

Board of Water Commissioners
Meeting Minutes
Acton Water District
693 Massachusetts Avenue, Acton, MA
Monday, July 10, 2023

AGENDA

Comments from the public

OLD BUSINESS:

- A. Update on BALDCO Acquisition**
- B. Update on 549 Main Street**

NEW BUSINESS:

- A. Vote to approve the issuance and details to a loan from the Massachusetts Clean Water Trust for Loan No. DW-23-01 and sign related closing documents**
- B. Waiver of Fees for Powder Mill Place 40B Project**

Executive Session: To consider the purchase, exchange, lease of real property as an open meeting may have a detrimental effect on the negotiating position of the District

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 03:02 PM on Monday, July 10, 2023, by Ms. Amir-Lin.

Present at Today's Meeting:

Commissioners: Erika Amir-Lin (Chair), Barry Rosen, and Stephen Stuntz
District Manager: Matthew Mostoller
District Treasurer: Christine McCarthy
District Counsel: Mary Bassett
Environmental Manager: Alexandra Wahlstrom
Finance Committee: William Guthlein

Public Present:

Alissa Nicol
Kim Kastens

Comments from the Public

Kim Kastens mentioned there is a page on the District website related to water restrictions. She had a question about the status update on the water management act permit process, when does the public comment period take place, and will there be a request for an increase in withdrawal volume? Mr. Mostoller responded that he does not have a status update. He has reached out to

MassDEP; however, they have not been forthcoming about the status. The public comment period ended in Fall 2021, and we have not asked for an increase. We have only requested a modification to allow us to withdraw from additional points at this time.

OLD BUSINESS:

A. Update on BALDCO Acquisition

Mr. Mostoller provided the update. He stated we are moving forward with the environmental site assessment field work tomorrow which will include soil borings, monitoring wells, and test pits that will be dug in the berm material. We anticipate collecting soil and groundwater samples at the site and anticipate receiving the Phase 2 environmental site assessment report in August. Additionally, the draft lease agreement was received from the seller today and the trespass letters have been received by the abutters. We do not know if there has been a response to any of the letters. Mr. Mostoller and Mary Bassett made a recommendation to formally request to extend the due diligence period to 8/31/2023 and schedule the closing for 9/13/2023. Mary believes that the request can be sent out by the end of this week.

Ms. Amir-Lin feels this is perfectly reasonable and asked for a motion from the Board.

Mr. Stuntz moved to accept the recommendations of Counsel to extend the dates of the closing for the BALDCO land. Mr. Rosen seconded, and it was unanimously approved by roll call vote:

Mr. Rosen, Mr. Stuntz, Ms. Amir-Lin

B. Update on 549 Main Street

Mr. Mostoller stated we received the revised draft conservation restriction on June 29th. This was initially due on May 10th. The secondary CR holder has not had their comments incorporated. Mr. Mostoller has reached out to SVT and will solicit some feedback from them in the next couple of days. The seller is withholding comments until SVT can provide their feedback. The seller was hoping we could update our target of July 1 to submit to the State and aim for the third week of July. He is not sure if we can do that at this point, but it is something we can work towards. Similar to the BALDCO purchase, we were supposed to have a July 31 closing date, and that is not on track due to a lack of approval of the CR from the State. Mr. Mostoller and Mary Bassett will be working with the seller to obtain an extension for the closing date. The seller has indicated that they are willing to extend the closing to the end of September. This is predicated on the State giving an expedited review once the CR has been submitted to them.

Ms. Amir-Lin moved to authorize the date of the closing to be extended to a date deemed appropriate by the District and other parties.

After a short discussion the motion was then amended to: The Board moves to authorize the extension of the P&S to be negotiated between the parties. Mr. Rosen seconded, and it was unanimously approved by roll call vote:

Mr. Rosen, Mr. Stuntz, Ms. Amir-Lin

NEW BUSINESS:

- A. *Vote to approve the issuance and details to a loan from the Massachusetts Clean Water Trust for Loan No. DW-23-01 and sign related closing documents*

Ms. Amir-Lin motioned that the Board of Water Commissioners vote to approve the issuance and details of the loan from the Massachusetts Clean Water Trust for loan number DW-23-01 and sign the related closing documents based on the document entitled “Vote of the Board of Water Commissioners” on July 10, 2023. The document reads:

- (1) that the District shall issue a bond or bonds in an aggregate principal amount not to exceed \$1,000,000 (the “Bonds”) pursuant to Chapters 29C and 44 of the General Laws and a vote of the District passed April 13, 2022 (Article 17), which authorized a total borrowing of \$1,000,000, for the drinking water project identified in such votes (the “Project”);
- (2) that in anticipation of the issuance of the Bonds the Treasurer is authorized to issue an interim loan note or notes (the “Notes”) from time to time in an aggregate principal amount not to exceed \$1,000,000;
- (3) that each Bond or Note shall be issued as a single registered security, and sold to the Massachusetts Clean Water Trust (the “Trust”) at a price determined pursuant to the Financing Agreement;
- (4) that the Treasurer is authorized to determine the date, the form, the maximum interest rate and the principal maturities of each Bond and Note, and to execute a Financing Agreement (or Agreements) with the Trust with respect to the sale of the Bonds and Notes, such date, form and maturities and the specific interest rate or rates of the Bonds and Notes to be approved by a majority of the Board and the Treasurer and evidenced by their execution of the Bonds or Notes;
- (5) 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.
- (6) that all action taken to date by the District and its officers and agents to carry out the Project and its financing, including the execution of any loan commitment or agreement by the Treasurer, are hereby ratified, approved and confirmed; and

(7) that the Treasurer and the other appropriate District officials are each hereby authorized to take any and all actions necessary or convenient to carry out the provisions of this vote, including execution and delivery of the Financing Agreement(s) and the Project Regulatory Agreement(s) relating to the Project.

Mr. Stuntz seconded, and it was unanimously approved by roll call vote:
Mr. Stuntz, Mr. Rosen, Ms. Amir-Lin

B. Waiver of Fees for Powder Mill Place 40B Project

Mr. Mostoller provided an overview of the Powder Mill Place Project. The project has been around since 2017 and is an approximately 230-unit apartment complex that is being proposed on the Acton/Maynard Town line. The project was originally going to straddle the two Towns and at that time the District had reviewed the preliminary plans and agreed to supply water to the entirety of the project even though part of it was located outside of Acton. The project died down and then came back in 2020 with a different developer. That developer also walked away from the project and now another developer is interested in the project. The current developer reached out to Mr. Mostoller in the middle of May to issue a will serve letter. This is not something the District normally does. Typically, an application is submitted for water service, and we then review the project to see what the infrastructure impacts are, water use impacts are, and we develop a workable path forward to supply water. We provided a conditional will serve letter which among other things requires the developer to submit a water impact report and we provided them with an estimate of the fees for connecting this project to our water system. We told them we believe we can supply them with x number of gallons to the project, but we need more information before we can fully commit to the project and for their planning purposes, we provided an estimated cost. We have not heard back from the developer.

The reason this matter is coming before the Board is we found out the developer requested on June 30th that the ZBA give a waiver of our fees. They have not requested a waiver of fees directly from the District. The developer feels that as a 40B project they do not need to abide by local board requirements. Historically, every 40B project that has connected to the water system has followed our process, complied with our rules and regulations, and paid all subsequent fees.

Mr. Rosen referenced the West Boylston decision. A discussion ensued and it was agreed that the case was not precedent setting but a waiver of fees by the ZBA would be precedent setting for the District. Mary Bassett stated that we need to have our position placed on record; she and Mr. Mostoller have drafted a letter that will be sent to the ZBA.

Alissa Nicol pointed out an important detail from page 19/20 of the West Boylston decision. The Acton Water District is distinct from the Town, we have our own annual meeting, and we are not a local board.

Mr. Stuntz stated that we shouldn't do anything until we are asked. We cannot make decisions if we haven't been asked.

Ms. Amir-Lin will attend the ZBA meeting being held virtually on 7/11/23 and will have material prepared. She indicated there is no case to be made, we simply need to remind them what the policies and procedures are.

This item may be added to future agendas if needed.

Mr. Rosen asked if an executive session would be needed today. Mr. Mostoller said no, however we will likely require an executive session on 7/17.

Mr. Rosen moved to adjourn the meeting at 3:51PM. Mr. Stuntz seconded, and it was unanimously approved by a roll call vote:

Mr. Rosen, Ms. Amir-Lin, Mr. Stuntz

Next meeting: July 17, 2023