

**Cedar Meadow Lake Watershed District
Special Meeting
November 28, 2012**

A Special Meeting of the District was scheduled to be held at the Knights of Columbus Hall in Leicester at 7:30 P.M. on November 28, 2012. District by-laws require a fourteen (14) day notice. The Proprietors of the District were notified of the meeting by First Class mail on November 10, 2012, and a copy of the same Warrant sent to the Proprietors (attached) was posted November 13, 2012 on the Leicester Town Clerk's bulletin board.

District Clerk Richard Johnston of 1 Maple Glen Lane, Leicester welcomed everyone and stated that Ruth Kaminski, who would ordinarily serve as Moderator for this meeting, was called away to an Emergency Civil Rights Commission meeting. He explained that the meeting was being held because several members exercised their right to circulate a petition calling for a Special Meeting, and that more than the minimum number of signatures were obtained. He stated that there were several hand-outs in the back of the room. He further stated that the members were not there to vote on whether to borrow money to pay the judgement, or whether to collect loan payments through taxes or betterments. These issues were decided at the Annual Meeting and could not be voted at this Special Meeting. The members were there solely for the purpose of deciding whether to adopt a means of allocating member shares of the \$1.8 million loan on some basis other than on an assessed valuation basis. Lastly, he asked the members to be civil towards one another as the members always have been.

Having been assured by the meeting clerks that a quorum was present, Mr. Johnston convened the meeting at 7:43 P.M..

Meeting Minutes

Article 1

Mr. Johnston read the Article. Management Committee member Wayne Ridley of 39 Lakeview Drive, Leicester moved that the District votes to elect a Moderator to preside for the duration of the meeting. The motion was seconded. Mr. Johnston asked for nominations. Mr. Ridley nominated Donald Cherry and noted that Mr. Cherry, the Town Meeting Moderator for Leicester, had kindly offered to step in as Moderator at the last minute in Mrs. Kaminski's absence. There were no other nominations. Mr. Johnston asked for a vote. Don Cherry was voted Moderator unanimously.

Procedural Matters

Prior to the start of the meeting, Mr. Johnston presented Mr. Cherry with the District's by-laws and enabling legislation, and highlighted those portions of these documents pertaining to Special Meetings and voting procedures. He also presented Mr. Cherry with a signed certificate showing that the members were properly notified in a timely manner.

The Meeting Clerks, Anita Johnston of 1 Maple Glen Lane, Leicester and Kathleen Pelley of 75 Lakeview Drive, Leicester were sworn in by the Moderator. Attendance by Proprietors (also

referred to as “members”) owning property within the District with an assessed valuation of \$7,811,333 was required to establish the required one-third (1/3) quorum. Proprietors owning property with an assessed evaluation of \$15,968,600, 68.1% of the District total, registered to vote at the meeting in-person. An additional \$3,906,600, 16.7% of the District total, was represented by proxy, for a total of \$19,875,200, equal to 84.8% of the District total. One member registered late to increase the total to 85.4%

Prior to presenting Article 2, the Moderator stated that he ordinarily limits discussion to 5 minutes per person. This was extended to 10 minutes for the proponents of the article and a main counter position to the article. Further, he suggested that consideration be given to the overall amount of discussion devoted to each article. A motion was made, seconded and voted to the above limits.

Article 2

The Moderator introduced the article and asked for a motion. John Moisan of 69 Fairview Drive, Leicester moved that the District votes to reapportion the allocation of betterment charges as assessed May 16, 2012 for the purpose of acquisition of a 144+/- acre parcel located in the Town of Leicester, Worcester County, Massachusetts, known as Cedar Meadow Lake (also known as Cedar Meadow Pond), including a certain masonry dam located on said parcel, in such a manner as to distribute these charges equally amongst all proprietors of the District as of the date of betterment issuance, rather than as a percentage based upon any arbitrary benchmark having no pertinence to the value and usage of said parcel, such as the assessed property valuation on which the determination is presently assigned. The motion was seconded.

The Moderator asked for discussion. Michael Corby of 65 Fairview Drive, Leicester stated that he saw this meeting as an informational meeting that would make everyone more aware of the implications of their votes at the Annual Meeting. He specifically talked about the effects of betterments based on assessed valuation on the members and posed several questions that were answered by Mr. Johnston. Mr. Corby asked whether the betterments would be tax deductible. Mr. Johnston stated that the Management Committee had asked an accountant to perform some research and to offer an opinion on whether District betterments were tax deductible. This accountant found several statements within IRS publications that would support taking District betterments as tax deductions. Within these same publications, he found some contradictory language. The Management Committee planned to summarize this information for distribution prior to the next tax season so that each member could share this information with his or her tax expert and decide individually whether to take betterment payments as tax deductions. He that he planned to take the deductions. Mr. Corby asked whether tax exempt members would be subject to District taxes and betterments. Mr. Johnston answered that tax exempt members such as the Green Mountain Club would be exempt from District taxes but not from District betterments. Mr. Corby asked if each member would have to go out and get their own financing or whether each member could take advantage of the low USDA rate. Mr. Johnston answered that the District would secure the loan at the low interest rate on behalf of all members of the District. Mr. Corby also asked if other alternatives to assessed valuation were taken into consideration. Mr. Johnston stated that the Management Committee considered several alternatives and rejected each due to the disparity within each area of consideration. The Management Committee considered equal shares but rejected this because property value ranged from \$19,000 to \$745,000. They considered lot size but

rejected this because lot sizes ranged from one-third of an acre to 12 acres. They considered shoreline frontage but rejected this because member shorelines ranged between 50 feet and over 400 feet.

The Moderator asked if there was further discussion. Mr. Johnston raised a number of points in opposition to passage of the motion. He started out by stating that he was speaking as a member of the District and not as the District Clerk. He stated that an argument was being made that it was unfair that members with expensive homes pay a disproportionately high share of the \$1.8 million, and that it was his opinion that it was equally unfair that a member with a lot assessed at \$19,000 or a summer cottage assessed at \$120,000, pay the same as members with year-round homes assessed at between \$500,000 and \$700,000.

Mr. Johnston also stated that the betterments being discussed were in lieu of District taxes and, if the \$1.8 million loan were collected through District taxes, we would not even be talking about this issue. There is only one way to apportion District taxes, and that is by way of assessed valuation.

Mr. Johnston referenced a schedule that was handed out before the meeting. He explained that this schedule contained the same information as a similar schedule distributed at the Annual Meeting except that the Green Mountain Club had been added and that members with more than one lot or one property were combined to be consistent with the motion to share repayment of the loan equally among members. He described the schedule and explain that each member's share on the existing assessed valuation basis appeared in the third column from the right. The next column to the right showed each member's share on an equal share basis. The last column on the right showed the difference between the two methods. Members that would pay more under the proposed change were highlighted in yellow. Members that would see a decrease in their share were shown in parentheses. He asked the members to look at three members grouped together on the last page of the schedule as an illustration of the effect of the proposed change. Vasil Thamel has a lot with an assessed valuation of \$18,200. His current share of the loan is about \$1,400. If equal shares is voted, his share would increase to \$21,400, an increase of \$20,000. His betterment would exceed the value of his lot. The Stiles family, has a small summer cottage assessed at \$121,700. Their current share is about \$9,300. If equal shares is adopted, their share would increase to \$21,400, and increase of \$12,000. On the other hand, the Theoharides property is assessed at \$463,000 and their current share is \$35,500. If equal shares is voted, their share would drop to \$21,400, a decrease of \$14,000. Mr. Johnston explained that the members could look throughout the schedule for other comparisons, but these three, which happened to be grouped together, pretty clearly illustrates the effects of the proposal.

During the course of Mr. Johnston's comments, the Moderator pointed out that he had exceeded his allotted 10 minutes. He was asked if he wanted another 5 minutes. The Moderator asked for and received a motion to give Mr. Johnston another 5 minutes. The motion was made, seconded and voted in the affirmative.

Mr. Johnston referred the members to a second hand-out, a legal opinion by the District's municipal attorney, Deborah Phillips, and particularly asked that the members read the first and last paragraphs. He quoted Attorney Phillips as follows. "In my opinion, the Management Committee may not divide the betterment assessed among all the proprietors equally as it does not meet the legal standard of proportionality. While other methods may be designed to meet the legal requirements for this assessment, in my further opinion, property valuation is a method

that is readily ascertainable and meets the standard.” He went on to state Attorney Phillips’ opinion that dividing the betterment assessment equally would not stand a legal challenge. Mr. Johnston stated that, if equal payments was voted, it would be challenged and the District would spend a lot of money on lawyers. First, District members would be fighting among themselves legally. Second, payment to Shea, who is already putting pressure on to get his money, would be delayed and he would be in court to get his money. He would get a court order and the District would be forced to hold a Special Meeting to get approval on a special \$127,000 tax collection to make the first loan payment. This would be the only solution based on past experience attempting to get a loan from local banks. This special collection would be apportioned to members based on assessed valuation. Mr. Johnston also stated that the District would have to find someone else to handle these legal matters. He has been the liaison between the District and lawyers for many years, but would not participate in legal fights between members.

Mr. Johnston went on to say that many members can look at the schedule and conclude that they were fairly indifferent to either assessed valuation or equal share allocations with only a few hundred dollars or even a couple thousand dollars spread over 40 years. He submitted that they were not indifferent because they would have to pay their share of a lot of legal fees to fight challenges from members and Shea.

Mr. Johnston also stated that, in his opinion, there is no such thing as equal access or equal benefits. In his own case, when the water level is down his shoreline is out 75 to 100 feet. That is clearly not equal to other members. He also cited members having sunset views as not being equal to those that do not, and suggested that there were many other examples of differences.

With respect to the ability to write off betterments as tax deductions, Mr. Johnston referred to his earlier remarks and commented that this ability would be lost if betterments were apportioned on an equal share basis.

Mr. Johnston’s final point was that the idea that members had equal use of the lake, and should therefore pay equal shares of the loan, lacked merit. If you used this reasoning in Town, each taxpayer could say that we all have equal access to the streets in Leicester and equal access to the Police and Fire Departments, and therefore should pay an equal share of the costs to run the town. This doesn’t happen in Leicester, and should not happen here.

Member Donna Muscente of 63 Lakeview Drive, Leicester spoke against the motion. She stated that she would like to have a bigger house, and if she did, she would expect to pay more taxes than she does on her little house. Among her comments, she stated that the people with bigger houses should “suck it up” and pay their share. Finally, she stated that everyone should stick together and vote down the motion.

Member Robert Bober of 449 Pleasant Street, Framingham stated that he has a vacant lot on the lake because he could not afford to put a house on it. He further stated that he did not have equal access to the lake. When he wants to use the lake, he does not simply walk out of his home and onto the shoreline. He has to drive there from Framingham. He cannot enjoy the lake when it is raining, and he cannot access and use his property during the winter. His final point was that he pays municipal taxes on his home in Framingham based on assessed valuation and that is the way the betterments should be apportioned here.

Member Marty Pratte of 31 Rawson Drive, Leicester asked if the betterments would be adjusted if improvements are made to member property over time. Mr. Johnston responded that the betterments were based on a "snapshot" taken based on assessments in effect on January 1, 2012. Mr. Pratte also asked if there was a way to collect from non-members that use the lake. Mr. Johnston stated that there were many people around the lake that could access the lake through the four community beaches. There were about 100 homes surrounding the lake with this right. They were not included in the formation of the District because many did not use the lake at all and would have voted against formation of the District, and the District would never have been formed. He commented that these residents contribute \$500 to \$600 per year as voluntary contributions to the Friends of Cedar Meadow Lake Program. Mr. Johnston also commented that the associations governing these beaches can't even collect \$30 per year from their members. Mr. Johnston did say that the District could prevent these people from putting in docks and mooring boats on District land.

Mr. Moisan stated that they had to put something together and included equal shares in their article and motion. He referenced a letter and schedule mailed to all members earlier in the week offering alternatives to equal shares. Many members commented that they did not receive this letter and schedule. Mr. Moisan stated here or elsewhere during the meeting that each member had equal access and use of the lake, and cited as an example that each had the same ability to take their boat out onto the lake and that they could all drive from north to south and east to west on the lake.

Mr. Ridley commented that the equal share billing was like the billing of memberships at a country club. The lake district was not a country club. Our members do not have equal access like country club members.

Mr. Corby stated that there were some things that the other members did not know regarding the large houses at the end of Fairview Drive. He stated that there was a minimum house size requirement, and that they were limited to developing 10% of their shorelines.

Another point raised by Mr. Corby was that the legal opinion offered by Attorney Phillips addressed a specific issue, rather than to discuss other options.

Mr. Moisan commented that perhaps other options were available such as assessing empty lots in one category, summer cottages in another and year-round homes in another. Mr. Ridley stated that this system already exists in assessed valuation.

Member Mark Smith of 209A Greenville Street, Leicester asked how the other two Districts, Burncoat and Stiles, handled the payment of their judgements. Mr. Johnston responded that they are both collecting via district taxes, and that their members were not given a choice.

Member Scott Daniels of 25 Fairview Drive, Leicester stated that member shares were not very different under the equal shares method and were so close to the assessed valuation method that the members should vote for the equal share method.

The Moderator reminded the membership that the planned 45 minute discussion period had ended and suggested that it was time to call for a vote.

There was a brief procedural discussion between the Moderator, Mr. Moisan, and Mr. Johnston at the front of the room. Mr. Moisan expressed concern that the motion prepared by Mr. Johnston and read by him did not include the words, "or to take any other action relative thereto."

Mr. Moisan expressed concern that the absence of these words precluded other motions for alternatives to the equal shares method of allocation. The Moderator stated that these alternative methods could be offered as motion under Article 3 to follow.

The Moderator called for a vote and asked the members to raise their voting cards to be counted by the meeting clerks. The motion did not carry. There were 6 votes in the affirmative and 58 in opposition.

Article 3

The Moderator read the Article and asked if there was a motion. Management Committee member Paul Dufresne of 47 Fairview Drive, Leicester moved that the District votes to discuss any other business that may properly come before this meeting. The motion was seconded. The Moderator asked for a vote. The motion passed with 36 voting in the affirmative and 26 voting no. The Moderator asked for discussion.

Member Linda Monahan of 43 Fairview Drive moved that the issue in Article 2 is settled and the no vote be final and no other method of apportionment will be entertained. The motion was seconded. The members were anxious to end discussion and ready to vote. Mr. Johnston stated that, due to an error on his part in which the motion in Article 2 was worded, the proponents of Article 2 did not have the opportunity to propose alternative methods of apportionment. He stated that they put in the work and deserved the opportunity. Mr. Moisan stated that he and others did not have any interest in proposing alternatives and thanked the members for listening to their proposals.

A motion was made and seconded to close Article 3. and was voted by a clear majority.

The Moderator asked for and received a motion to adjourn. The motion was seconded and voted unanimously, and the meeting adjourned at 9:05 P.M..

Respectfully submitted,

Richard D. Johnston
District Clerk