

DENNIS WATER DISTRICT

Board of Water Commissioners

Minutes of Meeting held

December 11, 2008

A meeting, having been duly posted, was held this date at the main offices at 80 Old Bass River Rd., S Dennis. The meeting was called to order by Edward A. Crowell, Chairman at 4:10 PM. Water Commissioner Paul F. Prue and Charles F. Crowell were present along with the following District officials:

David Larkowski, Superintendent
Sheryl A. McMahon, Clerk & Treasurer
James Ritchie, Asst. Superintendent

Mr. Larkowski discussed the information he obtained when surveying other water departments about Meter Tampering Fines. He advised that some departments, like the District, follow Chapter 165, Section 11 as provided in Mass. General Laws. Others set their own fine. Mr. Larkowski advised that in his investigation he has discovered that the Mass Water Works Association has been working on drafting legislation to amend this statute along with legislation that will amend the statute that governs the allowable fee for testing the accuracy of water meters. He said that he will continue to keep the Board apprised of developments on these two issues.

The Superintendent provided a status report on the Iron & Manganese Removal Project. He stated that the contractor is moving forward on north side building which is being framed. He believes the project is still on-line for a late spring-early summer start up for the south side plant. The south side plant is expected to have the garage door installed soon and that will enable the electrical and mechanical work to begin inside the facility.

Mr. Larkowski discussed the replacement of the plastic chemical tanks at the Station #5 Corrosion Station. The tanks are not guaranteed. Mr. Larkowski said that it was installed in 1993. Looking at original documentation on the manufacturer documentation says that they do have a life expectancy and that we are just beginning at the earliest part of the range. He will be bringing forward a replacement program to be funded over the next four years or so.

The painting of the 6-million gallon tank is now complete. The lights have been replaced entirely and one paint spot was fixed. The electrical conduit was in severe condition having been the original equipment installed in 1964. The roof hatches were also replaced. The total cost of the project was \$560,811 compared to the total appropriation of \$650,000 with a net return to the general fund of just over \$89,000. He advised that the Treasurer had requested that he release \$50,000 of the anticipated unexpended appropriation before the end of June 2008. That \$50,000 is part of the "free cash" currently available for appropriation in the FY 2010 budget. The remaining \$39,000 or so won't be certified until the close of Fiscal Year 2009. He stated that he will be requesting a capital funding project for power washing and inspectional services for tanks in the FY 2010 budget.

Ms. McMahon advised the Board that she met earlier this month with a representative from the Massachusetts Interlocal Insurance Association (MIIA) regarding the declared values of District

properties, mainly the pumping stations and the personal property contained therein. The property insurance is for replacement cost and is not based on depreciated value. She anticipates that there should be a significant increase in the valuations as they have not been adjusted for about 10 years. The Board discussed the insurance of the water tanks. The tanks have never been insured for property damage or for liability. There was further discussion as to the potential for liability if an unauthorized person was injured. Ms. McMahon advised that unauthorized persons on the tanks would be considered trespassing. However, the insurance underwriter advised that even though it was considered trespassing, if for some reason there was a breach in the security of the property and someone was injured, they could sue. If covered for liability, MIIA would at least provide the legal representation to defend a case filed against the District. There was a consensus among the Board members to have the Treasurer and Superintendent investigate the cost of liability coverage for the water tanks.

The Board members acknowledge the passing of Attorney John Crenney who had represented the District in legal matters for more than thirty-five years. They discussed the need to appoint new legal counsel. It was noted that the most urgent and significant pending case is O'Haire vs. Dennis Water District. This suit pertains to a claim of land taken by the District when it acquired the sand pit owned by the heirs of Albert Crowell. Mr. O'Haire claims the District took approximately one acre of his land and that he can no longer build the previously approved housing development. As it happens, the case was scheduled to be heard before a Master this week to determine the issue of title. The Superintendent shared a list of area attorneys that provide services to other water departments such as Brewster, Harwich, Orleans and Sandwich.

Mr. Larkowski reviewed the District's potential legal standing in an appeal from promulgated regulations regarding water conservation requirements under the Department of Environmental Protection's (DEP) Water Management Act registration renewal. The District is only permitted for a certain level of pumping over the course of a total year. The new regulations will require that the District meet a 65-gallon per capita per day limit. According to DEP, the District's 14,000 accounts should only use 65 gallons per day and be within 10% of unaccounted for water. The regulations will also force water conservation measures in drought events in Massachusetts even though it may not pertain to Cape Cod. If there is a third level of drought conditions in any one area, then the entire state will be ordered to comply with the conservation measures. Mr. Larkowski advised that he is of the understanding that Attorney William Henchey is representing one or more water suppliers who are filing an appeal to these regulations. He requested authorization to meet with Attorney Henchey and discuss the implications for Dennis as well as the possibility of joining an appeal case. On a motion made by Paul F. Prue, and duly seconded, the Board ***UNANIMOUSLY VOTED: to authorize the Superintendent to meet with Attorney William Henchy to review the pending appeal of the water conservation regulation and the possibility of the Dennis Water District joining said appeal case.***

Mr. Larkowski advised there are actually two separate land damage cases pertaining to the Albert Crowell sand pit off Old Chatham Road. One was filed by Kevin O'Haire. The other was filed by David Lammers. While the District disputes the title claimed by Mr. O'Haire, it is accepting the chain of title of Mr. Lammers. However, the District does not believe that locus for either claim is within the area taken by the District. Mr. Prue suggested that Attorney Leslie-Ann Morse be considered as special counsel for the suits filed by O'Haire and Lammers. He believes that her experience in having filed the Land Court petition for ownership on behalf of the heirs of Albert Crowell make her well qualified to represent the District in these cases. On a motion made by Paul F. Prue, and duly seconded, the Board ***UNANIMOUSLY VOTED: to authorize the Treasurer and Superintendent to arrange for interviews***

in the coming week with Leslie-Ann Morse as a candidate for special counsel in the cases of O'Hair vs. Dennis Water District and David Lammers vs. Dennis Water District and with Thomas Perrino and James Veara as candidates for general counsel.

The Treasurer provided an overview of insurance claims filed by the District that have unmet deductibles. In some cases, MIIA pays on the estimated costs of repairs. In others, they pay on the exact amount of the invoices submitted. On a motion made by Paul F. Prue, and duly seconded the Board **UNANIMOUSLY VOTED:** to transfer from the FY 2009 Reserve Fund \$3,106.23 to Account No. 3244-50 to cover the \$1,000 deductible on truck damage, \$2,026.56 to Account No. 3244-09 to cover the deductible and minor unpaid balance for a claim of lightening damage to two stations and \$79.67 to Account. No. 3244-08 for the unpaid balance for lightning damage to a station deductible on lightning damage.

The Superintendent advised the Board on the status of the Massachusetts Estuaries Project. He has been organizing and implementing the sampling program for the four estuaries in the study for the past four years. He requested the Board consider whether or not the District should undertake a fifth year of sampling. The cost of conducting the water equality samples is approximately \$18,000. It is a reduced program from what was undertaken the first three years. Bass River is not done because the data collection has been compiled and the release of a technical report is anticipated. He advised that it is the District staff that does the majority of the sampling. He asked if the Board wishes to continue with another round of sampling in the summer of 2009. He would like to know if it is necessary to conduct the sampling every year and whether or not a trend can still be determined if sampling were reduced to every other year. Mr. Larkowski did note that cancelling the sampling program for next summer may raise some concerns among proponents who support continuation of the program. On a motion made by Paul F. Prue, and duly seconded, the Board **UNANIMOUSLY VOTED: not to conduct the MEP sampling for the summer of 2009.**

Mr. Larkowski noted that within the Operating and Maintenance Budget the major items driving up the budget will be chemicals costs. KOH is not a petro-chemical, however, the international demand for the product has sky-rocketed the price from \$2.04 per gallon to \$5.94 per gallon. The District 50,000 gallons per year at a FY 2009 cost of \$164,000. With the addition of two new treatment plants and the need for more chlorine he anticipates that this line item will go to \$348,000 per year.

The Superintendent also reviewed his proposal for two new replacement vehicles. One is to replace a ½-ton pick up and the other is to replace the 1-ton utility body truck.

There was a brief discussion on anticipated increases in the property and liability and workers' compensation insurance premiums. Ms. McMahon stated that she anticipates having updated figures for budget discussions.

With no further business before the Board, the Water Commissioners signed the Accounts Payable Warrants and on a motion made by Paul F. Prue, and duly seconded, **UNANIMOUSLY VOTED: to adjourn the open session of the meeting at 5:27 PM and to convene an Executive Session for the purpose of discussing strategy for negotiating wages for non-union personnel in accordance with Chapter 39, Section 23B (3) and not to return to open session upon its conclusion. The Chairman having called for a roll call vote which was recorded as follows:**

Edward A. Crowell – Yeah
Paul F. Prue – Yeah
Charles F. Crowell – Yeah

For the record the Executive Session was adjourned at 5:58 PM.

Respectfully submitted,

Sheryl A. McMahon, Clerk