

**MINUTES OF THE  
SPECIAL MEETING OF JANUARY 24, 2012**

**WATER COMMISSIONERS PRESENT:**

Mr. Robert L. Burnham, Chairman  
Mr. James E. Kelleher, Water Commissioner  
Mr. John S. Lovewell, Water Commissioner

**EWD STAFF PRESENT:**

Mr. Shane A. Ben David, Foreman  
Mr. Fred R. Domont, Water Superintendent  
Mrs. Pia Webster, Administrative Assistant

**MEETING CALLED TO ORDER:**

The Board of Water Commissioners of the Town of Edgartown held a Special Meeting on Tuesday, January 24, 2012, at 4:00 p.m. at the offices of the Water Department located at Fifty-Eight Kavanagh Way, Edgartown, Mass. At 4:00 p.m., Chairman Robert L. Burnham called the meeting to order.

**APPROVAL OF MINUTES:**

The Commissioners began with a consideration of the **Minutes of the Regular Meeting of January 10, 2012**. Water Commissioner John S. Lovewell had something to say about the last two sentences in the fifth paragraph on page 5. “He had drawn up a *scope!*” read Mr. Lovewell, referring to Paul E. Cote, an engineer with Tata & Howard Incorporated. “Has anyone ever *seen* this?” demanded the Commissioner.

“Yes,” answered Foreman Shane A. Ben David. Chairman Burnham explained that the Department had charged the contractor, Barbato Construction Co., Inc., to hire a subcontractor to set up the SCADA system and that Eii, Inc. had met that goal. “It’s on the computer! It’s *working!*” said Superintendent Fred R. Domont.

Mr. Lovewell then made a motion to approve the Minutes of the Regular Meeting of January 10, 2012 as written, seconded by the Chairman. The motion carried by voice vote, with Messrs. Burnham and Lovewell voting aye and Water Commissioner James E. Kelleher abstaining, because he had not attended that meeting.

**OLD BUSINESS:**

**DISCUSSION/POSSIBLE VOTE: ARTICLES FROM TOWN ACCOUNTANT.**

Chairman Burnham referred to the Commissioners' earlier discussion of the two Warrant Articles submitted by Town Accountant Kimberly G. Kane for the April Town Meeting. *[See page 6 of the Minutes of the Regular Meeting of January 10, 2012.]* "We've seen all this," he said. He had thought at first, he recounted, that the shortfall experienced by the Town a few months earlier would be covered by funds in the USDA loan.

The Articles being discussed were as follows:

- 1) *Vote to transfer from water surplus the sum of \$33,258.00 to the Water Control Center USDA Project for ban paydowns for prior years.*
- 2) *Vote to transfer from water surplus the sum of \$69,857.96 to the Water Control Center USDA Project for expenses not reimbursed by USDA.*

However, in speaking to Paul Cote after the last meeting, the Chairman had come to understand that the USDA would not cover the shortfall. So he recommended that the Commissioners leave the Warrant Articles in place. If the audit turned up anything, the Articles could be postponed at Town Meeting, he concluded.

Mr. Domont related that he had talked to Mr. Cote and Town Counsel Ronald H. Rappaport, who had confirmed that the amounts in the Warrant Articles would not be covered by the USDA. So he agreed with the Chairman. There were no objections or comments from the other Commissioners.

**DISCUSSION: HIRING OF AUDITOR RE: USDA LOAN DISCREPANCIES.**

The Board discussed briefly the possibility of hiring an independent auditor to comb through the two most recent USDA loans, along with the accompanying grants, to locate the source or sources of the discrepancies that had led to the shortfall a few months earlier. *[For previous discussions about hiring an auditor, refer to: page 2 of the Minutes of the Special Meeting of October 31, 2011; page 5 of the Minutes of the Regular Meeting of November 8, 2011; page 2 of Minutes of the Special Meeting of November 14, 2011; pages 2-3 of the Minutes of the Special Meeting of November 22, 2011; and pages 4-5 of the Regular Meeting of January 10, 2012.]*

First, those present established that the recently distributed reports did not concern the USDA loans and grants but the FY11 Operating Budget. Town Auditor Sullivan & Rogers had in fact audited the second USDA loan in October 2011; but the report was not yet available. Chairman Burnham clarified with Superintendent Domont the latter's position that hiring an independent auditor to look into both loans was not necessary at this point. Mr. Domont said that once he was done with the annual statistical report required by the Mass DEP, he would begin his own study of the loans, beginning at the beginning.

Administrator Assistant Pia Webster brought to the Board's attention a glaring discrepancy she had noticed on the spreadsheet presented by Mr. Cote at the Regular Meeting of January 10, 2012. [See page 4 of those minutes.] Referring the Board members to a document titled "Monthly Project Budget Report," Mrs. Webster pointed to the item "21E Cleanup," the "Revised Budget" for which was listed as \$247,000 and for which the "Previously Paid Amount" was \$165,943. While her records agreed with the *expended* amount, the budget for the project was inexplicable, she remarked.

According to the spreadsheet, the Admin Assistant continued, the "Total Earned to Date" amount for the 21E Cleanup was \$165,943 and the "Balance to Finish" was "\$81,457." In their packets, said Mrs. Webster, was a printout of the expenditures from EWD Project No. 39, 21E Cleanup Engineering Services/Other, which expenditures totaled \$165,942.99, with all payments going to Earth Tech, Inc., \$10,651.50 in FY07 from the first USDA loan and \$155,321.49 from the second loan in FY08.

She had to assume, the Admin Assistant stressed, that this sum included *all* aspects of the cleanup, both engineering and hauling, since a search of all of the Department's accounts in Fiscal Year 2008 – when the project was actually executed – turned up no other expenditures related to it. (Fiscal Years 2007 and 2009 had also been checked.)

How was it possible then, Mrs. Webster wondered, that the USDA had not paid for all that had been expended by the Water Department on the 21E cleanup? If \$58,000 had not been reimbursed, where was that expenditure? It said right there on USDA Area Loan Manager Ron Koontz's spreadsheet that USDA had reimbursed the EWD \$165,943, and that was exactly what the Department had spent. In any event, the Admin Assistant concluded, this was an area worth exploring further.

#### **DISCUSSION: RESTORATION OF THE MILL HILL STANDPIPE.**

Mr. Domont reported on the recent inspection and cleaning of the Mill Hill Standpipe. He related how he had received a telephone call from Underwater Solutions, Inc., a vendor that had done the cleaning and maintenance in the past. The vendor offered not to charge freight and to keep the price under \$6,000. "I jumped at the opportunity to save money," he said.

As for Underwater Solutions' report, "[i]t's just as we've been discussing," Mr. Domont went on. "It's not a dire emergency ... but as soon as we can, we should repaint the standpipe." He then provided some of the details of the recent undertaking by the divers. The good news was that with all the flushing and other efforts by the Department, the divers had found only three inches of sediment instead of the 18 inches that had been found during some previous cleanings.

The next step, said the Superintendent, was to get a copy of Underwater Solution's report to the Commissioners. "We do need to do something within the next couple of years," he emphasized. Chairman Burnham noted that they needed to get a price for the work and

then look into how much money was available. Mr. Domont said that Leo R. Yuskus of Haley & Ward had related to him that the Brewster standpipe, which is larger than Edgartown's, had recently been painted inside and out for about \$800,000. He added that the first time the Department had had it done, it had cost \$175,000, \$225,000.

We need the money from that lawsuit, said Chairman Burnham, referring to the settlement from the methyl tertiary butyl ether (MTBE) case. *[See page 3 of the Minutes of the Meeting of December 11, 2007.]* The Superintendent explained that at the time of the payout, Town Counsel had advised the Town that because the check was written to the Town of Edgartown, the money was, in essence, theirs. "Let's do some exploration to see how much money we have," reiterated the Chairman.

"No way should we reduce our rates until the standpipe is taken care of," stated Mr. Lovewell. The Superintendent responded that he had not planned to do that in any case. The FY11 surplus was due in part to their not closing on the second USDA loan until the start of Fiscal Year 2012. "So we didn't pay the full price of the debt service," he said. The discussion wound down.

**DISCUSSION: SHERIFF'S MEADOW LEASE SWAP PROPOSAL.**

"I make a motion that we table the whole damn thing!" said Mr. Lovewell, referring to the Sheriff's Meadow Foundation lease swap proposal. *[For background, see pages 2-3 of the Minutes of the Regular Meeting of January 10, 2012.]* He continued, "I'm not spending *any* money on those buildings." The Superintendent said he wanted to move one of the storage sheds on the Shurtleff site to the Wintucket Control Center site. The Chairman wondered why the Department did not fix the roof of the largest building if, as Executive Director Adam R. Moore of Sheriff's Meadow claimed, it needed replacement. "What is the rationale of fixing up those buildings?" asked Mr. Lovewell. There was no second for his motion.

Mr. Domont suggested that they do a site visit and afterward decide what to do next. Chairman Burnham wanted to know if the monthly rent of \$600 offered by Mr. Moore was a good price. "Not worth the aggravation," replied the Superintendent. After further discussion, the Chairman proposed that if the others felt confident the lease swap was not a good idea, they ought to turn down the proposal. The Superintendent said that he would prefer to keep as low a profile as possible at the site until the land was sold. Mr. Lovewell's motion died as the Board moved on to the next agenda item.

**PROPOSED ASSISTANT SUPERINTENDENT POSITION.**

Chairman Burnham related that he had gone to the Personnel Board office, where Human Resources Coordinator Marilyn Wortman had repeated that the Department was not going to get the position of Assistant Superintendent on the 2012 Annual Town Meeting Warrant. He reiterated what he had said in the December 13, 2011 Regular Meeting:

that any new positions for FY13 would have had to have been vetted by Massachusetts Municipal Association (MMA) representatives the previous June.

Mr. Domont noted that the MMA's participation was in fact restricted to approving the job description. Furthermore, he stressed, the MMA representatives were not elected officials of the Town of Edgartown. A discussion ensued. "Well, she told me again, there's no way," said Chairman Burnham.

The Superintendent recommended that he and the Commissioners meet with the Personnel Board. "They are in total error in what they are saying," he declared, then commenting, "It's typical that we get all these hurdles." The discussion continued. It was agreed that the Superintendent would arrange a meeting with the Personnel Board.

Mr. Kelleher wanted to know what the Commissioners would be presenting at the meeting. Tell the Personnel Board, answered Mr. Domont, you approved the job description and you're requesting that it be on the Warrant. He continued, you would be instructing the Personnel Board to submit an Article on the Annual Town Meeting floor to create a new position, the Assistant Water Superintendent.

"We still have to work out details," noted Mr. Kelleher. Then Mr. Domont went over, for instance, how they could explain that for the time being the Foreman and Assistant Superintendent positions would be an either/or proposition, that is, the Department would not have both positions filled simultaneously. The Warrant Article would have to be written in such a way that this was clearly conveyed, he added. Mr. Kelleher remarked that it seemed they were not expanding the Foreman's position but redefining it.

Mr. Domont tried to demonstrate the pliability of the staffing situation if the new position were in place. As an example, if the Assistant Superintendent were to become the Superintendent, the question of whether then to have an Assistant Superintendent or a Foreman would be at the *new* Superintendent's discretion.

A discussion followed about the license grade level required for the new position. Currently, the Superintendent was a four, and the Foreman, a three. "So the Assistant Superintendent should be a four," suggested the Chairman, adding, "I think that should be added ... There's got to be some kind of upgrade."

Mr. Kelleher asked about the reason for the creation of the position. Mr. Domont related that his retirement was "just around the corner" and that the Department had "a qualified person in-house." The Chairman noted that they would still have to advertise the opening; it seemed to him they needed a better reason for creating the position. Mr. Kelleher agreed: "They're going to say, why do you need this?" "Oak Bluffs and Tisbury both have Assistant Superintendents and an unfilled Foreman position," argued Mr. Domont, adding, "It's like the Assistant Principal position. It's more administrative."

Mr. Lovewell said, "I'd like to go on record and make a motion that the Board approves establishing the Assistant Superintendent position." Chairman Burnham provided a

second. The Chairman then turned the discussion back to the subject of the Assistant Superintendent's having to have a Grade 4 license. Admin Assistant Webster reminded him that there was a motion on the floor. The motion carried unanimously by voice vote.

The agenda item discussion wrapped up with the Chairman asking the Commissioners to call the Superintendent with their ideas for the Assistant Superintendent job description.

**NEW BUSINESS:**

**DISCUSSION: OUTCOME OF \$160,000 LOAN OUT OF R&M ACCOUNT.**

Admin Assistant Webster explained that Mr. Domont had requested this agenda item, and she directed those present to an excerpt from the Minutes of the Regular Meeting of January 9, 2007. Therein was described a request from Town Administrator Pamela M. Dolby, acting on behalf of the Selectmen, that the Water Department lend the Town, on a short-term basis, \$160,000 out of the Repair and Maintenance Account to fund the first phase of the North Water Street Project. Her memory of this matter, continued Mrs. Webster, was that the Town had ended up not needing to borrow the money; and in fact a thorough search of the Repair and Maintenance Account, as well as all other Department accounts, showed no large withdrawals during that period.

The Superintendent's recall of this piece of Department history differed. He recounted North Water Street resident S. Bailey Norton approaching the Selectmen for money to finish the project and the Town taking the \$160,000 out of the MTBE case settlement to do that. Some discussion ensued.

**DISCUSSION: DRAFT FY11 MANAGEMENT LETTER/AUDITOR'S REPORT.**

The week before, the Commissioners had received copies of the Draft Management Letter and the Independent Auditor's Report for FY 2011 from Sullivan & Rogers, the Town Auditor. "Couple of things," began Mr. Lovewell. "There's a bunch of numbers in this thing... Do we agree with them? Do we care?" He inquired specifically about the receivable figure on page 41 of the Independent Auditor's Report. Admin Assistant Webster indicated that the figure was correct.

Mr. Lovewell also made mention of a report on page 4 of the Management Letter titled "Water Enterprise Fund Indirect Costs," in which the Town Auditor recommended that the Town implement the recommendation of the Department of Revenue by establishing a written internal policy regarding internal cost allocations, to be reviewed annually. Specifically, these costs are related to interdepartmental services like accounting, treasury and so forth.

**PAYROLL:**

The Commissioners signed payroll forms.

**ADJOURNMENT:**

There being no further business, Chairman Burnham asked for a motion to adjourn. Mr. Lovewell made a motion to adjourn, seconded by Mr. Kelleher. The motion carried unanimously by voice vote, and Chairman Burnham adjourned the Regular Meeting at 5:05 p.m.

Respectfully submitted,

Pia Webster  
Administrative Assistant

**APPROVED:**

**BOARD OF WATER COMMISSIONERS  
TOWN OF EDGARTOWN**

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Robert L. Burnham, Chairman

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James E. Kelleher, Water Commissioner

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John S. Lovewell, Water Commissioner