

# Cedar Meadow Lake Watershed District

[www.cedarmeadow.org](http://www.cedarmeadow.org)

- Newsletter -

August 2012

**This newsletter was delayed to provide you with the most up-to-date information concerning dam repair plans, the status of the low level outlet, and the tax deductibility of betterments.**

## Annual Meeting Results

The Proprietors of the District attended the Annual Meeting of the District at the Knights of Columbus hall at 7:30 P. M. on Wednesday, May 16, 2012. Proprietors owning 72% of the property in the District were represented in-person, and another 6% were represented by proxy. Ruth Kaminski, again, served as Moderator. Thank you Ruth!

### Election of Officers

Dick Johnston of 1 Maple Glen Lane was elected to his nineteenth one year term as Clerk. Terry O'Coin of 6 Lake Shore Drive was elected to his sixteenth one year term as Treasurer.

Paul Dufresne of 47 Fairview Drive was elected to his fifth three year term as a member of the Management Committee. Paul joins Wayne Ridley of 39 Lakeview Drive and Tommy Lee of 61 Fairview Drive on the three member Management Committee. Following the Annual Meeting, the Management Committee met to elect their officers for the following year. Tommy Lee was elected Chairman and Wayne Ridley as Vice-Chairman.

### Members Vote to Pay Judgement

Following extensive discussion, and after learning from the District's legal counsel, David Nickless, Esq., that the prospects of having any success in further opposing payment of the full judgement were anything but clear, the members voted to pay the judgement, and to authorize the Management Committee to secure the necessary financing to do this. Attorney Nickless, a 25 year Trustee of the U. S. Bankruptcy Court, explained that a municipal entity such as the District could not file bankruptcy in Massachusetts, and that there was no precedent in the municipal law concerning the failure of a municipal entity to pay a jury awarded judgement. Attorney Nickless explained that attorneys representing Central Water District Associates would have the ability to take actions to force payments. The District could oppose these actions and spend a lot of money on legal fees, but would have no assurance of a positive result. At the time of the meeting, the judgement, plus interest equaled approximately \$1,711,000. Schedules showing each members share of the judgement and their approximate respective share of annual loan payments associated with judgement were distributed for review by those in attendance. The vote was nearly unanimous, with only one dissenting vote cast.

### USDA Loan

Prior to the meeting, the Management Committee secured a commitment from the U.S. Department of Agriculture for a 40 year, 3.375% Rural Development loan of up to \$1.8 million to finance payment of the judgement. The final loan amount will represent the amount of the judgement plus interest along with closing costs and is expected to be less than \$1.8 million.

## **Betterments**

The members also voted, by a slim majority, to repay the USDA loan through betterments rather than through District taxes. The pros and cons of both approaches were discussed at length. Betterments are most frequently used to bill for water and sewer line extensions. The “pros” of betterments include the ability of individual members to voluntarily make lump sum payments to pay off or reduce the amount of their betterments. Betterments must also be paid off when individual properties are sold within the District. Voluntary pay-offs and pay-offs that occur at the time of ownership changes will make it possible to pay off the USDA loan before the 40 year term expires. It could also be easier to sell property by clearing up the betterment at the time of sale rather than to have to explain to potential buyers that they would have to pay high annual District taxes for the remainder of the 40 year loan term. Total USDA loan interest over the term of the loan would be lower as a result of using a level principal repayment schedule.

The “cons” included the need to pay higher initial annual payments associated with a level principal payment schedule. Under this method, a fixed amount would be paid annual to reduce the principal, and annual interest changes would go down over time as the principal balance decreases. The “cons” also included the need to for the District to add a 1% interest premium to ensure the ability to make timely and complete annual loan payments. The USDA loan repayment schedule, once established, cannot be altered. Consequently, early betterment payoffs cannot be applied to reduce the loan principal until sufficient funds are accumulated to pay off the loan. As betterments are paid off voluntarily, or as a result of property ownership changes, the proceeds will be placed in a loan repayment stabilization account to pay annual loan payments and to invest in safe financial instruments. As long as the interest and dividends earned on these investments exceed the interest rate on the loan, the District will have the ability to pay off the loan. Adding 1% to the betterment interest rate helps to ensure this ability. The members were advised that another “con” was that betterment payments are not tax deductible. Following the Annual Meeting, several references were identified in IRS publications to indicate that our betterments could be tax deductible. Dan Haynes, the District’s accountant/auditor agreed that this matter was worth pursuing. Subsequent communications with Donald Maloney, Jr. of the Worcester accounting firm of O’Connor and Maloney were also encouraging, but not conclusive. It is recommended that each member consult their own tax expert or accountant.

Betterments are billed by the Town for payment during the first and second quarters each fiscal year (August and November). It is too late in the current fiscal year to get the District’s first betterment payments out this year. Legislation must be filed with, and approved by, the Massachusetts Legislature to allow the betterment payment period to be extended beyond the normal 20 years to 40 years. Representative John Binienda filed this legislation, and we are currently awaiting approval. Once approved by the Legislature, time must also be devoted to communicating payment options to our members. The first annual, two-part betterment bills are not expected to be due until August and November next year.

Notices containing the exact amount of individual betterments and 40 year payment schedules are expected to be sent in December 2012 or January 2013. Each member will be given 30 days in which to decide whether to make full or partial lump sum payments to avoid first year interest payments, and/or to decide to pay over a shorter period of time. These schedules will not be “set in stone” as the Board of Assessor’s Office will accommodate future requests to adjust payment periods and / or apply lump sum payments to reduce future annual betterment payments. Keep the following estimated time lines in mind when doing your financial planning.

### District Tax and Betterment Payment Due Dates in Calendar Year 2013

February 1	First half of District taxes
May 1	Second half of District taxes

August 1                      First half of betterment  
November 1                    Second half of betterment

### **Members Vote to Purchase Land Below the Dam**

Concern was expressed that, even after payment of the judgement, Mr. Shea would continue to refuse to allow the trees below the dam to be cut. The cutting of these trees took on added importance when the Office of Dam Safety changed the manner in which overall safety ratings are applied to dam inspection results. In the past, ratings in critical categories were averaged to arrive at the overall rating. Under this system, our dam was considered to be in "fair" condition, and subject to engineering inspections every five years. Under the new system, the overall rating cannot be any higher than the lowest rating on any single critical category. The "poor" condition rating associated with trees growing too close to the dam will result in an overall "poor" rating and subject the District to fines and the need for engineering inspections every six months. The members voted at the Annual Meeting to authorize the Management Committee to acquire the property below the dam from Mr. Shea.

### **2011 - 2012 Results**

The Management Committee summarized their activities since the last Annual Meeting. During the past year, the Management Committee met ten times. \* Routine maintenance on the dam, in the form of grass cutting, was completed as planned. \* The trees below the dam were not cut as required by dam safety regulations because Raymond E. Shea, Jr., the owner of the land below the dam continued to refuse to allow the District access to this land to cut trees. \* The goal to make repairs to stop water leaking through the dam was incomplete. A new leak was discovered during the winter and the plan was to make repairs in the Fall of 2011. A sink hole was discovered following Tropical Storm Irene in August. The District's Emergency Action Plan was executed and the sink hole and dam made safe within just a few hours. Plans to make permanent repairs in the Fall, and to complete a five foot draw down for weed control purposes, failed when water levels could not be brought down as planned. Temporary siphons were installed by members Tommy Lee, Norman MacLeod and Nate Cosper in an attempt to accelerate the draw down. Additional delays were caused by a lack of available funds when Commerce Bank declined to renew the District's letter-of-credit, and the need to change engineering firms. Repair efforts got back on track during the early Spring when an anonymous friend of the District came forward to personally guaranty a line-of-credit loan with the Spencer Savings Bank, and when Lenard Engineering came on board and quickly developed a sensible and inexpensive plan to stop the leaks through the dam. \* The District experienced some success on the legal front, when the Court of Appeals decided that Central Water District Associates ("CWDA") was not entitled to interest tied to AAA rate bonds rather than Treasury Notes as required by statute. This would have added an additional \$600,000 to the judgement. The Court, however, decide that compounded, rather than simple, interest was appropriate. This added \$100,000 to the amount owed CWDA. This action ended the appeal process and the Superior Court issued the final judgement in December. Attorney DeSimone, who represented the District since 1997, recommended that the District secure the services of an attorney specializing in bankruptcy and collection to examine the District's options going forward. The law firm of Nickless, Phillips and O'Connor began to represent the interests of the District in November with Attorney Nickless providing guidance regarding the judgement, and Attorney Phillips, a municipal law expert, providing guidance regarding loan payment options and the statutory requirements of long term financing. Clark Rowell, Vice President of UniBank Fiscal Services, is the financial advisor to many area municipalities, and now serves in this capacity for the District. Attorney Richard Manley serves as the District's bond counsel to ensure that all the bonding requirements are met with respect to securing long term financing. \* \$345 was collected from non-member "Friends" of the lake, including a generous \$100 contribution from the Green Mountain Club. \* Communications with the members and "friends" of the District continued through newsletters and the District's web site.

### **Action Plan**

The members approved the 2012 - 2013 Action Plan which has been attached for your review.

## Budgeting

Actual expenses through May, plus pending expenses through June 30, 2012, are expected to be \$69,300. A renewal of the \$30,000 line-of-credit loan was approved along with a budget for the July 1, 2012 - June 30, 2013 period (FY2013) calling for \$52,600 to be raised through taxation. This is up approximately \$4,000 over the current budget. Significant budget items include \$10,000 for legal expenses, \$6,000 for a bad debt provision associated with the USDA loan, \$17,500 for dam inspection, engineering and repair, \$2,000 to permanently install siphons across the spillway, \$7,500 to cut the trees below the dam, and \$3,400 for administrative expenses including communication, liability insurance, and the annual audit. The budget also includes \$10,000 in the reserve account for unexpected expenses

## Dam Repair Plans

Work to repair the dam will not be completed until the Fall of this year. Engineering drawings were completed and the contractor was ready to start work in June, but Office of Dam Safety asked that additional studies be performed as a condition of dam repair permit approval. These studies will be completed through the Summer months. Water levels have intentionally been held down to minimize the amount of water pressure on known dam leaks. During the month of July, water levels fluctuated between 6 inches and 8 inches below the spillway elevation. Leakage through the dam, evaporation, and the absence of meaningful amounts of rain will likely reduce the lake level further during the month of August. Keep this in mind when mooring boats. More information concerning dam repair plans will be shared in a planned September newsletter.

## Low Level Outlet Update

It was not possible to reduce water levels as planned over the past two Fall/Winter periods. Reduced capacity of the low level outlet was suspected. The low level outlet, a 16 inch round pipe and valve located at the lake bottom in front of the dam is equipped with a trash rack, a safety device that prevents large objects from being sucked into the pipe. Member Dan Beauvais borrowed an underground camera from a contractor friend and examined the area around the inlet of the low level outlet in June to find what appeared to be an accumulation of debris at the inlet to the valve. Member Mike Dupuis donned his scuba diving gear in July to dive at the valve opening to find that the trash rack was installed too close to the valve opening and was plugged with weeds and leaves. Mike also confirmed that the valve operated correctly and could be fully opened. Once cleared of the debris, the low level outlet functioned correctly and at full capacity. The trash rack will be repositioned or redesigned during this year's Fall draw down.

## Boating and Swimming Safety Reminder

**Boaters**, it is illegal to operate a vessel at any speed within **150 feet** of shorelines used as swimming areas, rafts, floats and swimmers. **Swimmers**, MA law states that no person shall swim or float more than **50 feet** from shore unless accompanied by a boat. MA water craft regulations also state that **no craft may operate faster than 10 miles per hour between the hours of sunset and sunrise. Powered craft must display running lights and unpowered craft must carry flashlight or lanterns.**

Go to [www.boat-ed.com/ma/handbook/](http://www.boat-ed.com/ma/handbook/) to review the full text of MA Boater Safety Handbook.

**Enjoy the Rest of the Summer**