

Board of Water Commissioners
Meeting Minutes
Acton Water District
693 Massachusetts Avenue, Acton, MA
Monday, January 25, 2021

AGENDA

- A. Comments from Citizens
- B. Approve Minutes from Meeting of 1/5/2021 and 1/11/2021
- C. Appoint One Commissioner to Approve Warrants While Conducting Meetings Virtually

D. OLD BUSINESS:

1. Update on Land Lease with Baldco, Inc. at 104 Powdermill Road-Rear.
2. Follow-up on Request from Owner of 960 Main Street-Rear.
3. Update on Per- and Poly-Fluoroalkyl Substances (PFAS).
4. Update on Proposed Solar Projects.
5. Update on the Central Acton Water Treatment Plant (CAWTP) project.
6. DRAFT Budget for Fiscal Year 2022 (FY '22)

E. NEW BUSINESS: Any agenda item(s) which did not come to the attention of the Board of Water Commissioners 48 hours prior to this meeting and were not reasonably anticipated

Present at Tonight's Meeting:

Commissioners: Erika Amir-Lin (Chair), Stephen Stuntz, Barry Rosen
District Manager: Chris Allen
District Treasurer: Mary Jo Bates
District Counsel: Mary Bassett
Environmental Manager: Matthew Mostoller
Commissioners Secretary: Lynn Protasowicki
Finance Committee: Chuck Bradley

Citizens:

Kim Kastens

Due to the Covid-19 stay-at-home order by Governor Charles Baker, the Board of Water Commissioners meeting was not held at the Acton Water District Office, instead the meeting was held via Zoom Webinar. The meeting was called to order at 7:02 PM on Monday, January 25, 2021 by Ms. Erika Amir-Lin.

A. Comments from Citizens

Kim Kastens: wanted to know what meeting was that they had back on January 5th and what the lawyers are for. Ms. Amir-Lin stated that back in December it was recommended by our site consultant that we might want to engage a Special Environmental Counsel regarding anything that might come from the contamination that was discovered during the testing of the potential new Bedrock source that we will be pursuing on the land abutting the Conant II location – there is a site there that is a former manufacturing facility where there are some contamination concerns. This will allow us to have special counsel on contract to consult with as we go through the process with any issues that might arise regarding the property. Meeting was to interview two candidates that came before the District for the Commissioners' consideration.

B. Approve Minutes from Meeting of 1/5/2021 and 1/11/2021

Mr. Rosen motioned to approve the minutes of January 5, 2021. Mr. Stuntz seconded the motion, and it was unanimously approved by a roll call vote: Mr. Stuntz, Mr. Rosen, and Ms. Amir-Lin.

Mr. Rosen motioned to approve the minutes of January 11, 2021. Mr. Stuntz seconded the motion, and it was unanimously approved by a roll call vote: Mr. Stuntz, Mr. Rosen, and Ms. Amir-Lin.

C. Appoint One Commissioner to Approve Warrants While Conducting Meetings Virtually

Ms. Amir-Lin moved to appoint Mr. Stuntz as the Commissioner to approve warrants while conducting meetings virtually. Mr. Rosen seconded the motion, and it was unanimously approved by a roll call vote: Mr. Rosen, Mr. Stuntz, and Ms. Amir-Lin

D. OLD BUSINESS:

1. Update on Land Lease with Baldco, Inc. at 104 Powdermill Road-Rear.

Mr. Louis Levine, Esq., Counsel for Baldco, Inc., provided an update for the Commissioners. He stated that the dirt pile (pile of material stored on the 104 Powdermill Road-Rear parcel that is comprised mostly of material processing tailings that has accumulated over time) on the property put there by DH Loam needs to be removed. Baldco will remove it, as a condition of the lease. There was an issue that was raised regarding the fencing that Baldco installed. There was a slight mistake on the northwest corner where the fence is about 10 feet off the property line; Mr. Levine stated that we didn't have to fence but Baldco wanted to show good faith. Due to the expense, they do not want to move the fence. They would like to leave where it is. They would like to move forward with the lease. Baldco has done everything that the District has asked them to do so would like to move forward on the lease. He knows that an RFP has to be done.

Mr. Stuntz inquired as to which side of the property line is the fence on. Mr. Levine stated that it's inside the Baldco property between the fence and the real property line. When Baldco put up the fence they put it about 4 feet off the actual survey line which is not typical. You usually want to put about 4 feet between properties.

Mr. Rosen inquired as to whether Baldco has observed any incursions? Mr. Levine stated that it physically can't happen – in this area that is about 10 feet off the 4 feet line that DH drives their trucks along that line plus we have blocked off the entrance from Knox Trail. Mr. Allen posted an aerial view of the property. Mr. Mostoller stated that where the mulch piles are located it is more than 10 feet. You can see where DH Loam continues to use the Baldco property. The mulch piles can only be accessed by the Baldco property. Mr. Levin stated that he was told they are not coming over onto the Baldco property. We are committed to removing the dirt pile to get the lease.

Mr. Amir-Lin inquired as to where DH Loam is coming in from exactly. Mr. Levine was told that the entrance they were coming through has been blocked off.

Mr. Levine can get a plan of where the entry was and where it is blocked off. Ms. Amir-Lin stated that it would be helpful to get the new configuration of the new access. Mr. Levine stated that he will get a plan of where the fence is, where he was previously accessing the mulch piles, and where he is accessing it now.

Mr. Rosen stated that based upon the photos that Mr. Allen has up, what recharge zones are those mulch piles sitting in. Mr. Mostoller stated that some are in Zone I and some are in Zone II Groundwater Protection District (GWPD).

Mr. Levine stated that if the District has concerns about what is in the mulch piles and where they are located that they should approach DH Loam.

Ms. Amir-Lin inquired as to what the timeline is for getting rid of the mulch pile as part of the lease. Mr. Levine stated that he is thinking 6-9 months concurrent with the lease with a condition in the lease would say that if Baldco doesn't remove the pile by that timeframe that the lease would be terminated.

Mr. Allen stated that the last one-year extension expires at the end of March. There would have to be some additional extension until voters could approve the lease at the Annual District meeting. Counselor Bassett stated that yes it will need to be extended again for another year and once the new lease gets voted on that one year would end and the new lease would begin.

Mr. Levine stated that he will get a survey plan to Chris and Matt showing where the fence is located in terms of property line. If we could define in survey or draw on the plan the exact area of the pile and what grade it needs to be dropped down too. Mr. Mostoller stated that we will need to go out to the site and discuss with all to figure that out.

Mr. Mostoller wanted to clarify one comment that Mr. Stuntz made regarding the compost piles and that being just a town zoning issue. Effectively by the property line and the fence not lining up that is allowing them to use that part of the land that they otherwise would not be able to access. It sits at the bottom of a hill. It does have a direct role in their ability to utilize that portion of their own property. It's not just a zoning issue at hand.

2. Follow-up on Request from Owner of 960 Main Street-Rear.

Mr. Allen stated that when he contacted the MA Inspector General's (IG) hotline and was told that the proposal by the applicant is not allowed under chapter 30B Section 16 of MA General Law. Mr. Peter Gottlieb reached out to the IG and got an attorney's name for Mr. Allen to speak with. Subsequently Mr. Allen spoke with Attorney Simon who stated that this is an interest in real property. The 70 feet right of way on District property of way is entitled to use pass and repass and is an existing interest in real property. However, this proposal is contrary to the District's role and mission related to preservation of real property. He has hesitations in being an active participant in this type of activity. We have an active water source and this property abuts that. And the concerns related to that are the increase in risk potential for that water source.

Attorney Mark Bobrowski stated that under the Subdivision Control Law (Chapter 41, Section 81L) there are definitions and one of them is applicant and it basically says that an applicant for subdivision approval is the owner of the land. We own the back (Parcel 17) and the District owns the front which we have an easement but our easement is not ownership but a right of passage which is a recognized interest in property which we have had for 30 years. You are the owner of the land under the easement and technically there are subdivision cases that say to apply for a subdivision we need your signature. He would like to go to the Acton Planning office and tell them that is what we'd like to do at Parcel 17. The parcel is a 70 feet wide easement. He would ask the planning office to think the prospects of either an open space development in back or a residential/planned residential conservation community under section 9 of the zoning. Under the OSD we would have to place 50% land into open space and in the PCRC we would have to put 60% land into open space, and we would include all of Zone 1 land in that. He asked Peter Gottlieb to put together a brief statement about what we are seeking which would be something that the Commissioners would sign. Mr. Allen posted this agreement so that all could read and review.

Mr. Stuntz likes the last sentence in this agreement which says that at the end of the day we the Commissioners get to approve the plans.

Mr. Rosen stated that he is not so worried about the Zone 1 because the town shouldn't let anyone build there anyway. It is undevelopable land. He is concerned that the Planning Board may think that the District is endorsing or thinks that this development is a good idea. He would want the Planning Board to know the District is neutral because we don't know how this is going to look and that we are concerned that it is close to an active well and that the land is all in a critical recharge area. This concerns him because if the developer draws up the plans and the town gets to the point of siting the community leaching fields (there have been some problems with that in other PCRCs). The District might be able to withdraw but not sure if withdrawing will work because the developer could still have a right of way. He is not comfortable with approving this tonight. He would want to talk to someone that has experience in this.

Ms. Amir-Lin stated that she hopes to not see this in front of us again. She thinks it is an inappropriate use of this right of way. It is unusual and irregular to have a significant number of cars passing every day to and from a residential development that close to drinking water infrastructure. She would be uncomfortable with that in the long term and short term. Residential homeowners want their roads, salted, sanded, and plowed and none of that happens there now. All of this would imperil the water supply and that area. We haven't even discussed the potential impacts of lawn fertilizer, septic systems, etc. She would be totally uncomfortable with us signing on to anything resembling this agreement. And it is not appropriate for us to act as a co-applicant in any development because we are not a development authority, we are a municipal body. Our concern as a municipal body is for our municipal interests and in this case, it is preserving the safety of our water supply. In her opinion any development using this access way would not be in the interest of preserving our water supply. She does not see this as something we should sign on now or in the future. She does not see this as going forward as something viable unless the opinion of the Board were to come into an agreement. She doesn't see this as being pursued.

Attorney Bobrowski stated that this easement was created when the District purchased the property from prior owners. He understands the concerns of the water supply, but it is not in the terms of the easement. The easement is pretty open ended and says we can use the 70-foot easement for any purpose that roads are used for in the town of Acton. He is more than happy to work with the District to caveat the concerns that Erika mentioned. We can put these concerns into an agreement. He agrees that the District stays neutral. This land is dead in the water unless we come up with that easement. He just wants to explore this with the Planning Board. We can work around those things that Erika commented on.

Peter Gottlieb stated that Mark made some very valid points and that we are just looking for a signature at this point. He pointed out to Erika that she made a lot of objections, but you have to consider that the District allowed Dirt Doctor to operate right behind the District office. A residential development would be far less taxing on that land than what the Dirt Doctor is doing as we speak. He is surprised that the District never did anything to deal with that issue but you apparently have an objection to this one which is far less invasive use of the land than the heavy commercial operation going on right next to your property and using that same easement. Their goal is to try and improve the usage of the land and not diminish it. Ultimately if residential usage is installed that one day it might lead to the demise of the commercial usage that currently exists there. A residential development serving a positive purpose in that location and section of Acton.

Mr. Mostoller stated that the Water District is not the entity who is allowing Dirt Doctor to operate on Ed Kennedy's land adjacent to this parcel. Back in June you were in attendance where we tried to assist you folks in shutting down that operation. It does continue to be a concern of ours. We are doing everything in the power of the District which we don't have a lot of tools at our disposal to handle matters like this. What you are proposing to us is something that we do have control over. The Commissioners are appropriately hesitant on signing on to something that we don't have conceptual plan on or something to review. We would never look at another project without having a plan in front of us to review. It's not a

fair argument to make about the District. Mr. Gottlieb apologized and didn't mean it in a derogatory way but in a viewpoint way. He thanked him for the participation in the hearing we had. He wished that the District had taken more steps on their own prior to that hearing. The impact of a residential development on Dirt Doctor has the potential for correcting that mistake there.

Mr. Allen stated that we continue to object to the activities of Dirt Doctors, and we had done a ton of surveillance prior to base on their activities. Matt contacted the state and got multiple inspectors involved both state and local. That is spin-up to the appeal of the planners decision that we appeal to ZBA. We still object to the activities back there. We recently had communication with Town Planner in town of Westford in regard to storage back there. We don't have much control there. We are given some level of control. He doesn't think much would cause them to shut down and move out. It would become a nuisance to the residents if a residential development should happen.

Ms. Amir-Lin stated that she doesn't see much deliberation at this time. We are not prepared or interested in calling a vote in signing your agreement at this point. We appreciate them bringing this in front of us.

Attorney Bobrowski informed the Commissioners that he does intend to speak with the Planning Dept to explore the options of a condominium form of development. Open space is off the table because it does involve subdivision and it is under a subdivision control law that we need the Commissioners signature. In the spirit of cooperation he will let the Commissioners know of a conversation with the planning department and the plans for a condo development.

3. Update on Per- and Poly-Fluoroalkyl Substances (PFAS).

Mr. Allen stated that they did pump test the Assabet 3 source last week at 200 gallons per minute for eight hours. Matt took samples and are off for analysis. The well performed fine mechanically. The round two PFAS state grant application was submitted specifically designed around the design of connecting the Assabet 3 well to the South Acton Water Treatment Plant. We will be completing the additional piloting at the North Acton Water Treatment Plant (NAWTP) this Wednesday, 1/27. We did not see a repeat of that Differential Pressure phenomenon that was incurred in the original pilot study. It was attributable to the feed source, which was the plant's Backpulse Tank. Our PFAS project was selected for the 2021 Intended Use Plan (IUP) for the MA State Revolving Fund (MA SRF). Our project was selected for full funding.

4. Update on Proposed Solar Projects.

Mr. Rosen stated that he has continued talking with Jim Snyder-Grant, the District's liaison to the Acton Selectboard. There is a Zoom meeting set for this Friday with all parties. The purpose of this meeting is to strategize how the Town can go back to DOR and explain why this is circular taxation and why we think it is quid pro quo.

5. Update on the Central Acton Water Treatment Plant (CAWTP) project.

Mr. Allen provided an update on the Central Acton Water Treatment Plant project. He showed progress photos of the plant that were taken on 1/15. The filtration tanks are in the building and in place. The roof is being worked on as we speak. The aeration tower expected to be delivered this week. The project is approximately 40% complete. We are right on schedule to be completed by late September/early October. Ms. Bates, the District Treasurer, informed Mr. Allen that the project is not on the list for permanent financing this year. Permanent financing would be October, at the earliest, which is more in-line with our original expectations. This means that the debt will not impact the Debt Fee on the quarterly water bill until 2022, as originally anticipated.

6. DRAFT Budget for Fiscal Year 2022 (FY '22)

This DRAFT budget reflects changes discussed at the last meeting which includes the increase in Legal line item and a drop in Chemical line item. It still needs to be revised based on the recent development with the CAWTP permanent financing.

Other Old Business:

Mr. Allen reminded the Commissioners about their Annual Report – he has not seen a draft being circulated yet and it needs to get done soon. Typically, this would be approved at the second meeting in January, this meeting.

E. NEW BUSINESS:

Mr. Rosen suggested that the Commissioners appoint one of the Commissioners as a liaison to the Acton Selectboard. Mr. Stuntz and Ms. Amir-Lin agree and have appointed Mr. Rosen as the liaison which will officially start when he is appointed the Chair of the Water Commissioners Board, after the town election, and Board reorganization in April.

Currently, Mr. Rosen is informally appointed as the liaison because he has been working with the Acton Selectboard anyway.

Mr. Rosen motioned to approve that the Chair of the AWD Board of Commissioners or chair's designee be appointed as the liaison to the Acton Selectboard and will change with each new chair. Ms. Amir-Lin seconded the motion and it was unanimously approved by a roll call vote: Mr. Stuntz, Mr. Rosen, and Ms. Amir-Lin.

Mr. Rosen motioned to adjourn the open meeting at 9:03 PM. Mr. Stuntz seconded the motion and it was unanimously approved by a roll call vote: Mr. Rosen, Ms. Amir-Lin, Mr. Stuntz.