

Board of Water Commissioners
Meeting Minutes
Acton Water District
693 Massachusetts Avenue, Acton, MA
Monday, March 14, 2022

AGENDA

- A. Comments from the Public
 - B. Approve minutes from the meeting of 2/28/22
 - C. Appoint one Commissioner to approve warrants while conducting meetings virtually

 - D. NEW BUSINESS:
 - 1. Attorney Lou Levine & Representatives of Wood Partners on the Powdermill Place 40B Project.

 - E. OLD BUSINESS:
 - 1. Land Lease with Baldco on District Property at 104 Powdermill Road-Rear
 - 2. Update on Free Cash Certification from MA Department of Revenue (MA DOR)
 - 3. Per- and Poly-Fluoroalkyl Substances (PFAS)
 - Current sample data, if available
 - Review on the bottled water rebate program for sensitive subgroups

 - F. EXECUTIVE SESSION: To consider the purchase, exchange, lease of real property at 549 Main Street as an open meeting may be detrimental effect on the negotiating position of the District.
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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 and was recorded. The meeting was called to order at 7:01 PM on Monday, March 14, 2022, by Mr. Barry Rosen.

Present at Tonight's Meeting:

Commissioners: Erika Amir-Lin, Barry Rosen (Chair), Stephen Stuntz
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
Acton Selectboard: David Martin

Public Attendees:

Alissa Nicol
Michael Geis
Ron Parenti

A. Comments from the Public

Alissa Nicol, School Street. She has a question about the discounts the District makes available. She recently learned that Municipal buildings have a discount. I know that you have been in conversations recently about the possibility of alleviating the increasing debt service to lower income residents. In addition to Municipal buildings, does the Housing Authority and the A-B School buildings also have a

discount? Mr. Allen responded that those are all classified as municipal buildings, so they pay the same Municipal rate, which is a flat rate.

Michael Geis – he is on the WRAC committee. He has been charged with developing a map of the wastewater treatment sewers along Great Road. He wanted to know if the District has this information available. Mr. Allen doesn't believe the District has that information. Barry Rosen: we do not have that information. The Sewer Commissioners are the Town Selectboard members. And the Chairman of that would be David Martin . Michael Geis stated that he has gone to the Town and received information on the Quail Ridge development but has no other information. Matt Mostoller recommends reaching out to the Building Commissioner to see what he has for related information.

B. Approve Minutes from the Meeting of 2/28/22

Mr. Stuntz moved to approve the meeting minutes of February 28, 2022. Mr. Rosen seconded the motion, and it was unanimously approved by a roll call vote: Ms. Amir-Lin, Mr. Stuntz, and Mr. Rosen.

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

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

D. NEW BUSINESS:

1. Attorney Lou Levine & Representatives of Wood Partners on the Powdermill Place 40B Project.

Present are Attorney Lou Levine, representing the current owner and Jim Lambert, representative of Wood Partners, the potential buyer.

Attorney Levine provided an overview of the 2017 discussions surrounding the project. Initially this it was going to be a 40B project in both Acton and Maynard. In the initial concept they had discussions with District and the District agreed to supply the water and Maynard would collect the sewer. As time went on Maynard withdrew from the project and the complex was redesigned to be all in Acton. Over a year ago or so, they presented to the Acton Zoning Board of Appeals (ZBA) for a comprehensive permit for 230 units on the Acton side. There were negotiations between the proponent and Sewer Commissioners relative to waiver sewer connection fees. In lieu of the project providing infrastructure improvements that were part of the Powdermill grants that the town was trying to obtain. The project was approved by the ZBA. No consideration given to the Water District fees. In the last 6-7 months, Wood Partners has engaged in due diligence as to the various aspects of the project and came to the realization as to the substantial amount of fees charged by the District (connections fees and mitigation fees to be determined). What we are asking for tonight is that the Commissioners consider and allow waiver of fees that Jim Lambert will go into detail. He knows historically that the District has been out of the 40B fee requests. He submitted information to Chris Allen that separately constituted can be considered and will be considered in making units affordable and whether waiving fees are appropriate.

James "Jim" Lambert, Managing Director of Wood Partners. We have been engaged in the last several months to purchase this site and bring it to fruition. Wood Partners is a large-scale multi-family developer on the national level. They reviewed all aspects of this project. He gave a brief overview of where the project stands today. It has been approved by Zoning Board of Appeals for 230 units; it is a mix of 1, 2, 3 bedrooms with 420 total bedrooms. Going back to ZBA and getting the plan changed to be more efficient and improved upon. As a 40B project, 25% will be designated as affordable which means it is reserved by folks making up to 80% of the median area income. All 230 units will count towards the town's Subsidized Housing Inventory (SHI). 25% units have to be eligible for affordability, but entire project counts towards the 10% needed to satisfy the Chapter 40B requirement.

Tonight, he is asking the Commissioners to consider the following:

- Would like the Commissioners to consider a delay of demand charges until first Temporary Certificate of Occupancy (TCO). The current regulations require Demand Charges to be paid at time of application.
- Regarding the demand fees: they would like to lock-in \$3,550 per unit (this rate was in place at the approval of the project), for 171 market-rate units, as currently published on the AWD website and Rules, Regulations and Rates. They would like the Commissioners to waive the demand charges for 59 affordable units. The total demand charges being paid to District would be \$607,050.
- No requirements for off-site improvements (Powder Mill water main upgrade and the construction of a Maynard interconnection)
- Mismatch of various demand charges and mitigation fees that they would ask for a waiver from.

Attorney Levine stated that they would rather negotiate with the District but will go to the ZBA. He stated that this project was embraced by the Town of Acton. The Town Manager is very anxious to learn when the construction will begin. Try to come to an agreement tonight versus going to the ZBA having them ordering those fees being waived.

Barry Rosen: The District made you aware that because of inadequate fire suppression that the existing water main couldn't supply enough water at the Powdermill site at the correct pressure and quantity of water. The District did mention that the water main would require an upgrade so that it could deliver sufficient fire suppression. Attorney Levine stated that he was aware of this issue. He is not here to discuss the relining the water main. This would be a discussion between the District and Jim Lambert. Barry stated that he does not know how they can ask for a waiver on that because after the real-time testing showed could not provide sufficient water, but the water main upgrade would have to be done to supply water to Powdermill Place. Jim Lambert: we have seen some information from the past but were not involved. He is not here to argue with what was discussed. He is just putting forward some terms that would make the project feasible to move forward.

Chris Allen stated that this water main is acting like a 3" pipe and not a 6" pipe. The parcel you are building on as never been served by the District, as such, this is akin to new development. It not typical for us with new development to pay for any infrastructure installation or improvements with a new development. That is the responsibility of the owner. At a minimum, we are looking at a rehab of the 6" main, i.e., cleaning and relining. Jim Lambert: he understands Chris's comments, and this is something that they are looking into. He does not have enough info to understand the cost implications of rehabbing the main.

Attorney Levine would like to get the Commissioners comments on the first two items of the proposed fee structure that Jim Lambert presented.

Barry Rosen: are you master metering these buildings? Jim Lambert: they will be sub-metered. Chris: our responsibility would be to read the master meter and the sub meters would be read by the owner.

Erika Amir-Lin: regarding the fee amount, she has two questions for Chris. (1) confirm what the fee is per unit? Chris Allen stated that it is currently \$4,800 per unit effective January 1, 2022. (2) Is there is no change in demand fee when it is an affordable housing unit and market rate units? Chris Allen: that is correct.

Barry Rosen: How do we charge the Acton Housing Authority? Do we charge them the normal connection rates? Chris Allen: yes that is correct.

Jim Lambert: he would like to ask about timing – on the properties that pay at time of application, do you know when they are making the application in the process as it relates to pulling a permit and starting construction? Chris Allen: that is typically before tapping the water main. Before there is any work on the on the existing water infrastructure the application will be filed, and fee will be paid. Jim Lambert: that means their project would have been approved and they would have designed the project long ago and doing the construction. Chris Allen: yes that is the path. Sometimes the contractors will do the site work first and install site piping, water is the first to go in and then go into right of way to tap our water main to bring water into project and then start their testing. Jim Lambert: he is trying to understand when the application process happens. Chris Allen: typically, it does not come before the Board. Typically, an application will be made to the District office and the application will be approved by staff (not the Commissioners). Barry Rosen: the reason that this project came first to the Water Land Management Committee (WLMAC) and then the recommendation came to the Commissioners is because the original project was not typical – it involved two towns. And there were some questions about whether the District should service Maynard or just Acton because typically the District does not service other towns, unless voted as such at a public meeting. This was the last time that there were committees involved. Jim Lambert: so, because of the unique history if typically, would have gone to the District directly. Where do fees get decided? Chris Allen: the fees are a master meter. The units are numerated, and the multi-unit applies. The multi-unit is less because there is one meter one line feeding into an apartment complex.

Jim Lambert: where would off-site improvements get approved/requirement to do those? Chris Allen: the analysis would be done by the District and our Engineer. Typically work with Chris and his staff; Matt Mostoller who handles the mitigation and our Engineer consultant. Attorney Levine: it is his understanding that the Mitigation fees that the District imposes after an application is made; a water report is submitted, the District reviews, and the District determines the Mitigation fees. Chris Allen: yes that is correct. A water impact report is submitted by owner; typically, that process lays out with the demand of the project is based upon all the various water fixtures that encourages water conservation. Mitigation is a term that was brought about by the Sustainable Water Management initiative (SWMI) in MA that put additional burden for maintenance of environmental conditions on public water suppliers by maintaining surface features, streams, rivers, ponds, etc. We have to mitigate the demand that is placed on our system by regulation. So, Mitigation is a fee we collect for that purpose. And it gives you the initiative to implement water conservation practices. Attorney Levine: in his experiences, there are always additional Mitigation fees, correct? Chris Allen: that is correct. Attorney Levine: in his mediating this conversation, it is his understanding that Jim doesn't know the Mitigation fees, won't know them until the water impact study is done, and but they are not zero. The other issue from Jim's standpoint is that you don't get to the determination of Mitigation fees until you pay the demand charges per unit. Chris Allen: mitigation can often be negotiated prior to application. If you are aware of what the projected demand will be, you lay out the number of bedrooms, bathrooms, occupancy, and put that on an impact report multiply the number of units and the mitigation can be worked out early in the process.

Jim Lambert: He was trying to get a handle on the process so now he understands the process.

Stephen Stuntz: when you see people paying the demand charges as soon as they can it's because it's so that they wouldn't hit the increase in demand charges. These were projects that heard that the increase in demand fees was going to happen. It's not an application for approval because we don't do approvals. We need to get the developer to pay the upcharges to make sure the water gets there and doesn't impact the rest of the system. And that's why the fire line has to be big enough to supply that. It costs to the developer not to the town. We seldom see the developer coming to the Board for anything because it is right off the Rules and Regulations. Matt does negotiate the mitigation fees. The rules are applied at the design and that is a good time to discuss mitigation. We are in the business of hooking up and we set the rules.

Erika Amir-Lin: a classic case of misunderstanding. At this point, maybe a conversation with the District staff to discuss mitigation as it's not a Board decision.

Jim Lambert: yes that is correct, but the request will remain for the demand charges. While he has heard what everyone has said and he is now more comfortable with the process, he is still making the request on the demand charges and making them retroactive when the project was approved and also waiving the affordable units.

Erika Amir-Lin: do you know when you will be in front of the ZBA? Jim Lambert: we do not - we are still working on the due diligence with the site – meeting won't happen for a few months still. Erika Amir-Lin: would like to see Wood & Partners have conversation with District staff and then revisited with the Board if needed.

Chris Allen stated that looking at this proposal and this request. He is operating by the District Rules & Regulations. He is not inclined to grant any of these waivers. Apply the current demand charges as they are- \$4,800 per unit, no waiver for affordable units, and mitigation in full. That is the way staff operates. If you want to work with us that is the mindset that you will have to take.

Barry Rosen: did you already take over this project or are you still in the decision mode about taking over the project from the original developer? Jim Lambert: yes that is correct. We are still in the due diligence period. We are under contract to purchase the land and the rights to entitlements but it contingent upon our satisfactory review of all aspects of the project including water, environmental, geotechnical, title survey, as well as getting our modifications through ZBA. There is still a lot to be determined before we can move it forward.

Barry Rosen: Wood Partners will work with District staff under current Rules & Regulations. If Jim Lambert still needs to speak with the Board then he can work with Chris Allen to make that happen.

E. OLD BUSINESS:

1. Land Lease with Baldco on District Property at 104 Powdermill Road-Rear

Attorney Louis Levine representing Baldco, at 104 Powdermill Road-Rear.

Unless the Board has a desire to enter into negotiations to enter into a long-term lease, Baldco is happy to just go year to year. The lease is up at the end of March (March 31st). We just request that it be extended for another year. Stephen Stuntz: the one reason we didn't want to extend the lease was because there were certain changes that needed to be done. Attorney Levine: the pile/mound has been removed. Chris Allen: was the "berm" removed entirely? It appears that only one side was removed. Attorney Levine stated that he was told that the mound was removed. Chris Allen: As discussed last February, Baldco was supposed to come back to the District with a plan and that never occurred. A surveyor was supposed to be engaged to determine the cost of removing the material and that never occurred. Only 25% of the material that make up the mound has been removed and that was from his visit from last month. Attorney Levine: regarding the surveyor that was based upon getting a 20-year lease. Chris Allen: we have been at this for over 5 years dealing with Mr. Dexter. Attorney Levine: The trespass was abated; the fence was installed and some of the material was removed.

Erika Amir-Lin: regarding the berm and what the material is made up of - the not knowing is the problem. We can't make a judgement and we have to be suspicious of it because of the proximity to our infrastructure. The worry can't be ruled out. In the proximity of our wells, we have to be extra cautious.

Attorney Levine: the control over Baldco is the lease so if you don't want to extend the lease the conversation becomes mute. He doesn't disagree with Erika. He is not here to say that Baldco is wrong.

He is here trying to get this lease moved forward. The Commission wants to extend the lease on some future contentions, or they don't want to extend it. He thought the removal was the right step forward but if it's not enough for the Commissioners then it's not enough for Commissioners.

Matt Mostoller: last February our meeting on site was to make sure that we were all on the same page and it continues to seem as though we are not. Our concerns remain the same and your clients concern over it does not seem to be the same area as ours. What Chris is observing he believes it is less than the 25% cleaned up. That surveying work that we thought was forthcoming was to establish the agreed upon this is what needs to be dealt with. And without that we don't have a mutual agreement upon what the issue is.

Barry Rosen: the last time we spoke about this you had said that Hancock Surveyor would be called in for a price by Jason Wolfe, of Baldco, and he would survey it and move on from there. I don't know that anything has happened since that assertion that a price quote was going to happen, and that Jason was going to get a quote from Hancock. And he would have to agree with Erika and Matt that we don't know what is underneath that berm until it is surveyed so we have to remain concerned about it.

Attorney Levine stated that he is just looking to keep this moving forward so what do the Commissioners suggest? Steve Stuntz: a survey is the only thing that will tell us anything which has a certain cost to it. Maybe we get a grant from some third party to pay for survey. Lou's client will get permission from Baldco to do the survey. If they don't give us permission to survey the n there is something wrong with the land and he doesn't want the responsibility of cleaning it up. The only thing moving this forward is mitigating everyone's fear that there is something there and the only way to do that is by testing and if testing proves it then someone is responsible for cleaning it up.

Attorney Levine: he will come back in a couple weeks; in the meantime, he will speak with the client about what they are willing to do and meet with Matt Mostoller on-site.

In the meantime, it will be month to month.

Matt Mostoller: if the concern for Baldco is the cost of the survey, they don't have to do the survey. That was their suggestion in quantifying the amount of material. If we go out in the field and come to the agreement that this is what needs to happen they could save on the cost of having the survey done. It was their decision when we met in February that they wanted to quantify so that they could come up with a plan on how to get rid of it.

Barry Rosen: the action item is Lou going back to speak with client about what they are willing to do and meet with Matt either onsite or another location to decide on how we will satisfactorily remove everything or get the survey done and get a path that we all agree to. Lou Levine will speak with his client in the morning and will speak with Matt and Chris on what the outcome of that discussion was. Ultimately the goal is to have the berm tested, correct? Matt Mostoller said that yes that is the question we have discussed before, and the client wasn't willing at the last discussion. There are multiple levels of concern.

Barry Rosen: what do we have to do to go month to month with Baldco? Counselor Bassett stated that you just say you are going month to month, and we will go by the same terms of the one-year lease. Extending from year to year is not the proper approach we should be taking. We either go with the 20-year lease or not. When there is no lease there is no leverage for them to do anything. Barry Rosen: at the next meeting we will have an opportunity to decide whether to go month to month, extend another year or the lease is up. Counselor Bassett: if it is going to be month to month lease there needs to be milestones met every month and reported monthly to the District.

Chris Allen stated that Lou will be back on March 28th and he can present something to us at that point.

The discussion will be tabled until then.

2. Update on Free Cash Certification from MA Department of Revenue (MA DOR)

Chris Allen: the District just received our free cash certification based on last year's audit and it was certified as requested at \$1,157, 598. We can move forward with appropriations at our Annual District Meeting on Wednesday, April 13th.

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

- Current sample data, if available
- Review on the bottled water rebate program for sensitive subgroups

- Current sample data, if available

Chris Allen: Currently serving to customers water at South Acton and Central Acton Water Treatment Plants (North Acton is still being used intermittently). All samples were in compliance; all less than 20 PPT.

Matt Mostoller: Collected samples for the month of March today at Acton Center and South Acton. North Acton is offline for well rehabilitation and will be sampled at the end of the month when it goes back into service.

- Review on the bottled water rebate program for sensitive subgroups

Chris Allen: the current statistics this quarter are that we are giving 80 bill credits and sending checks to two renters. The total cost this quarter is \$3,210 and the total program cost to-date is \$5,625.

Mary Jo Bates: we get additional applications anytime we do outreach or if PFAS is brought up in the news. We had two new applications today.

Erika Amir-Lin: we should continue to offer it. It continues to be an appropriate interim measure.

Stephen Stuntz: I feel pretty good that we have been below the limits since July 2021. When people ask what we have done we can show them. It looks pretty good since July.

Mr. Rosen moved to adjourn the open meeting at 9:21 PM and enter into Executive Session at 9:21 PM to discuss the purchase, exchange, lease of real property as an open meeting may have a detrimental effect on the negotiating position of the District and not to reconvene in open session. Ms. Amir-Lin seconded the motion, and it was approved unanimously by a roll call vote: Ms. Amir-Lin, Mr. Stuntz, and Mr. Rosen

Next meeting: March 28, 2022