs. A rate study will calculate what the rates will need to be say over five to ten years. But, if something happens and the capital needs change the rate study is now obsolete. She confirmed that if it doesn't work out and it is not something the Board wishes to continue using, the subscription would end. Ms. McMahon noted that in the modeling additional tiers and rates can be projected. She said she has a lot of user data. Ms. McMahon said that on a Zoom meeting with Mr. Larkowski they met one of the co-founders of Waterworth and he was able to answer all of their questions as he knows the water industry. On a motion made by Peter L. McDowell, and duly seconded, the Board **UNANIMOUSLY VOTED: to authorize the Treasurer to enter into an agreement with Waterworth for \$8,600 for a forecasting model and an additional \$1,000 for the service rate analysis.**

### **Discuss and Consider a Report on the Condition of Filter Media at District's Iron & Manganese Treatment Plants.**

(1:46) Mr. Larkowski advised that he had just received the report on the condition of the filter media in the plants. The plants are fourteen years old. The media can last anywhere from 20 to 10 years depending on water quality. A quick over view of the report says that generally the anthracite at the plant that the particle size is marginally out of specification. In other words, it is smaller than specification size. Anthracite bed has been reduce in its granular size. There is anthracite and green sand as filter media. He said the anthracite has already been on the lower end of its spec. On the bottom paragraph of the first page states that the anthracite in filter 120 completely out of spec. On page 4, the chart indicates that on filter 120 test result effective size was .39. The specification size should be .70 to .80. So it essentially half the size it should be. Only tested filters at each of the plant not all seven. This report tells us one filter is needs to be completely replaced. He is recommending that we speed up and fully budget for the replacement of the anthracite and green sand at both plants. The cost is estimated at \$1.5 million. There is \$550,000 to \$600,000 currently available. Mr. McDowell asked what other capital costs are anticipated. Mr. Larkowski said land purchases were a big-ticket item. Ms. McMahon reported that the pending bond issue is for \$1.24 million, and the District has outstanding loans with Mass Clean Water for construction of the two treatment plants is probably close to \$4 million. She said she would provide the total outstanding as she couldn't recall it at the moment.

### **Superintendent's Report**

(1:53) The Superintendent reminded the Board of PFAS sampling taken back in 2021, and out of the nine entry points, the south plant, which has six wells running through it, had a positive PFAS result. The PFAS was coming from wells 5 and 16 but the number dropped very low because of dilution. We were well under the 20 parts per trillion (ppt). A sample was taken at the south plant and the PFAS was present at 2 ppt. Nothing is required of the District at this time. However, it brings up further discussion about PFAS and more samples will have to be have to be done in the 1<sup>st</sup> and 3<sup>rd</sup> quarter of 2024. Current regulation is at 20 ppt. He said it makes him nervous about what could happen if the regulation is changed to 4 ppt. He noted that it was mentioned earlier in the meeting about what would we do if we have a hit. He has discussed it with the Kristen Berger, the Districts consultant. There are many different factors with the wells. He gave examples; if they need to have iron removal or if they go through a common distribution point and would have to be pulled out. He said we should include in next year's budget the cost of doing an investigation on what the District would do if we had a hit at any one of the wells. He advised that the Town of Yarmouth has three wells out of service and it has been a lengthy process. Mr. Perry asked about Well 5 and Well 16. Is there somewhere to link the presence of an industrial area that might be causing it. Mr. Larkowski said they are all in residential areas and it is most likely from septic systems. He further advised that when the sampling was done in 2021, the labs showed that there were many more detections, but they were reported as J-values as they were detected in the samples but not reportable as a detection level.

## Treasurer's Report

Ms. McMahon advised that the meter reading is complete but, there had been a lot of issues with the meter reading equipment and there was an issue with Neptune requiring a new file structure for uploading readings to Muni-Link. She said the water bills will be printed and dropped in the mail on or about August 21. She advised that the re-reads are capturing some of the summer usage.

She advised that she and Lynne Welsh of Unibank, the District's financial advisor, had an interview with Standard and Poor's for the bond rating. She said the legal opinion is still pending. Ms. McMahon said the Town's bond rating is AAA and the last District rating was AA+. She expects it to be the same. Ms. McMahon requested the Board to reschedule their regular meeting scheduled for August 24 and meet on Tuesday, August 29 to vote and sign the bond documents. She said she would communicate what the bond rating.

Ms. McMahon recalled for the Board, the cyber security incident that happened when an email account of the District's was hacked. The District had insurance coverage, but the deductible cost \$2,500. She said there are a lot of endpoints in the District's system. Endpoints are used throughout the District to access District programs such as Muni-Link and GIS but with every end point comes risk factors. She noted two-step verification should be implemented. She advised that years ago she could buy at Staples anti-virus software and install it. Today, there are so many cloud-based subscribed services that the District pays for. The proposed cyber security services provided in an outline to the Board is not inexpensive but, there are so many moving parts these days and having already had an incident, she was recommending subscribing to services provided by TechMD. She said they were on the State bid. She said most security violations come via email. She reiterated what Mr. Larkowski said about the District needing an IT person on staff. For her, right now the District needs a cyber security vendor to monitor our system, provide training and to protect the District and the District's data. She said she would place it on the next agenda. The cost to implement from now until next April would require a Reserve Fund transfer of \$24,000. The cost is \$36,000. Being totally honest, she advised that she did not know how to draw up a request for proposals for cyber security service nor would she know how to rank responders.

## Minutes: June 22, 2023

On a motion made by Peter L. McDowell, and duly seconded, the Board ***UNANIMOUSLY VOTED: to approve the minutes of June 22, 2023.***

On a motion made by Peter L. McDowell, and seconded by Robert M. Perry, the Board adjourned to ***Executive Session in accordance with M.G.L. Chapter 39, Section 23B; Reason 6) to consider the purchase, exchange, taking, lease, or value of two parcels of real property as the Chair has declared that an open meeting may have a detrimental effect on the District's bargaining position and not to return to open session. The Chair then called for the vote which was found as follows:***

***Robert M. Perry "aye"***

***Paul F. Prue "aye"***

***Peter L. McDowell "aye"***

*Clerk's Note: The Executive Session was adjourned at 12:54 PM.*

Respectfully submitted,

Sheryl A McMahon, Clerk