

**Cedar Meadow Lake Watershed District
Minutes of Management Committee Meeting
September 19, 2012**

The meeting commenced at 7:44 P.M. at Leicester Police Department Community Room

In attendance: **Elected Officials**

Paul Dufresne
Wayne Ridley
Richard Johnston, Clerk
Terence O'Coin, Treasurer

Members

Linda Corby
Nicole Moisan
John Moisan
Michael Reis

Minutes of Previous Meetings

The previously distributed Minutes of the Management Committee meeting on August 8, 2012 were offered for approval. A motion was made, seconded and voted unanimously to accept the Minutes as written.

Clerk's Report

Mr. Johnston reported the following communications since the last Management Committee meeting:

- 8/7 letter (received 8/10) from Commerce Bank covering paid loan paperwork to file with State and Registry of Deeds (for Treasurer)
- 8/10 sample letter from Clerk to 17 listed members that did not attend Annual Meeting attached to highlighted schedule showing their individual shares of \$1,800,000 judgement financing
- 8/11 - 125 newsletters to members and Friends of lake
- 8/17 letter from Clerk to Lenard Engineering covering Phase I re-inspection agreement
- 8/17 note from Clerk to Lenard Engineering providing updates concerning depth survey and dam seepage (agenda item)
- 8/17 letter from Clerk to Lenard Engineering requesting on-call service agreement (agenda item)
- 8/17 letters from Clerk to Burncoat Pond Watershed District and Sargent Pond Association proposing group purchase of Phase I re-inspections to realize price discounts
- 8/17 "welcome" letter from Clerk to Thomas and Marta Frisinger, new owners of 37 Lakeview Drive
- 8/27 e-mail from Clark Rowell of UniBank covering 8/1 letter from bond counsel seeking documentation
- 8/30 through 9/11 exchange of e-mails between Clerk and Attorney Nickless providing updates on progress of 40 year betterment legislation (agenda item)
- 9/5 On-call Dam Engineering Services agreement between District and Lenard Engineering (agenda item)
- 9/5 and 9/7 exchange of e-mails between Clerk and Lenard Engineering regarding Phase I reinspection, on-call agreement, depth survey and engineering required by the Office of Dam Safety (agenda items)
- 9/8 e-mail from Clerk to Lenard Engineering regarding outstanding \$500 ODS check

- 9/10 e-mail from John Murphy of Representative Binienda's office to Clerk regarding 40 year betterment legislation in response to 8/6 e-mail from Clerk.
- 9/10 through 9/13 exchange of e-mails between Clerk and Julie DeSobral of Senator Moore's office regarding 40 year betterment legislation (agenda item)
- 9/12 e-mail from Clerk to Attorney Phillips seeking legal opinion (agenda item)
- 9/12 letter from Clerk to members Michael and Linda Corby inviting them to attend 9/18 Management Committee meeting (agenda item)
- 9/12 letter from Clerk to members John and Nicole Moisan inviting them to attend 9/18 Management Committee meeting (agenda item)
- 9/12 letter from Clerk to members Michael and Michelle Reis inviting them to attend 9/18 Management Committee meeting (agenda item)
- 9/13 exchange of e-mails between Clerk and ConCom regarding reported potential oil spill (non-agenda item)
- 9/18 email exchange between Clerk and member Steve Monahan regarding Beaver problem (non-agenda item)
- 9/18 e-mail from Clerk to Richard Holub, wildlife trapper, regarding Beaver problem (non-agenda item)
- 9/18 e-mail from Clerk to ConCom regarding reported potential oil spill (non-agenda item)
- 9/19 follow-up e-mail from Clerk to James Nicas regarding group purchase of Phase I re-inspections

Treasurer's Report

Mr. O'Coin presented a Treasurer's Report dated 9/19/12 showing that the District had \$16,126.63 on deposit in the Spencer Saving Bank and the Commerce Bank. He described entries for bank service charges and the deposit of \$1,339.96 in tax revenue along with a \$25 Friends donation. He sought and received approval for Warrant #162.

Mr. O'Coin stated that he was prepared to turn the books over to auditor Dan Haynes for the annual audit and Certification of Free Cash, and planned to do so within the next week.

Mr. Johnston noted that the outstanding \$500 check from the Commerce Bank that was preventing the closing of this account was being held by the Office of Dam Safety. The District could either write a new check and ask for the return of the original check or wait for the check to be processed when the ODS approves the dam repair permit sometime in the next two months.

New Business

It was agreed that, in the interest of allowing members Linda Corby, Nicole Moisan, John Moisan, and Michael Reis to avoid staying through nearly the entire meeting, the New Business matter of the letter from these three member families be taken out off order.

The Corby, Moisan and Reis families own larger and more expensive homes than average at the end of Fairview Drive. In their letter to the Management Committee dated August 5, 2012, and hand delivered to Mr. Johnston August 8, 2012, they cited the disproportionately high share of the judgement expected to be charged to them due to apportionment of the financed judgment on the basis of assessed property valuations in effect at the time of the judgement. The letter sought to have the judgement apportioned on the basis of assessed valuation in effect at the time of the taking in 1997.

Mr. Ridley lead the discussion for the Management Committee. He pointed out that the District had a verbal legal opinion from Attorney Phillips that the judgment must be apportioned based on assessed valuations at the time that the court issued the judgment. The District had not as yet received a requested written opinion because Attorney Phillips was on vacation. Mr. Ridley, Mr. Dufresne, and Mr. Johnston pointed out that it would be impractical to go back to the date of the taking for several reasons. Since the taking, both the Dufresne and Ridley homes have had additions and renovations and were assessed at a much higher amount than assessed in 1997. Mr. Johnston pointed out that the property at the end of Fairview Drive was an undeveloped six plus acre parcel that was assessed as unimproved land in 1997. Mr. Ridley pointed out that his family has owned their property on the lake since 1932. If the judgement was going to be based on assessment in effect in 1997, why not go back to when each parcel was originally purchased. He pointed out that going back to 1997 was just not practicable.

With respect to the decision to apportion the judgement and interest on the basis of assessed valuation, Mr. Ridley pointed out that this method was consistent with the manner in which District expenses have been apportioned since the District was formed. This was also the method used by the Town to apportion Town expenses to taxpayers. This same method of apportioning their judgements was utilized by the Burncoat Pond and Stiles Lake Districts. Mr. Ridley went on to state that many other alternatives were considered by the Management Committee. First, apportioning equally was considered and rejected as being unfair. Mr. Johnston stated that, while considering this option, a comparison between the homes at the end of Fairview Drive and 1 Lakeview Drive, a converted small cottage was made. It did not seem fair to charge each the same. Also considered was apportionment on the basis of shoreline frontage. This too was rejected because someone such as member Kathy Pelley with 400 feet of frontage would pay much more than a member with a similar house with 50 feet of frontage. Mr. Johnston pointed out that he recently learned from Mr. Reis that he had more than 400 feet of frontage. Mr. Reis stated that his lot had 468 feet of shoreline frontage. There was discussion about an alternative method proposed verbally by Mr. Reis to Mr. Johnston to apportion the judgement 50% on a per member basis and 50% on assessed valuation.

There was discussion led by Mr. Johnston in response to a question from Mr. Reis regarding the timing of assessment billing. Mr. Johnston explained that in December and January work would be done by the District to prepare mailings by the Board of Assessors offering members several options. The exact amount of each members betterment would be included and members could opt to pay all or a portion of the amount within 30 days to avoid first year interest. Members could also opt to pay off their betterment over a shorter period than 40 years. Otherwise, each member could opt to pay over 40 years and would have a 40 year payment schedule showing the reduction in annual payments attributable to a fixed principle method of repayment. The first half payment would be due August 1 and the second half due November 1. District taxes would be due February 1 and May 1, spreading total payment of taxes and the betterment over four payments. Mr. Johnston went on to explain that the Town must submit all their tax and betterment billing data to their billing vendor by June 1 each year.

Mr. Ridley pointed out that any change in the method of apportionment of the judgement would have to be approved by the full membership of the District. Mr. Reis expressed doubt that any proposal by him and his neighbors to reduce their share would be approved. Mr. Johnston cited a "jealousy factor" that he has seen in Town previously that would likely occur in this case and cited an experience at Burncoat Pond. The water level at Burncoat Pond had been lowered to the point that the pond looked more like a swamp. The Town Beach on the pond could not be used. The Board of Assessors reduced property valuations by 30%. The Select Board intervened and negotiated an agreement with Mr. Shea for a standstill agreement that, in exchange for repairing the dam, refilling the pond, and suspending legal action for six years, the Town would pay Mr. Shea \$100,000. The proposal went before the Town Meeting and was "shot down royally." The voters stated that, if residents could afford waterfront property, they could afford to pay to repair the dam themselves. Mr. Reis cited the attitude of the jurors in our

lawsuit. They clearly did not show any sympathy for the lakefront property owners in our District.

Mr. Moisan, speaking just for himself, stated that he would prefer to have the members of the District tell him themselves, though a vote, that they did not agree with the proposal offered by he and his neighbors. It was agreed among the Fairview Drive members present that they would like to propose that the judgement and interest be apportioned on a per member basis or, in the alternative, some combination of this and apportionments based on an assessed valuation. Mr. Ridley and Mr. Dufresne stated their willingness to conduct such a Special Meeting. Mr. Johnston stated that members seeking a Special Meeting must obtain the signatures of 10 members on a petition. He stated that this would have to be done quickly due to the time constraints of Town billing. He agreed to confirm this in the enabling Act and to provide this information to Mr. Moisan and his neighbors by the weekend. Mr. Johnston then went on to state that the Management Committee had the ability to call a Special Meeting and Mr. Ridley and Mr. Dufresne endorsed this approach. Mr. Johnston discussed the need to write an Article for consideration at the meeting and suggested that it could offer a couple of alternatives. There was discussion about the fact that there are 92 bills rendered to 85 members because several members own adjoining additional lots or multiple dwellings. The prevailing sentiment was that, if billed on a per unit basis, the billing should be on a per member rather than a per lot basis. A motion was made, seconded and voted unanimously to hold a Special Meeting to consider whether to apportion the judgement on a per member basis or, in the alternative, another method. Mr. Johnston was instructed to draft the necessary article.

The Fairview Drive members left the meeting and the meeting resumed with consideration of Old Business.

Old Business

Lake Level Management:

Mr. Johnston stated that he had been able to hold the lake level at between 5 and 8 inches below the spillway elevation by partially opening and closing the low level outlet.

Seepage Update:

Mr. Johnston stated that seepage through the leak near the gatehouse was held to a minimum by holding water levels down and that, when the water was at 8 inches below the spillway elevation, there was just a trickle of water seeping through the dam near the gatehouse.

Lake Depth Survey:

Mr. Johnston stated his frustration in attempting to get a depth survey started. This survey data is necessary for Lenard Engineering to complete the hydrological and hydronic (H&H) study requested by the Office of Dam Safety. He plotted a grid using Google Earth and landmarks that could be identified across the lake and went out in his boat to use the Lowrance depth and coordinate device to find that the Lowrance device coordinates did not agree with Google Earth coordinates. Further, he found that there was no consistent difference between coordinates, i.e., the difference increased from one end of the lake to the other. He discussed this matter with member Brian Waterman, whose employer does a lot of survey work, and asked Lenard Engineering for a price quote for doing the survey work. Member Shane Schemke previously offers to provide assistance.

Engineering and Dam Repair Permit Update:

Lenard Engineering is planning to model the impoundment and to complete a leak survey and H&H study, all as prerequisites to obtaining a dam repair permit. The Office of Dam Safety (ODS) has requested these expensive engineering studies as a condition of dam repair permit approval. Mr. Johnston asked for and received Management Committee authorization to contact William Salomaa, Director of the ODS to seek approval to postpone some of this work to later years so that limited resources in the current fiscal year can be devoted to dam repair rather than permitting expenses.

Dam Repair Planning:

Mr. Johnston reported that, as soon as water levels are adequately reduced, work will commence on Phase I of dam repairs, probably in November.

Phase 1 Dam Inspection Proposal:

Mr. Johnston reported that the effort to package Phase I dam re-inspections at Cedar Meadow, Burncoat and Sargent Ponds was successful, and that Lenard Engineering will give each District or association a \$200 discount..

The re-inspection at Cedar Meadow will be delayed until after phase I repairs are completed.

Legislative Update:

Mr. Johnston reported working with John Murphy in Representative Binienda's Office and Julie DelSobral of Senator More's office on the proposed legislation that will allow the District to bill betterments out over 40 years. The Bill, H.4319, was reviewed by House committees and engrossed by the House and sent on to the Senate. After some minor revisions, it is expected that it will be engrossed by the Senate and returned to, first, the House and, then, the Senate for approval before being signed by the Governor.

Weed Survey and Spread of Fanwort:

Mr. Johnston reported the rapid spread of Fanwort in the cove near his home. This weed originated in the Rawson Street cove, then moved to the cove near his home, and was reported by member Shane Schemke to be present part was down the Lakeview Drive side of the lake to the Simpson property. Mr. Ridley noted that he found Fanwort in five or six feet of water outside the swampy area on the east side of the lake. This weed spreads through fragmentation. Mr. Johnston reported finding floating fragments of Fanwort up against the dam in September.

New Business

Start of Annual Draw Down:

It was agreed that the annual draw down would commence on September 30. When notified by newsletter, this will give members two weekends in which to remove boats and floats.

Newsletter:

A draft September newsletter was approved for distribution as written.

On-Call Engineering Agreement:

There was a brief discussion about the need to incorporate Lenard Engineering into the District's emergency Action Plan. Mr. Johnston shared a proposed on-call agreement. A motion was

made, seconded, and voted unanimously to authorize Mr. Johnston to sign the on-call agreement with Lenard Engineering on behalf of the Management Committee.

Tax Deductibility of Betterments:

Mr. Johnston asked Donald Maloney, Jr. of the accounting firm O'Connor and Maloney in Worcester to make a determination as to the tax deductibility of District betterments on behalf of the District. Mr. Maloney researched and provided numerous regulatory and court decision citations supporting the deductibility of our betterments. He also found some conflicting language in these same citations that could be construed to say that our betterments are not deductible. In the interest of keeping the cost down, Mr. Johnston asked Mr. Maloney to furnish just his raw data. Mr. Johnston stated that he planned to package and summarize this information for distribution to members with a recommendation that each member make this information available to his or her own tax expert or accountant to decide whether to take the deductions. Mr. Johnston presented a \$500 bill from Mr. Maloney for the time spent performing research. A motion was made, seconded, and voted unanimously to approve the bill for payment.

Water Sampling:

A non-agenda item - Mr. Ridley shared that results of water testing on samples taken at the end of July and August and pointed out some very good total phosphorus readings in the 40 to 50 ppb range. PH readings that were a little below neutral in July returned to just above neutral in August. Clarity was not good in comparison to previous years.

Beaver Problem:

A non-agenda item - Mr. Johnston discussed problems with Beavers being reported by members. Member Steve Monahan lost a couple of White Birch trees and Mr. Johnston lost a stand of Beach Rose shrubs. Earlier in the meeting, Mr. Moison reported the loss of several White Birch trees. Mr. Johnston contacted a local wildlife management company that resulted in a phone call on 9/18 from Malcolm Streicher of Spencer, a trapper who works for the Worcester water department and Leicester and Spencer water districts. Mr. Johnston summarized his conversation with Mr. Streicher. Beavers not only build lodges above the water line but also hollow out dens in river and lake banks. He cited an example of a partial collapse of a breakdown lane on the Mass Pike cause by Beavers hollowing out below and under the Mass Pike to get to the median strip. He also stated that, in his experience, Beavers usually move upstream from their den or lodge, meaning that the Beaver taking down trees off Fairview Drive probably come from below the dam. Mr. Streicher offered to perform a free survey and to provide the District with a price for Beaver removal. In-season, between November 1 and April 1, Mr. Spreicher usually charges \$150 per Beaver. It was agreed that this matter should be included in the September newsletter.

Reported Potential Oil Slick:

A non-agenda item - Mr. Johnston reported that he received a phone call from member Brian Waterman of Lakeview Drive on 9/13 to report a potential oil spill. Mr. Waterman's son noticed a slick on the water on the opposite side of the lake when fishing the prior evening. When he awoke on 9/13 he brought to his father's attention that the slick was now in front of their home. Mr. Waterman called Mr. Johnston at 8:30 AM and stated that it looked like it could be a spill of oil/gas from a boat and that the slick extended from his home and along the Lakeview Drive shoreline northerly approximately 150 feet. Mr. Waterman reported the matter to the Worcester Department of Environmental Protection.

Mr. Johnston rowed down to this location a half hour later to find that the "slick" looked like the

same material that appears from time-to-time on his shoreline. There were signs of an oily sheen that had a mild petroleum odor. The bulk of the material observed by Mr. Johnston here and in front of his own home is green in color and appears to be either algae or pollen. This material floats on the surface and is suspended below the surface for 12 to 18 inches. In addition, and often at the same time, a slick of dirt particles appears on the surface. At times, there appears to be a little petroleum based material mixed in with the dirt. The combination of the green material and dirt is nasty looking, but always disappears within hours by either being absorbed in the water or falling to the bottom.

The Leicester Conservation Commission e-mailed Mr. Johnston to report that the DEP had received notice of a potential spill. This was followed by several exchanges of e-mails between Mr. Johnston and ConCom member JoAnn Schold. He initially stated his speculation about the material and, later confirmed this speculation. Mr. Johnston and Mr. Waterman examined the shoreline in front of Mr. Waterman's home and the homes of his neighbors at 5:30 PM to find no sign of the slick. There was a small amount of floating dirt particles and what appeared to be an oily substance in a two foot by three foot alcove on Mr. Waterman's shoreline. Mr. Waterman speculated that the oily substance was vegetation based. This oily material had a mild petroleum odor consistent with the odor given off by the Najas weed when raked up onto dry land. At the request of the ConCom, Mr. Johnston called the DEP to ask about their findings, only to learn that they did not send anyone to inspect the slick. There was discussion about Mr. Johnston providing a sample to Lycott Environmental to determine with the green material is algae or pollen.

Next Meeting

The next meeting of the Management Committee was schedule for Wednesday, October 10, 2012, at 7:45 PM at the Leicester Police Department community room.

Adjournment

A motion was made, seconded and voted unanimously to adjourn the meeting. The meeting adjourned at 9:15 P.M..

A True Copy Attest:

Richard D. Johnston
District Clerk