

Board of Water Commissioners Meeting Minutes
Acton Water District
693 Massachusetts Avenue, Acton MA
Monday, August 31, 2020

AGENDA

A. Comments from Citizens

B. Approve minutes from meetings of 8/6, 8/17 & 8/21

C. NEW BUSINESS:

1. Presentation from representatives of the law firm of Napoli-Shkolnik for PFAS litigation

D. OLD BUSINESS:

1. Appoint one Commissioner to approve warrants while conducting meetings virtually
2. Update on Baldco lease for 104 Powdermill Road-Rear
3. Update on proposed Solar projects at Lawsbrook Road and Knox Trail
4. Update on Per- and Poly-Fluoroalkyl Substances (PFAS)

Present at Today's Meeting:

(Panelists)

Commissioners: Erika Amir-Lin (Chair), Barry Rosen, Stephen Stuntz

District Manager: Chris Allen

District Counsel: Mary Bassett

Environmental Manager: Matthew Mostoller

Commissioners Secretary: Lynn Protasowicki

Board of Selectmen (BOS): Jim Snyder-Grant (Selectmen's liaison to the District)

Harold Naughton, esq.: of counsel to the law firm of Napoli-Shkolnick

(Attendees):

Louis Levine, Legal representation for Baldco, Inc./Money Matters Radio

Jason Wolfe, Baldco, Inc.

Ronald Parenti, 12 Heritage Road, Water Resources Advisory Committee (WRAC)

Due to the COVID-19 limitations on in-person gatherings ordered 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 a video conference using Zoom. The meeting was called to order at 7:00 PM on Monday, August 31, 2020 by Ms. Erika Amir-Lin.

A. Comments from Citizens.

Jim Snyder-Grant spoke.

BOS and AWD recently met and discussed their meeting schedules and trying to coordinate them so that there could be more attendees from each group at these meetings. Started conversation with each of the Chairs, the Town Manager and the District Manager. From Jon Benson, the BOS Chair, he would prefer that the BOS keep their meetings on the 1st and 3rd Monday's. He is suggesting that the AWD switch their meetings to the 2nd and 4th Mondays. Ms. Amir-Lin will put on the calendar a discussion about the District's potentially switching their meetings to the 2nd and 4th Mondays of each month.

Special Town Meeting - Mr. Snyder-Grant mentioned that he will be presenting at Special Town Meeting Article 3 which is giving the Town Manager the authority to negotiate and enter into the Payment in Lieu of Taxes (PILOT) agreement with the solar developer, EDF Renewables. He summarized the Article for the Commissioners and he will send the full article electronically to them. The Town of Acton's finance committee voted unanimously as well as the BOS to approve the article. Ms. Amir-Lin, Mr. Stuntz, and Mr. Rosen mentioned that they will not be able to attend that town meeting that will be held on Tuesday, September 8th.

Counselor Bassett was just confirming that her understanding of this warrant article is to vote to agree to the Town's Finance Committee and the BOS as to giving Town Manager the authority to enter into the PILOT agreement and giving authority to negotiate it. Mr. Snyder-Grant agreed.

B. Approve Minutes from Meetings of 8/6, 8/17 & 8/21.

Mr. Rosen motioned to approve the modified minutes of August 6, 2020. Mr. Stuntz seconded the motion, and it was unanimously approved by a roll call vote: Mr. Stuntz, Mr. Rosen, Ms. Amir-Lin.

Ms. Amir-Lin motioned to approve the minutes of August 17, 2020. Mr. Stuntz seconded the motion, and it was unanimously approved by a roll call vote: Mr. Stuntz, Mr. Rosen, Ms. Amir-Lin.

Mr. Stuntz motioned to approve the minutes of August 21, 2020. Ms. Amir-Lin seconded the motion, and it was unanimously approved by a roll call vote: Mr. Rosen, Ms. Amir-Lin, Mr. Stuntz.

C. NEW BUSINESS:

1. Presentation from Representatives of the Law Firm of Napoli-Shkolnik for PFAS litigation

Mr. Allen mentioned that a few law firms have contacted the District regarding class action litigation for PFAS contamination and some are AFFFF centric. The focus of this

litigation is a multi-district litigation (MDL) filed in Federal District Court in South Carolina. We met with Hank Naughton and Walter Hang, of Toxics Targeting and their Toxicologist, and after reviewed other solicitations he was impressed with this firm and deemed it appropriate to have this firm come in front of the Board for their consideration.

Hank Naughton - introduced himself as the Managing Partner of the law firm of Napoli-Shkolnik LLC.

He is impressed with the District's proactiveness in regard to PFAS. The litigation is in regards to AFFF - aqueous film forming foam and it's an ingredient used in firefighting, water repellent fabrics, microwave popcorn bags, industrial and household use, etc. and the active ingredients in it are PFAS and PFOA which are leeching their way into the water supplies around the country. Used widely in late 1950s to the present and has impacted so much of everyday use. 1500 districts in USA have been impacted in AFFF, PFAS and PFOA. Due to so many cases popping up around the country, a group of Federal judges in 2018 decided to consolidate these cases into one and have it presided in the Federal District Court in Charleston SC. There are currently 500 plaintiffs. The law firm is currently representing several Massachusetts water departments and districts. They are going to open a Boston office to service the District's needs and other MA clients.

If the District decides to retain Napoli-Shkolnik LLC, he proposes from a litigation stand point, to draft a complaint on behalf of the Acton Water District, file it in Boston's Federal District Court but then subsequently remove the complaint and attach your case to the MDL in South Carolina. We are also pursuing another complaint on behalf of the Natural Rural Water Association a similar parallel case in Federal District Court in District of Columbia which is another possibility that we could pursue but he thinks it will be merged with the MDL in South Carolina.

He will send a copy of the complaint which will show the dozens of different defendants who are in the current litigation. We are also prepared to go after any other personal responsible parties (PRPs) separate and apart from the makers named as defendants in this litigation. That could be pursued in the State court and Federal court on the Districts behalf.

Mr. Stuntz: reading through the document/complaint is confused as to who is eligible for a class action suit? He didn't think the District would fall under that category. Mr. Naughton stated that the District is the template/typical type of District they want to work with and who qualify for the class action suit; of the 500 plaintiffs many are the Acton Water District's size. Our clients include Oklahoma City, which is large, MWRA, to Madrona Beach Washington (36 members).

Ms. Amir-Lin: confused about eligibility after reading through document/complaint. She understood it to be a specific source and we don't have a source to be found. Please expound on what makes us eligible. Mr. Naughton explained that the eligibility arises from the damages and not the source. There are limited number of manufacturers who are the makers of the active ingredient so if you are impacted by it, they must have made it. The damages that qualifies the District for the lawsuit. Counselor Bassett stated that the defendants are the manufacturers of it, and it had to be one of them because there are only so many manufacturers of the product.

Mr. Rosen: is our damage limited to what we expect to pay for one or more solutions, or can it also include our ongoing cost of operating additional filtration?

Mr. Naughton: yes - and that will be where the hard work will come in. Because if we hope that some of the manufacturers settle. Quantifying the damages is up to the court as to what formula will be used to divvy up the settlement. The money will then go into a trust fund and there will be a formula set up for which plaintiffs can apply to show current cost and future cost.

Mr. Rosen: timeline for settlement?

Mr. Naughton: case has been going on for 2 years and it could take another 2-3 years for a settlement.

Mr. Rosen: in MA it appears that we will set a standard for 20 parts per trillion (ppt) but the federal government has not implemented a regulation—only an advisory for 70 parts per trillion. Is it likely that since we are not above 70 ppt we may have a tougher time to say we are damaged?

Mr. Naughton: this is actually a trial question. It is up to us (the lawyers) to demonstrate the damage and present that in court to a jury.

Ms. Amir-Lin: what is needed from us both as a Board and the District? Time investment from us? Financial cost? What is asked of us?

Mr. Naughton: there will be a retainer agreement. Time involved from District for Walter Hang of Toxic Targeting to go through records and doing research in the District office. The law firm assumes all costs. Walter Hang is on retainer to the law firm so no additional costs from him.

Ms. Amir-Lin: how often are updates given by the law firm?

Mr. Naughton: he will work with the District on what they want to know. This is Federal Court which moves slowly. The District can set the communication schedule.

Mr. Mostoller: when they met with Walter Hang and Mr. Naughton. Mr. Hang gave a presentation of the type of work he will do relative to helping identify local sources. He brings a lot of skill to identifying sources. The District staff doesn't have the time to commit to finding the source. Mr. Hang and his team would bring a lot of value to the

District in seeking out specific sources since we have not identified a soul source of our PFAS contamination.

Mr. Rosen: is suggesting that Mr. Naughton, send through Counselor Bassett, the retainer agreement before the District's next open meeting on September 14th so that the Commissioners can review it and decide.

D. OLD BUSINESS:

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

2. Update on Baldco Lease for 104 Powdermill Road-Rear.

Mr. Allen provided an update. He had communication with the tenant, Baldco, regarding a long-term lease, had an appraisal done to purchase the property, which was sent over to the client, and subsequently the client would like to seek a new 20-year lease. The lawyers are present to speak tonight. This would be an on the warrant for the Annual District Meeting to take place in March 2021 if we can all agree on the lease. He mentioned that from the last drone pass over a few months ago it still shows DH Loam accessing the Baldco property. There are still spaces on the property line. Did not notice a ton of material storage but equipment is still moving through. That condition still exists.

Mr. Mostoller: We have not been on the site since the last meeting (over last winter). The trespass was still on the Baldco property and has not ceased.

Mary: at that time the boundary/wall put it was still on the Baldco property and was not abated completely. They are still using the Baldco property. We have been insistent that we will not go into a long-term lease until trespass has been abated.

Louis Levine and Jason Wolf, representing Baldco.

Mr. Levine spoke: Baldco reached out to DH Loam/Mr. Dexter to refrain from his activities. When we had meeting in Dec/Jan, DH Loam promised to build a stone wall; then Mr. Dexter's mother died, and we entered into the pandemic; then the District went out for appraisal. Regarding the appraisal, he thought it was extremely low. So here we are today, and we are happy to go into 20-year lease and want to understand the terms of the lease and what we have to do to go forward with the lease. He has not heard anything else since Dec/Jan on what is happening on the DH Loam property. If there are still issues with DH Loam, they would like to take care of it.

Mr. Allen responded. The lag was due to waiting on the appraisal. The conditions since Jan/Feb are still the same. They are continuing to use Baldco property. There is still a

question of the earthen berm behind 36 Knox Trail and what materials make up that berm. The District would like to see some sampling of that material. Regarding the stone wall, Mr. Dexter put incremental concrete blocks to delineate the approximate property line. DH Loam seems to continue to use the property even though they are not supposed to be.

Mr. Levine stated that in the future there is no need to surveil using a drone. Just contact us and the District can go on the property. Mr. Allen stated that the District owns the drone and it is a good way of seeing property lines monitoring activity and taking photos. Mr. Levine asked, what is the next step? Mr. Allen stated that we are concerned about source protection; the environment, Zone 1 and Zone 2 land and protection of our sources; we are currently looking at putting the Assabet 3 well online and its close by to this property. Mr. Levine stated that he wants to know how we can move forward with the lease.

Counselor Bassett stated that she has not seen what has changed. She is hearing that it is our job to monitor Mr. Dexter's use of the Baldco property. The District will not enter a lease with a neighbor is allowing another neighbor to potentially pollute our wells. All we can say to Baldco is that the District is not interested in a long-term lease until you do your job and abating the trespass with DH Loam. To date the trespass hasn't been abated.

Mr. Levine stated that about a year ago he reached out to the Acton Zoning Enforcement Officer and it is in a Zone 1 or Zone 2 and the activities that Mr. Dexter is doing it violates the Acton Zoning Bylaw. We are trying to set up a meeting to get the District to complain to the Zoning Enforcement Officer who will then make their own investigation to determine if there is a zoning violation and if so, would cause the matter to be abated. That's the whole purpose of the groundwater district under the Acton Zoning Bylaw gives the Town of Acton the power to get us out of this mess. Counselor Bassett stated then you should file a complaint with the Zoning Enforcement Officer. You are the owner of the property. The District has no standing. It's your issue to abate. He wants to know why the District won't file a complaint with the Zoning Enforcement Officer. It's your well not the Baldco well.

Mr. Mostoller stated that there are some issues with what Mr. Levine is saying. (1) There is a trespass going on and the Zoning Enforcement Officer at the time told the District that until the private property of the trespass is dealt with the Town will not touch it. (2) The Town of Acton has never done anything to protect the groundwater resources or the surface water resources of the Town of Acton. It's a misguided principal.

Ms. Amir-Lin: I would echo what Mr. Mostoller stated. We recently just went through the process where the Town did not act in a zoning capacity that was in favor of the District.

Mr. Levine stated that if he can get the Town of Acton to proceed with some enforcement action is the Board ok with that.

Mr. Rosen stated that there is clearly a zoning violation and the owner of the property (Baldco) has got to stop the trespass. He will not vote for another lease unless this issue is straightened out by November 1 which will allow the Board to discuss it in a timely manner and decide whether to place it on the warrant for our March 2021 meeting.

Mr. Levine inquired that if Baldco can get the Town interested in proceeding with a zoning enforcement action will the District indicate their concern about the activities.

Mr. Allen stated he would put it to akin to 960 Main Street where the District was asked for comments on an appeal, we testified at public hearing, and the Zoning Board of Appeals did not overturn the Zoning Enforcement Officers decision.

He will report back to Mr. Allen and Counselor Bassett by the next District meeting.

Mr. Allen stated that they will wait on Mr. Levine to contact him as to what has transpired, and the District will continue with drone surveillance periodically to monitor the activities.

3. Update on Proposed Solar Projects at Lawsbrook Road and Knox Trail.

Mr. Allen stated that this update was covered in comments from citizens section. Mr. Stuntz stated that since none of the Commissioners can be at the town meeting do we want to send a statement for Jim to read at the town meeting? Mr. Allen stated that it is not necessary. We will leave it up to EDF and Town of Acton and the District should remain peripheral to the PILOT negotiation.

Counselor Bassett stated that EDF wants the Town of Acton to tell them what the amount is, and Town of Acton wants to get as much money out of EDF as it can.

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

Mr. Allen provided an on Per- and Poly-Fluoroalkyl Substances. Operational update, Assabet 2 is close to being in service, we did some sampling this past week per regulation that DEP demanded and should be getting those results soon. The electrical work is wrapping up. Instrumentation and Controls will be done this Thursday to tie into controls into treatment plant.

Pilot study at the North Acton Water Treatment Plant will be commencing next week. The plant will be flowing to waste during pilot.

On the regulatory side, he has not heard anything on the state grant for design and piloting.

We also applied for SRF funding for construction which went in last week, August 21st for construction for the full-scale system. Not sure of technology so the predicted cost is a somewhat inflated number, because, not knowing the technology, we don't know how much it will cost.

Mr. Mostoller did some raw water sampling today. Mid-September should have those results. With reactivation of North Acton, we will do some more sampling there. We have been pumping the Kennedy #2 well to waste as a capture well. We did cycle in another contract lab to assist with sampling results. We sent duplicate samples to both labs at the beginning of last week to do a comparison. Mass DEP does expect that the regulations will be finalized by late September early October. Most water utilities in MA will need to start testing for PFAS in the first quarter of 2021.

Mr. Rosen: how will we account for the variability between the testing of the same well at the two labs?

Matt: it's a sensitive test. There can be PFAS introduced into the lab equipment. There are slight modifications that each lab makes to achieve their compliance with the analysis protocol. There can be variations relative to reconciling it. But he doesn't think the District will face those issues. We ran into same issues with 1,-4 dioxane. Mr. Rosen asked if we submit both number to DEP? Mr. Mostoller stated that we will need to see what they say.

Mr. Mostoller stated that after we got those increase numbers from the Conant wells, we made some operational changes. The sampling conducted today will hopefully reflect better water quality.

Mr. Stuntz asked what types of operational changes are made? Mr. Mostoller stated that at Conant 2 we changed the number of hours that that facility was running (it's getting time to rest) and reduced the flow rate there as well.

Mr. Rosen asked about the Clapp-Whitcomb well in regard to the Arsenic levels. Mr. Mostoller stated that we made adjustments in our operations there and resampled it at the end of July and both were below the MCL and were in line with previous sample results with that facility. The week of August 24th we took another Arsenic sample and it's at the lab and are awaiting results.

Other Old Business:

1. Central Acton Water Plant - there is a planned shut down for Thursday night, 9/3, starting at 7PM that will impact 24 customers who were hand delivered notices today. Tying the new 12" ductile iron main into the existing the 12" main on Main Street. This will be the new feed for the water treatment plant once it is commissioned. Making connection but not putting into service, until proper testing is completed.

2. He received the executed easement documents from Beran Peter, the owner of Associated Environmental Systems (AES), for 8 Post Office Square and Post Office Square right of way. He will deliver to Counselor Bassett tomorrow for filing so she can record the originals. He has not heard from the other two landowners on the other utility easements per his last request prior to leaving on his vacation two weeks ago.

3. Coming before the Commissioners soon will be an approval for an easement that National Grid will need for the new natural gas service to the plant. We do have approval from voters from the last Annual meeting to approve any easements for the Central Acton Water Treatment Plant project. The gas company needs an easement to run the new gas service for backup generator and building heat. He spoke with Waterline and we will need a record plan and easement documentation so that is in the works. The contractor will use \$55,000 from the utility allowance in the project bid for the fee to get the project going with National Grid.

Mr. Rosen moved to adjourn the open meeting at 8:51 PM. Mr. Stuntz seconded the motion, and it was unanimously approved by a roll call vote.