

# DENNIS WATER DISTRICT

## *Board of Water Commissioners*

Minutes of Meeting held

May 23, 2013

A meeting, having been duly posted, was held this date at the Dennis Town Hall, 485 Main Street, South Dennis. The meeting was called to order by Paul F. Prue, Chairman at 6:00 PM. Also in attendance were Charles F. Crowell and Peter L. McDowell and the following District official:

Sheryl A McMahon, Clerk & Treasurer

David Larkowski, Superintendent

### **Public Comment**

Chairman Prue read a letter from the Department of Environmental Protection Drinking Water Program. He noted that he and Mr. Crowell had attended the awards ceremony held in Springfield on May 7, 2013. A citation signed by Governor Patrick was also presented to the District and Mr. Crowell presented it to Mr. Larkowski. Chairman Prue extended his personal gratitude to the fine work and dedication of the Superintendent and his staff.

Mr. Larkowski noted that on June 1 the District's annual Household Hazardous Waste Collection Day will be held at the Tony Kent Arena

### **Sign Conservation and Watershed Restriction for Grassy Pond (Art 7, ADM 4/23/13) and Authorize Payment by Treasurer**

Mr. Larkowski advised that, just this afternoon at approximately 1:30 PM, the final draft of the Conservation and Watershed Restrictions for the Board of Water Commissioners signatures had been received. The hearing is scheduled for June 13 with DEP. There is a very tight time-frame for the Town to meet all of the grant funding requirements and to close on the property on or before June 28, 2013. The Board is authorized to accept a Conservation and Watershed Restriction for the payment of \$142,500 under Article 7 of the Annual District Meeting held April 23, 2013, and to authorize the Treasurer to release the payment to the Town of Dennis in sufficient time that the funds are available for the closing.

*Note for the record: the Board members signed the documents and the warrant which included the payment to the Town of Dennis.*

### **Establish Production Rate in Accordance with Leak Abatement Policy**

The Superintendent reviewed the Board's Leak Abatement Policy which states that the Board will establish annually a water *production rate* for application of the policy. A worksheet showing the calculation had been distributed to the Board members previously. He gave some examples of the cost allocations that are attributable to the basic cost of producing a 1,000 gallons of water. The proposed rate of \$1.95 per one thousand gallons is based on the FY 2014 budget. Ms. McMahon noted that the rate was \$1.55 previously. She said that she will be placing it on the Board's calendar to vote the production rate in May following the Annual District Meeting. On a motion made by Peter L. McDowell, and duly seconded, the Board **UNANIMOUSLY VOTED: to set a Leak Abatement Water Production Rate of \$1.95 per thousand gallons.**

**Leak Abatement Request – David Libby, 06143, 47 West Wind Drive, Dennis.**

Mr. Larkowski reviewed the circumstances concerning a leak at the property of David Libby of 47 West Wind Drive, Dennis. This customer has a meter in a pit. He had noticed low pressure and called the District. A leak was discovered after the meter and he used 778,000 gallons over at least a five to six month period. The customer was advised that the service going into the property was in terrible shape. The owner will be having the District replace the service line and relocating the meter into the house thereby eliminating the meter pit. On a motion made by Charles F. Crowell, and duly seconded, the Board **UNANIMOUSLY VOTED: to grant an abatement of \$1,126.50 to David Libby, 06143 of 47 West Wind Drive, Dennis in accordance with the Water Commissioners' Leak Abatement Policy.**

**Vote to accept a gift of a water distribution easement from the Town of Dennis**

Mr. Larkowski advised the Board that the final document for recording the Town of Dennis' gift of an easement for the installation of transmission main on property off Theophilus Smith Road near the Harwich Town line has been prepared by Attorney Perrino and is ready to be recorded. He anticipates that the Board of Selectmen will sign the easement on June 4, 2013. On a motion made by Peter L. McDowell, and duly seconded, the Board **UNANIMOUSLY VOTED: to accept a gift of an easement from the Town of Dennis as shown on a plan entitled: "Easement Plan of Land in Dennis, Massachusetts prepared for Dennis Water District Scale: 1" = 100", March 29, 2013" prepared by Demarest Land Surveying.**

**Financial Audit for FY 2012 – Further recommendation to request services of Department of Revenue for a Financial Management Review at no cost to the District**

Ms. McMahon said that she would like to have the FY 2012 audit completed by the close of the current fiscal year. She noted discussions regarding compliance audits have taken place during previous meetings. She said that there has not been the ability to obtain a scope for a total compliance audit for the District. She said that municipalities just don't do compliance audits unless there is a situation that has been identified. A compliance or performance audit has a specific scope otherwise; the cost can be quite prohibitive. In researching compliance auditing, Ms. McMahon said that the Department of Revenue has a Technical Assistance program within the Division of Local Services and will do a financial management review of the District at no cost. A written report would be provided to the Board. She recommended this as a start as it would perhaps identify any areas that the Board would then want to have further evaluated. This would perhaps give the Board a more specific focus. She noted that the bond rating agencies have been contacting her lately requesting the FY 2012 audit. Mr. McDowell said that in his experience, having served on a bank board, there was the financial audit and an audit for compliance with law. Ms. McMahon stated that a regular financial audit, to a great degree, does do compliance auditing. The scope of compliance within the financial audit does not check each transaction but does random checking for payroll, tax payments, procurement, etc. Bank statements are all verified with the banks. Customer invoicing, water bills and payments are randomly verified through the compilation of a random list. Ms. McMahon continued to describe the difference between a financial audit and a compliance audit. She noted that banks are highly regulated, more so than municipalities. Ms. McMahon had provided a memo with a

brochure from the Department of Revenue, Division of Local Services on the types of technical assistance programs that can be provided. They can focus on a particular issue or a more general review of policies and procedures to ensure that checks and balances are in place. Whatever issues are identified, they will provide recommendations. They will also provide training to staff at no cost within a limited scope. On a motion made by Charles F. Crowell, and duly seconded, the Board **UNANIMOUSLY VOTED: to authorize the Treasurer to procure the routine Financial Statement Audit for Fiscal Year 2012 so that she may have the report on file before the close of the fiscal year 2013.** On a motion made by Peter L. McDowell, and duly seconded, the Board **UNANIMOUSLY VOTED: to request that the Clerk Treasurer make the appropriate arrangements to request a Financial Management Review from the Department of Revenue, Division of Local Services in accordance with their Technical Assistance Program.**

### **Minutes of March 21, 2013, April 5, 2013, April 12, 2013**

Ms. McMahon noted that the minutes of March 21, 2013, a joint meeting with the District Finance Committee are extensive and lengthy. Chairman David Talbott had requested a set of the draft. He has volunteered to review them and provide her with his edits. She suggested that the Board defer review and action on them until Chairman Talbott's edits were available and could be incorporated.

On a motion made by Charles F. Crowell, and duly seconded, the Board **VOTED 2-0-1 (PLM abstaining): to accept the minutes of April 12, 2013, as presented.**

On a motion made by Charles F. Crowell, and duly seconded, the Board **UNANIMOUSLY VOTED: to accept the minutes of April 5, 2013, as corrected.**

### **To Vote on Request for Mediation as requested by Clerk on April 25, 2013**

Ms. McMahon advised that Attorney Perrino has recommended that the Board reaffirm a vote taken during the April 25, 2013, meeting in which the Board had approved a request by the Treasurer for mediation between herself and Mr. McDowell in order to alleviate any question that may be raised that the vote was not within the scope of the items as listed on the agenda. Ms. McMahon stated that there are issues with communication between Mr. McDowell and her and an incident that she found disturbing. She further said that there has been a public accusation made against her that she has not been forthright so she requested mediation to resolve the issue. A motion was made by Charles F. Crowell, and seconded by Paul F. Prue to reaffirm the vote taken on April 25, 2013, to arrange for the services of a mediator as requested by the Treasurer. Discussion ensued. Mr. McDowell stated that there would be no mediation involving him on this issue. Attorney Perrino said that after having reviewed the meeting he believed reaffirming the vote was advisable. He further stated that if the Board votes this then his recommendation probably would be that it be set up for the Board's next regular meeting with an independent mediator. He stated that the issue that has been presented to the Board is essentially one of an employee and an employer situation. He said he understood Mr. McDowell's position but, he reminded him that as a supervisor along with the rest of the Board, that there is an obligation to resolve whatever situation there is. If the Board sees fit to approve the request, then he would proceed along those lines. Chairman Prue then called for the vote in which the motion made by Charles F. Crowell, and duly seconded was **VOTED 2-0-1 (PLM abstaining): reaffirm the vote taken on April 25, 2013, to arrange for the services of a mediator as requested by the Treasurer.**

**To Require a Uniform Flow of Data & Information to the Commissioners by amending the Job Description of the Clerk Treasurer**

Chairman Prue read the entire item as it appeared on the agenda as follows:

*To Require a Uniform Flow of Data & Information to the Commissioners by amending the Job Description of the Clerk Treasurer as follows: "By striking the words, "Prepares and distributes agendas, materials, minutes and recordings of meetings" and inset in their place the following new words, "Uniform Flow of Information to the Commissioners- The clerk shall be responsible for the advance preparation and timely submission of agendas, materials, minutes, recordings of meetings and other necessary information to allow Commissioners reasonable time for their review in making necessary decisions in behalf of the District. No essential meeting information shall be provided to a commissioner that is not provided to them all."*

Chairman Prue said that it appeared to him that this item and the next were relative to the previously discussed legal matter and asked counsel if it was premature to be discussing it at this time. Attorney Perrino said that the two matters do seem to be related to the prior request having reviewed prior meetings. He said that the item may be a means of resolving the issue but, stated it also may be premature to make that determination until we hear further and go through the mediation process. He stated that the next agenda item seemed to be a different scope as the first deals with communication with the Board and the second deals with communication with the public. He said the Board may want to consider taking the current item under advisement until after the mediation.

Mr. McDowell stated that, fundamentally, since he began here, it became very clear to him that all of the information that the other two commissions obtained was not always given to him. Based on that, he was a meeting where he suggested to the Clerk/Treasurer that she was not forthright with him, and wasn't. Ms. McMahon stated her objection to the comments being made. She objected on a point of order as the Board had just voted on the issue of Mr. McDowell's accusation to her of not being forthright and requested mediation. She said she would like the opportunity to have that addressed as it had been tried before and it had not been very successful. She said this issue is specifically related to that.

Mr. Crowell said that he had a problem even discussing it and that it shouldn't even be on the agenda. He said that it is a personnel matter and it should not be discussed in an open meeting. Mr. McDowell said he did not believe the item was out of order for the water commissioners to establish a change in the job description of a department head. He said that the problem and issue that has developed here is a personality issue because there is not a definition in the job description that requires uniform information to the three commissioners. He thought it was not unreasonable for this water commission to establish a requirement that they all get uniform, timely, essential information prior to meetings. He said he would like to have all of the same information that the other two commissioners get which he does not believe has always been the case.

Chairman Prue said he felt the two matters were too-intertwined for the discussion to continue. Attorney Perrino concurred based on how the discussion began. He said it sort-of proved the point; as the genesis of this was the accusations made at prior meetings. He said that perhaps one of the solutions that may result from the mediation may be the proposed change to the job description.

Mr. McDowell asked Attorney Perrino if it was within water commissioners' role to set and define a job description for employees. Attorney Perrino agreed that it was. Mr. McDowell asked if there was anything, legally, that would block a municipal corporation, such as the District, setting a standard that the three commissioners receive all the same timely essential information prior to meetings. Attorney Perrino said that in the abstract, he would say no but, under the circumstances the Board is currently confronted with, where accusations have been made and a request to respond to those accusations is before the Board; if this is a potential solution to what Mr. McDowell perceives to be the problem then, it is appropriate that the employee's request before the Board to address those issues in mediation proceed. Attorney Perrino said that there is an on-going situation that requires resolution and in his opinion, one of the manners in which that may be resolved, could be through the mediation that was requested.

Mr. McDowell asked Attorney Perrino if there was anything technically incorrect with the Board voting this issue which had been duly placed on the warrant [*agenda*]. He proceeded to read his motion aloud. Mr. McDowell asked Attorney Perrino what was wrong with the duly placed set of words to modify the job description during tonight's meeting; what is interfering with that. Attorney Perrino stated that what is interfering is the prior request made during the last meeting and which was reaffirmed tonight, has its genesis arising from prior incidents and accusations that have been made against the Clerk and she is seeking redress of that. He said it was incumbent upon the Board to provide a forum for that to occur. He said that in the abstract it was obviously within the Board's ability to modify the job description however, the motivation and reason this is before the Board is to solve what Mr. McDowell perceives to be a problem. He said that Mr. McDowell had indicated earlier that this would solve the problem but, the other commissioners and the employee may not agree with that because the precise problem has not been identified. He believed the employee was entitled to a forum where that can occur and the other two commissioners seem to agree and have authorized that process.

Mr. McDowell asked if the mediation does not occur did it mean that this matter can never be voted on by this water commission. Attorney Perrino denied that that was his position. Mr. McDowell asked if it could be done at the next meeting or how long could this mediation hold the matter from going forward. Attorney Perrino said that it was difficult to answer because we have not gone through the process. He suggested that the outcome of the mediation may be similar to this, or it may be not. He said it would be up to the Board.

Chairman Prue said that perhaps one of the accusations that has been presented, that Mr. McDowell has not received certain information, was his responsibility. He said that he has called Mr. McDowell personally at his office in order to schedule meetings when there was a tight time frame. He said to his knowledge there hasn't been any information that Mr. McDowell didn't receive that Mr. Crowell received. Attorney Perrino stated that part of the issue, the communications that needs to be resolved.

Mr. McDowell said that one of the issues of information that he didn't get was a meeting that was called and he did not learn of it until four hours after it was over. He said the rules do not require it and this would change that. A motion was made by Charles F. Crowell to take the matter of modifying the job description of the Clerk/Treasurer under advisement. It was not seconded and a vote was not called. There were no objections to the motion.

**To Provide Public Access to Actions of the District by amending the Job Description of the Clerk Treasurer**

Mr. Crowell stated that he had made a motion to take items numbered nine and ten under advisement. Chairman Prue seconded the motion. Mr. McDowell stated that this item has nothing to do with the previous matter as it has to do with information for the public. Mr. McDowell read the following motion aloud: *To Provide Public Access to Actions of the District by amending the Job Description of the Clerk Treasurer, under the section, Clerk by adding the following words: "Public Access- The Clerk shall be responsible for the prompt placement onto the Dennis Water District website for public viewing all "Agendas", "Minutes" and "Videos on Demand" of all meetings of the Commissioners since 2010 in the same fashion the Town currently displays that of its commissions, committees and boards.* The motion was not seconded. Mr. McDowell said that exposing the public to what happens with the Water District, exactly as the Town of Dennis does; he said he could see no legitimate reason why the three commissioners wants to withhold that information from public viewing on our website.

Ms. McMahon said that she had not had the opportunity to review the proposed change to her job description. She said that the agendas are posted in advance on the District's website in advance of the meetings and are posted on the same day they appear on the Town's website. She said that minutes are always lagging and that it is more of a man-power issue. She said she has enlisted staff to help. She said that it is not a matter of unwillingness to do them [*minutes*], it is a matter of time. She said she does have an issue with the videos on demand. She has placed a link on the District's website but, she does not have the capability of managing the videos. She said that she has not made herself familiar with the reverse links (from Town's website linking to the District's). She said she did have another four sets of minutes that would be in the Board's mailboxes the following day. Mr. McDowell said that on the website there were no minutes or agendas for 2013 and only the minutes for February have been posted and there are no agendas. As he understood it, there is no real preparation to place them on the website and it is not a big deal. He said if it were a requirement, it would get done. He said he believed it is responsible for the commissioners to place this requirement into the job description of the Clerk/Treasurer.

Mr. Larkowski said that it seemed to him that there were three items. There are links to the videos but, that it is the Town's responsibility to ensure that they work. In terms of minutes and agendas, as this was the first time he has seen this agenda item, he said he would have to go to the District's website to view what could be seen. It was his personal opinion that we did not have to change someone's job description to get this done. He said that Ms. McMahon and one other staff person post these items to the website. Mr. McDowell said that the Town has been doing a good job getting the Board's videos available.

Chairman Prue said that he did not have any objection to the intent of what Mr. McDowell has proposed but, he felt at this point in was not appropriate and that it could be brought up at some point in the future. Considering Mr. McDowell's intent and Ms. McMahon's and Mr. Larkowski's admitting that they would be willing work on this. Ms. McMahon advised the Chairman that there was a motion made by Mr. Crowell and seconded. Chairman Prue then called for the vote in which the Board ***VOTED 2-0-1 (PLM abstaining): to take items numbered nine and ten on the agenda under advisement.***

**EXECUTIVE SESSION – 6:56 PM**

On a motion made by Charles F. Crowell, and duly seconded, the Board ***UNANIMOUSLY VOTED:*** ***to adjourn to EXECUTIVE SESSION: Ch. 30A, Sec. 21(a)(1) to consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body; to consider the expiration of an easement containing 8,587 sq. ft. granted by the Dennis Water District to Robert Ralston and Phyllis H. Ralston (otherwise known as “Agway”). Said easement is due to expire August 15, 2013; not to return to open session. The Chairman then called for the roll call vote which was as follows:***

***Peter L. McDowell***     ***“Aye”***  
***Charles F. Crowell***   ***“Aye”***  
***Paul F. Prue***         ***“Aye”***

***Noted for the Record:***                      ***The Executive Session adjourned at 7:17 PM.***

Respectfully submitted,

Sheryl A McMahon, Clerk