

**Cedar Meadow Lake Watershed District
Special Meeting
November 24, 2009**

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 24, 2009. The Proprietors of the District were notified of the Meeting by First Class mail more than 14 days in advance of the Meeting. Further, a copy of the same Warrant sent to Proprietors (attached) was posted on the Leicester Town Clerk's bulletin board more than 14 days in advance of the Meeting.

Meeting Minutes

The Meeting Clerks, Anita Johnston of 1 Maple Glen Lane, Leicester and Corey Lee of 61 Fairview Drive, Leicester were sworn in by the District Clerk, Richard Johnston. After having been assured that proper notification had been given and that a quorum* existed, Ruth Kaminski convened the Meeting at 7:45 P.M..

Article 1

Mrs. Kaminski read the Article. Paul Dufresne of 47 Fairview Drive, Leicester moved that the District votes to elect a moderator to preside for the duration of the Meeting. The motion was seconded. Mrs. Kaminski read the motion and asked for a vote. The motion was voted unanimously. Mrs. Kaminski asked for nominations. Mr. Dufresne nominated Ruth Kaminski to moderate the Special Meeting of the District. There were no other nominations. Mrs. Kaminski asked for a vote on the nomination. Ruth Kaminski was voted as Moderator unanimously.

Article 2

The Moderator read the Article. Tommy Lee of 61 Fairview Drive, Leicester moved that the District votes to hear a report from the Management Committee summarizing their activities since the last Annual Meeting of the District. The motion was seconded. The Moderator read the motion and asked for discussion. There was no discussion. The Moderator asked for a vote. The motion was voted unanimously.

Richard Johnston of 1 Maple Glen Lane, Leicester took the Proprietors through a summary of the Management Committee's activities since the last Annual Meeting, the need for the Special Meeting, and the need later in the Meeting for a vote on a budget that would result in taxes three times the rate that members were accustomed to paying.

Mr. Johnston reviewed what had taken place at the May 20, 2009 Annual Meeting of the District regarding the approved budget and authorization to borrow up to \$75,000 to pay the legal cost of defending the District. The budget was based on the assumption that the District could secure a two year loan and that legal costs could be spread out over two budget periods to minimize the one year financial impact on members. The legal cost to date were, however, almost \$100,000 and the Spencer Savings Bank turned down the District's request for a loan due to a concern relating to outstanding legal risks. He also discussed the importance of a loan to cover costs incurred during the fiscal year. Taxes approved in May Annual Meetings cannot, by regulation, be billed to the members until February and May of the following calendar year. If the District, does not have any money in the bank, bills would have to wait to be paid until tax revenues were received from the Town in March and June of the following year.

Mr. Johnston reviewed the results of the trial between the District and Central Water District Associates ("CWDA") that concluded on September 4, 2009 with a jury verdict of \$1.1 million. He discussed an motion by CWDA to amend its complaint against the District to include an effort to secure interest rates on any jury verdict that exceeded the statutory interest rates as established by the Massachusetts Legislature. If successful in this effort, CWDA could have more than doubled the interest owned on the jury verdict. At the onset of the September trial, the judge bifurcated the interest issue for consideration in a second trial. A trial date was later set for May to hear the interest portion of the case. Following the September trial the District filed a Motion for Summary Judgement with respect to the interest matter. Just prior to this Special Meeting, the judge allowed this motion and ended consideration of this matter in the current trial. This decision saved the District as much as \$700,000. The statutory interest rates that

have applied to the jury verdict over the past twelve years averaged about 4% per year and totaled 47%, or \$500,000, through November 16, 2009. When added to the jury verdict, the total jury verdict plus interest is \$1,575,000.

With respect to financing, Mr. Johnston described efforts to re-package the District's request for financing to a one year line of credit in an amount not to exceed \$100,000. Repayment of this obligation will be tied directly to tax revenues from District tax bills due on February 1 and May 1 of next year. Applications were made to Spencer Savings Bank, Country Bank, Webster Five Cent Savings Bank and Commerce Bank. Only Commerce Bank approved the District's loan request subject to a vote of the District members to approve the loan and to approved taxes to repay same.

Mr. Johnston went on to describe the discussions and disagreement that had taken place among the District's elected officials with respect to the next steps to take regarding the law suit. Initially, some officials wanted to continue to fight the results of the trial and to take the initial step in the appeal process. Others felt that the District was going to end up at the same place anyway and did not think that it made any sense to continue to spend money on lawyers and experts. He described the options considered and the possible consequences of each. The first step in the appeal process would be to file a Motion for Remittitur or in the Alternative a New Trial. The presiding judge could deny this motion, as was the case following the Stiles Reservoir trial. The judge could also reduce the jury award or grant a new trial. If the judge substantially reduced the jury award, CWDA would likely seek a new trial, and would also likely reintroduce a modified argument for higher interest rates. The cost to fight just the interest portion of a new trial would probably be in the \$30,000 range. The District would, again, find itself subject to the whims of another jury and would have no assurance of a better outcome than in the first trial. The jury could, in fact, award a higher verdict with higher interest. If the District was not satisfied with the outcome of the first step in the appeal process an appeal could be made to the Massachusetts Court of Appeals. The chances of success in this arena are, however, slim to none because the appeal would have to be based on law and not the jury verdict. The presiding judge did not make any errors in law during our trial.

The second option would be to stop fighting and stop spending money on trial and appeal related expenses. This would stop the legal bleeding. The District has already spent \$100,000 and a new trial would cost at least \$80,000 more. If the District fails to take the first step in the appeal process within 10 days of the entry of the final judgment in the trial, the District will have no ability to cause the judgement to be reduce through the courts.

The Management Committee decided to stop the fighting and spending on legal fees, and this decision is reflected in the supplemental budget that will be considered later in the Meeting. The factors that lead to the unanimous decision of the Management Committee in this regard were, first, the financial impact on the members. One budget year in which it is necessary to raise \$100,000 through taxes is one too many. \$100,000 is three times more than the level of taxation experienced by the members over the last ten years. If, the District continued to fight and ended up with a new trial, this year's budget would be followed by another budget calling for raising another \$100,000 through taxation. Second, no matter what the District did within the court system, the results would have been the same, a judgement that the District cannot afford to pay. Third, the Management Committee is comfortable that it can develop a strategy that will result in a better outcome than the current \$1.5 million interest-added judgement. The details of this strategy cannot be revealed in a public forum. The bottom line is that the Management Committee feels that it can achieve a good result in the long run without spending another \$80,000 on legal fees and that this kind of money will be better spent on some form of settlement with CWDA.

He asked that the members keep in mind that the District has an obligation to pay the amounts owed to our attorney and expert witnesses. It was particularly important to pay our attorney so that we can continue to call on him to keep the District in the most advantageous position with respect to future dealings with CWDA. The budget that Mr. O'Coin will discuss later on in the Meeting includes paying about \$66,000 in past bills to our attorney, Ernest DeSimone, and paying 2/3 of the amount owed the expert witnesses in the first year and the remainder in the second budget year. The budget in the second year should, therefore, look very similar to the budget approved in May, in the low \$40,000 range. Mr. Johnston concluded by saying that the Management Committee understood that this was a difficult time for everyone, and that the last thing any member needed was a higher bill of any kind. The Management Committee also understood that \$100,000 from taxation in a single year has to be a one time event that cannot be repeated in the future because the members just cannot afford to continue to pay District taxes at such a high rate.

There were several questions from the members. Some dealt with the appeal process. Others dealt with the costs associated with continuing the legal fight. One member questioned why the District just didn't hand the dam back to CWDA or the State. Mr. Johnston quoted other members he talked with recently that stated that handing the dam back to CWDA was not an acceptable option. With respect to the State taking possession, Mr. Johnston stated that the last thing the State wanted was to own another dam.

Article 3

The Moderator read the Article. Wayne Ridley of 39 Lakeview Drive moved that the District votes to hear a report from the Treasurer. The motion was seconded. The Moderator asked for discussion. There being none, the Moderator read the motion and asked for a vote. The motion was voted unanimously.

Terence O'Coin, the District Treasurer, discussed the District's current financial position of having less than \$20,000 in the bank. In response to a question, he pointed out that the District paid its last mortgage payment on the 12 year obligation to the Spencer Savings Bank on September 30. Of the less than \$20,000 on deposit at the Spencer Savings Bank, \$10,800 was in the District's Stabilization Account.

Article 4

The Moderator read the Article. Mr. Dufresne moved that the District votes to rescind the previous vote taken at the May 20, 2009 Annual Meeting of the District to authorize the Management Committee to seek and secure a loan in an amount not to exceed \$75,000 to pay District legal defense costs in the matter of Central Water District Associates vs. Cedar Meadow Lake Watershed District, and to vote to authorize the Management Committee to seek and secure a loan or loans in a total amount not to exceed \$100,000 and payable in not more than 12 months to pay District legal defense costs in this same matter. The Moderator asked for discussion. Mr. Johnston explained that the Article had two parts. The first part rescinded the authorization to secure a \$75,000 loan at the May Annual Meeting. The second part called for authorizing the Management Committee to secure a one year line of credit. He further explained that this article provided authorization to secure the loan, but that the vote to allow for repayment was contained in the budget vote to be taken later. One member asked about the interest rate and Mr. Johnston responded that it would be about two percent higher than the prime rate, which was currently very low. He also stated that repayment on a loan written up and called upon in December would begin in March and would be paid down by June. The Moderator asked for further discussion. There being none, the Moderator read the motion and asked for a vote. The Moderator pointed out that passage of the article required a two-thirds vote. The motion was voted unanimously.

Article 5

The Moderator read the Article. Mr. Lee moved that the District votes to transfer funds from the Stabilization Account to the General Funds of the District. The Moderator questioned whether there should be a dollar amount stated in the motion. Mr. Lee rewrote the motion and moved that the District votes to approve the transfer of \$5,000 from the Stabilization Account to the General Fund of the District. The Moderator asked for discussion. Mr. O'Coin stated that there was approximately \$10,800 in the Stabilization Account and that it was being proposed that \$5,000 be transferred to the General Fund to minimize the budget impact on current year taxes. If \$5,000 was not transferred, an additional \$5,000 would have to be collected through taxation. The Moderator asked for further discussion. She stated that she was unsure as to whether a two-thirds vote was required to transfer funds out of the Stabilization Account and, to be on the safe side, would require a two-thirds vote. She, first asked for a vote on the original motion. This motion was defeated unanimously. The Moderator then read the revised motion and asked for a vote. The motion was voted unanimously.

Article 6

The Moderator read the Article. Mr. O'Coin moved that the District votes to approve the Fiscal 2010 Supplemental Budget in the hands of the Proprietors, the appropriation of monies to be raised by assessment upon the Proprietors in support thereof. The Moderator asked for discussion. Mr. O'Coin referred the members to a three page document (attached) made available to the members at the start of the Meeting containing the budget approved at the May Annual Meeting, the proposed Supplemental Budget, and a summary showing a Conformed Budget. Members of the Management Committee also

handed out another three page document containing the taxation impacts on each individual member of the District.

Mr. O'Coin first described the previously approved budget in the amount of \$121,385.00 with \$41,998.06 of that amount coming from taxation, \$19,386.94 coming from Free Cash and \$60,000 coming from issuance of debt. He then described the Supplemental Budget that the members were being asked to approve at this Meeting. The total Supplemental Budget was \$99,241.84 with \$58,045.94 coming from taxation, \$36,195.90 coming from issuance of debt, and \$5,000 coming from the Stabilization Account. He further explained that \$21,847.00 would be devoted to paying 2/3 of the amount owed to the two expert witnesses, Beekman and O'Connor. An additional \$1,284.00 would be devoted to paying our attorney, Ernest DeSimone, and \$76,110.84 would be devoted to loan repayment and interest. The Conformed Budget developed for the purpose of showing the combined approved May budget and the proposed Supplemental Budget showed a total budget of \$220,626.84 with \$100,044.00 coming from taxation, \$19,396.94 from Free Cash, \$96,195.90 from taxation, and \$5,000 from the Stabilization Account. Mr. O'Coin then discussed the second three page document (attached), entitled "FY 2010 Tax Collection Projection." The first column on the left containing dollar amounts shows the taxes each member paid the District in FY 2009. The last column on the right shows what each member would pay in District taxes in FY 2010 if the proposed Supplemental Budget is approved.

Several questions were posed by the members. One member expressed concern about members unable to pay their District taxes. Could they lose their homes. Mr. Johnston answered that they could not lose their homes. The process applied by the Town in the case of unpaid property taxes applied to the District tax bills as well. There have been several instances over the years when members could not pay their District tax bills. The Town tax collector changes late payment penalties and interest and, if the tax bills are not paid, attaches a lien on the property so that the District taxes would be paid when the house is sold. One member asked if the outstanding judgement would have any effect on property assessment by the Town. The answer was that, although assessments were lowered 30% by the Town at Burncoat Pond when that pond was drained down and became a swamp, it is unlikely to happen in this case. There was a question to clarify how the expert witnesses would be paid. The answer was that the FY09 budget contained \$21,847 for this purpose and that the difference of about \$10,000 would be in the budget for the following year.

Another question went to what would happen if the proposed Supplemental Budget was not paid. The response was that spending would have to be limited to the budget approved in May and that the District would probably lose its attorney due to non-payment of outstanding bills. The District could not expect this attorney to continue to provide services without compensation and without knowing when he would be fully paid. The District could not expect to be able to hire a new attorney when we haven't paid the first attorney. Another question went to when the District would be required to pay CWDA. The response was that was uncertain and that payment of any amount would, first, require the approval of the members.

One member noted, and others agreed, that, if the District was having trouble borrowing \$100,000, it would surely have trouble getting a bank to agree to loan \$1.5 million. One member moved that the budget approval vote be a secret ballot and expressed concern that ill feeling could result if some members voted against budget approval. The Moderator asked for a showing of hands concerning whether a secret vote should be taken. Very few members were interested in such a vote.

The Moderator asked for further discussion. There being none, she first asked for a formal vote on the proposed amended motion to vote by secret ballot. The members overwhelmingly vote this motion down. The Moderator then read the motion to approve the Supplemental Budget and asked for a vote. The motion was voted almost unanimously.

Article 7

The Moderator read the Article. Mr. Dufresne moved that the District votes to discuss any other business that may properly come before this Meeting. The motion was seconded. The Moderator asked if there was any discussion. There being none, the Moderator asked for a vote. The motion was voted unanimously. Mr. Johnston stated that this was the part of the Meeting when any subject or question about the District could be raised. He stated that lake level was down approximately 40 inches as part of the annual draw down. He also mentioned plans to locate the source of dam leakage during the draw down and again when the lake is full in the Spring through the volunteer scuba diving efforts of Proprietor

Mike Dupuis and Scott Navaroli from Waite Pond. The volunteer work of Jeremy Lloyd was recognized. Jeremy painted the exterior of the gate house. He also installed a rubberized roof on the gate house. A question was raised regarding the issue of whether taking the first step in the appeal process had been finalized. Mr. Johnston explained that, by virtue of the vote taken on the Supplemental Budget, the District had decided this issue.

Adjournment

The Moderator stated that she would entertain a motion for adjournment. This motion was made and seconded and voted unanimously. The Meeting adjourned at 9:05 P.M..

- * Quorum: 51 of 84 Proprietors were represented at the Meeting, 41 in-person and 10 by proxy, representing 65.5% of District assessed evaluation interest in the District. This was almost double the quorum requirement of 1/3 interest.

A True Copy Attest:

Richard D. Johnston
District Clerk