

DENNIS WATER DISTRICT

Board of Water Commissioners

Minutes of Meeting

August 29, 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 10:04 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

Zoom Presentation by TechMD on Cyber Security Services. Consider Reserve Fund Transfer of \$24,000.

Ms. McMahon reminded the Board about the email hack about this same time last year. It required the filing of a claim which was paid by Mass. Interlocal Insurance Association less a \$2,500 deductible. (5:31) On the Zoom conference call was Caulin Hanify representing TechMD. The Board had been provided a copy of the presentation in their packets prior to the meeting. Over the years the District has grown to use a lot more technology devices such as tablets and cell phones. Every endpoint, as they are called comes with the risk of fraud, malware and ransomware, etc. She explained that the water billing, accounting and GIS software and data are now in the cloud. Still resident on the District server is the original water main mapping and flushing maps and the old water billing system which is still being used for historical reference. Ms. McMahon noted that TechMD is a respondent with a bid contract available through the State's COMBYS (state bids). Ms. McMahon introduced Mr. Hanify who shared his screen for all to follow along. He said that they offer cyber security to mitigate the type of email fraud that occurred with Microsoft 365. Mr. Hanify went through the presentation and explained the level of services, alignment review, suggestions on best practices and customer service response time. They will provide active technology management with centralized services. He reviewed the various levels of threats that are experienced by companies. He reviewed Integer Core which monitors Microsoft 365 for vulnerabilities. A slide shown depicted the threat landscape that Integer Core addresses 24/7.

Mr. McDowell asked if this was only applicable to Microsoft. Mr. Hanify said it applied to file storage and emails. Mr. McDowell asked if their surveillance of our system is limited to just Microsoft. Mr. Hanify said that they will secure the District's computers and our Microsoft environment. Ms. McMahon said that we still have a server which houses data that is not cloud-based and TechMD will do an assessment of the entire system. They will help us deploy whatever we need to protect our systems and data. She said that other items such as the Superintendent's pumping and chemical records are on the District's server, and they need to be secured.

Mr. Perry was pleased to hear that there would be at least an annual on-site assessment. He noted that it will be a work in progress. Mr. McDowell asked if someone from the company has to come down to the District, is there any additional fees for onsite. Mr. Hanify assured him that there are no additional fees. Ms. McMahon said that cybersecurity for the District has grown to a point where she can no longer manage it. The contract is for \$36,000 annually for support 24/7. She requested that the Board transfer \$24,000 from the Reserve Fund to pay for the services from September until the Annual

Meeting in April. There was discussion about accessibility by TechMD to the District network and individual PCs which Ms. McMahon confirmed.

On a motion made by Robert M. Perry, and duly seconded, the Board ***UNANIMOUSLY VOTED: to do a Reserve Fund transfer of the necessary funds of \$24,000 to engage with TechMD.***

Signing Documents for \$1.24 million Bond Issue.

(33:44) Ms. McMahon advised that she had interviewed with Standard and Poor's (S&P) on the bond rating for the District. She shared that the person interviewing on behalf of S&P had conducted an in-depth interview for approximately 45 minutes. She announced that the District Bond Rating was AA+, which is just one step down from the highest rating of AAA. Ms. McMahon had provided copies of the bid results and documents that the Board would need to sign prior to the meeting and advised that with the receipt of the Premium, the true net interest cost was 3.12% (further decimals were not provided). The premium of just under \$74,000 will be used to pay the issuance costs and some was applied to reduce the par value of the bond. Bond counsel had provided a comprehensive motion that the Board would need to vote to authorize the bonds. Ms. McMahon asked that the Board sign the documents upon adjournment. She noted for the Board that the motion will include an authorizing and directing the District Treasurer to establish post issuance federal tax compliance procedures and continuing disclosure procedures.

(40:49) On a motion made by Robert M. Perry and duly seconded, the Board **UNANIMOUSLY VOTED: that the sale of the \$1,225,000 General Obligation Water Bonds of the District dated September 7, 2023 (the "Bonds"), to Robert W. Baird & Co., Inc. at par and accrued interest plus a premium of \$73,621.95. The Bonds shall be payable on September 1 of the years and in the principal amounts and bear interest at the respective rates, as follows:**

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2024	\$210,000	5.00%	2027	\$205,000	5.00%
2025	205,000	5.00	2028	200,000	5.00
2026	205,000	5.00	2029	200,000	5.00

And further, that in connection with the marketing and sale of the Bonds, the preparation and distribution of a Notice of Sale and Preliminary Official Statement dated August 17, 2023 and a final Official Statement dated August 24, 2023 (the "Official Statement"), each in such form as may be approved by the District Treasurer, be and hereby are ratified, confirmed, approved and adopted.

And further, that the District Treasurer and the Board be, and hereby are, authorized to execute and deliver a limited continuing disclosure undertaking in compliance with SEC Rule 15c2-12 in such form as may be approved by bond counsel to the District, which undertaking shall be incorporated by reference in the Bonds for the benefit of the holders of the Bonds from time to time.

And further, that we authorize and direct the District Treasurer to establish post issuance federal tax compliance procedures and continuing disclosure procedures in such forms as the District Treasurer and bond counsel deem sufficient, or if such procedures are currently in place, to review and update said procedures, in order to monitor and maintain the tax-exempt status of the Bonds and to comply with relevant securities laws.

And further, that any certificates or documents relating to the Bonds (collectively, the "Documents"), may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document; delivery of an executed

counterpart of a signature page to a Document by electronic mail in a “.pdf” file or by other electronic transmission shall be as effective as delivery of a manually executed counterpart signature page to such Document; and electronic signatures on any of the Documents shall be deemed original signatures for the purposes of the Documents and all matters relating thereto, having the same legal effect as original signatures.

And further, that each member of the Board, the District Clerk and the District Treasurer be and hereby are, authorized to take any and all such actions, and execute and deliver such certificates, receipts or other documents as may be determined by them, or any of them, to be necessary or convenient to carry into effect the provisions of the foregoing votes.

Update: Waterworth – Financial Analysis and Planning and Service Rate Analysis

(45:07) Ms. McMahon advised that her “on-boarding” meeting is scheduled for next week to jump start the process of transferring the data for the development of program. She hoped to be able to provide frequent updates.

Consider a Comprehensive Review of Board’s Rules and Regulations.

(45:55) Ms. McMahon had originally asked for an agenda item to have the Board consider adopting a rule that would require a commercial business owner to receive a copy of demand shut-off notices, if their tenants do not pay the water bill as unpaid bills are a lien on the real estate. This process can now be automated in the new Muni-Link system. She noted for the Board that there is a lot of verbiage that is outdated and there are fees that are stated within the rules and suggested that the Board might consider. Mr. McDowell said he has a lot of commercial property and his lease agreements said that there are not charges that can accrue to him. He said that a tenant has no authority to assign or encumber a liability to the landlord. He said the assumption just presented is less than 100% accurate. There was a brief discussion about the Board’s level of interest. Mr. Perry said that he would be interested in reviewing changes proposed by the Treasurer and Superintendent and that if there is any question about the legality of an item, by all means, submit it to the Water District’s attorney.

(48:27) Mr. McDowell said he has been involved in government for 58 years. He said that every rule that is adopted by the Town of Dennis is in a book. He said the Dennis Water District has almost nothing. There is a set of bylaws. He acknowledged that this is a separate discussion not on the agenda today, he was hopeful that we could tie our set of regulations, rules bylaws or whatever, to a single book so when there is a question it can be referred to. He also said it should be written down somewhere that we have meetings once a month. He said that at one meeting we voted that the Clerk Treasurer had the authority to purchase endless lengths of stuff. He said it was voted on, but where it is. There was discussion regarding access to documents such as the Policy on Uniform Flow of Communications. Ms. McMahon advised that based on the conversation she spent time to post on the Water District’s website a tab for *Board Policies*. She complied this information by doing a search for ‘policies’ voted on by the Board from electronic files dating back to 1995. Links to the actual document for the policy were created. The Rules and Regulations and the District Bylaws have been readily available on the District’s website for years. Mr. McDowell asked if what Ms. McMahon had outlined was the full operations of the Dennis Water District? Chair Prue ruled Mr. McDowell out of order. Mr. Perry said that we have moved passed the topic of the discussion. He said he did not think it was practical to put it all into a book. He did not disagree with taking a look at the organizational structure of the District’s policies and rules, but there is no way Ms. McMahon can answer that question; that the entire District’s function is going to be described by one set of rules and regulations. He said it is too broad and too diverse. Mr. McDowell withdrew his question.

Superintendent's Report

(1:07) Mr. Larkowski said he had nothing to report at this time.

Treasurer's Report

(1:07:26) Ms. McMahon advised that out of approximately 14,500 water accounts, over 2,000 customers have signed up to receive paperless water bills. She said she has not calculated the cost savings yet for not having to print or mail those bills. She further advised that by the second day following the announcement that the water bills were available, the District had received more than \$68,000. She reported that 12,100 printed water bills were mailed on September 28.

Mr. Perry asked about the possible savings on premiums by having a cybersecurity company under contract. Ms. McMahon said that she had been more concerned about them not issuing the cyber security policy because of their observations via a non-intrusive scan of the District's server and website.

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

(1:11:32) Mr. Larkowski advised that the District had met with the Town in order to re-do the Site 2 report. He said there is no update on this currently. The Town is still working with CDMSmith and trying to redefine the scope of work to ensure that we were not asking for more than what was necessary.

Open Discussion to Review Item 3 of 8/03/23 Water Commissioners' Agenda: Attorney Chamberlain's Legal Opinion in response to documents submitted by Ms. McMahon as correspondence, Authority to Set Agenda: Pursuant to Mass. General Law Chapter 30A, Section 20 and 940 Code of Massachusetts Regulations 29.02 (1)(b)

(1:12:47) Mr. McDowell wanted to make a presentation that would also relate to Item 11 as well. He distributed materials to the Board members and to the Superintendent and Clerk Treasurer. Mr. McDowell said that he has some specific remarks and wants to share a particular document of the Open Meeting Law that is relevant to the posture of the Clerk Treasurer, Sheryl McMahon, has continued to insist that days after a Dennis Water District has been duly posted containing matters from the duly elected Board of Water Commissioners that the Chair can rightfully strike such matter from being acted upon by our Board of Water Commissioners. He disagreed. First, no Massachusetts law can be found which interferes with their absolute right as an elected town "Select Person" or elected "District Commissioner" to timely submit a subject matter into their, such forthcoming public meeting. In addition to our agenda, please review the 2 attached sheets from our recent meeting which focused on subjects: 1) Copy of Open Meeting Law C30A s20b and 2) Atty. Chamberlain's summary statement. Following an observation from the Clerk, of the Barnstable County Law Library (BCLL) and my subsequent discoveries I want to share with you why I believe we may have been somewhat misled by the documents submitted by Clerk Treasurer, McMahon to Atty. Chamberlain and his observations. I believe under absolutely no circumstances should the Chair or any DWD meeting agenda strike any matter from consideration by the attending Commissioners due to the following matters address:

1. Authority to set Agenda: Pursuant to M.G.L. c30A, s20(b) and 940 29.02 (1) (b), Note upon review by the clerk of the Barnstable Law Library the attached copy of the CMR 29.02 (1)(b) as defined, does not exist!

2. Please see the attached document: “940 CMR: OFFICE OF THE ATTORNEY GENERAL, 940 CMR 29:00 OPEN MEETINGS”

Mr. McDowell read part of the M.G.L. Chapter 30, Section 20, which covers the posting of meetings of public bodies. He referred to Mr. Chamberlain’s letter submitted at the last meeting. He said there is absolutely no circumstance where the Chairman of any of our District meetings can appropriately remove from an agenda item, days after it is published. He said that the Chairman can absolutely not do that and it is spelled out in law.

He further read CMR 940 29:00. In regard to the CMR, it states that “a district public body controlled by this regulation is a district public body that’s jurisdiction extending to two or more municipalities. He said the point being, that it doesn’t apply to any single district. He said we can set that aside. He said that we Commissioners set the policy for our Board. He said the Chairman does not have the authority anywhere in Massachusetts Law or regulation to interfere with that agenda item remaining in the agenda and proceed to a discussion for a decision on that matter.

The Chair recommended to defer the matter another month.

(1:23:13) Mr. Perry said he agreed with deferring the matter. He further noted that at the last meeting the Attorney, paid for by the Dennis Water District, researched the Massachusetts Law and regulation and noted that he believed there is a typographical error and did not believe in exploiting it. Mr. McDowell read aloud the CMR but, he believes Mr. McDowell read it differently from how he read it. He said the CMR states that the agenda include the topics the chair reasonably anticipates to be discussed. He said this is too disjointed and it is running completely contrary to what was received as a legal opinion. Mr. Perry said he was going with Mr. Chamberlain’s determination and as a commission we are going to have to decide how we want to go with that. ***A motion was made by Robert M. Perry to accept Mr. Chamberlain’s determination and that we defer this topic for six months*** so that we can concentrate on water district business that relates to the infrastructure, the quality of the water and the manpower needed to keep it running rather than the form that our discussions take. ***Chairman Prue seconded.*** Mr. McDowell said this was compliance with Massachusetts Law. He said that at no time did Mr. Chamberlain give a valid reason to support this. He said that what was pressed and then Mr. Chamberlain then recited what was in the agenda and what he read was wording that was inserted by the Clerk Treasurer that was about an ongoing practice, of quite a period of time, about what had happened here, and he recited that as the answer. He said you can watch it and see it but, it was not words from any law what he quoted; he believed that he did, however, it was not. It was wording that was offered and part of what the Clerk Treasurer had put into the agenda on her own. He said he was trying to suggest that the matter of a Chair of a meeting of the Dennis Water District, the Chair here may not, there is no valid law, if you can find it, you can read it to us. Mr. Perry said that, as he had said the last time, the commissioners did not press Mr. Chamberlain; Mr. McDowell pressed Mr. Chamberlain for about seven times to restate what he had already stated. He said he had accepted Mr. Chamberlain’s determination and suggested that if Mr. McDowell did not, perhaps Mr. McDowell would be seeking a legal judgement on that matter. Mr. Perry said that he was satisfied. There were two things he said he could think of no example where the Chair has completely bumped a topic requested by a commissioner, that language may have been changed but, he did not believe the topic was bumped and he just does not believe we have a problem here. It seems to be a form of argument that is semantical and basically becoming a waste of our time, said Mr. Perry. He said he would like to defer the topic until we can better organize it so we can discuss it efficiently. He said that was his motion; six months. Ms. McMahon advised the Chair that there had already been a motion made and seconded, and if the Board was ready, they could take a vote. When asked, Ms. McMahon recited the motion as follows: ***to accept Attorney Chamberlain’s response to the question about the authority as***

Chair and to defer this topic from further agendas for six months. Mr. Perry voted “aye” on that motion. The Chair followed. Mr. McDowell said he thought the question here is to find a law or Massachusetts regulation or otherwise, allows anyone to interfere with a Water District commissioner with any subject matter we put into the agenda. He said it would not take six months. He said until that law could be found, the chairperson of this Water District should not strike any subject matter. There were further comments. The Chair then called for the ***VOTE: 2-1-0 (PLM in the negative).***

Continued Discussion: “Clerk Treasurer or staff shall insert here and after, any forthcoming meeting agenda any subject matter request from an elected Water District Commission, provided such request is timely made by “email” or by document delivered to the DWD offices least 2 hours prior to the 24 “Open Meeting Law notice deadline of such meeting so requested.”

Minutes: August 3, 2023

(1:31:40) Mr. McDowell moved not to approve the minutes as they are faulty, their directive and it is on the same issue as this, and it is indicated and read words from Mr. Chamberlain that picked up words from the agenda that were prepared by the Clerk Treasurer which is contrary to what this issue we have just here. He said those minutes are incorrect. Mr. Perry said we are never in a rush to vote on minutes. Mr. Perry said we should see what Mr. McDowell is talking about and bring that forward if there is some sort of misrepresentation. He said he had read those minutes and he saw a few typos and a couple of little things, but he had not had a chance to bring back a draft and in fact, he thought the minutes were quite well done. *A motion was made by Robert M. Perry and duly seconded to defer the minutes of August 3, 2023. The Chair then called for the vote which was UNANIMOUS.*

Consider conducting an 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.

(1:34:03) A motion was by Chair Prue, and seconded by Robert M. Perry to adjourn to an 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. A roll call vote was conducted: Robert M. Perry “aye”, Paul F. Prue “aye” and Peter L. McDowell “aye”.

Clerk’s Note: The Executive Session was adjourned at approximately 11:55 AM.

Respectfully submitted,

Sheryl A McMahon, Clerk

List of Materials:

In Board's Packet – Certificate of Award; Total Issue Sources and Uses; Debt Service Schedules; Draft Minutes of August 3, 2023; TechMD Power Point Presentation by Caulin Henify; Draft Motion for awarding \$1.225 million bonds; Memo from S A McMahon RE: Comprehensive Review of Rules and Regulations; Rules and Regulations as of 7/28/2011; Signature Pages to be signed by Water Commissioners and Clerk/Treasurer for General Obligation Water Bonds; Letter to Attorney Chamberlain requesting legal opinion and dated 6/15/2023; Email from Ms. McMahon to Mr. McDowell regarding draft agenda; Draft agenda – undated; Note on typographical error in 6/15/23 letter to Attorney Chamberlain; Email from Mr. McDowell to Ms. McMahon regarding wording of agenda item; Draft Agenda for April 20, 2023; Email from Ms. McMahon to Board regarding the wording of agenda item concerning wastewater; Third draft of Agenda for April 20, 2023; Email request to Attorney General from Ms. McMahon regarding Chair's authority on agenda items; Email response from Elizabeth Carnes Flynn, Asst. Attorney General regarding Chair's authority on agenda; Email from Mr. McDowell to Board requesting latest version of Annual Report; Posted Agenda for April 20, 2023; Email from Mr. McDowell dated 5/12/2023 for agenda items to be included; Mr. McDowell's requested agenda items; Revised Posted Agenda of May 25, 2023; Email from Ms. McMahon to Board regarding draft agenda, Attorney General's response to inquiry, etc.; Board of Water Commissioner's Policy on Uniform Flow of Communications; Excerpt of Minutes of Board Meetings Concerning "Uniform Flow of Data & Information Communications to Commissioners"; Draft Excerpt of Minutes of May 25, 2023; Legal Opinion on the Issue of whether or not individual water commissioners have authority to add items to the agenda issued by Attorney Daniel Chamberlain.

Provided by Mr. McDowell – My Remarks; Legal Opinion on the Issue of whether or not individual water commissioners have authority to add items to the agenda issued by Attorney Daniel Chamberlain with highlights; 940 CMR: Office of the Attorney General – 940 CMR 29:00 Open Meeting.