



TOWN OF KINGSTON
BOARD OF WATER COMMISSIONERS
OPEN SESSION
WATER DEPT OFFICE - 22 ELM ST, MICHAEL J.
MACPHERSON MEETING ROOM & VIA ZOOM
SEPTEMBER 25, 2023

4:00 PM – CALL TO ORDER

Chairman Richard W. Loring Jr called the meeting to order at 4:00pm.

In attendance were Vice Chairman Robert Erlandsen, Kristen Berger of Resilient CE, Superintendent Christopher Veracka and Clerk Stacey Smith.

Attending via ZOOM was Attorney Richard Sandman.

Commissioner Robert Kostka was not in attendance.

APPROVAL OF DEPARTMENT BILL SCHEDULES:

MEETING MINUTES:

VOTE TO APPROVE THE MEETING MINUTES OF SEPTEMBER 11, 2023

Vice Chairman Erlandsen made the motion to approve the minutes of September 11, 2023 as presented. Chairman Loring seconded the motion and it was voted unanimously (2-0-0).

APPOINTMENTS:

ATTY RICHARD SANDMAN OF SANDMAN LAW RE: PFAS CLASS ACTION LAWSUIT

Attorney Richard Sandman stated he is representing the Town in the PFAS class action lawsuit. He added, Town Administrator, Keith Hickey had authorized the legal action based on the contamination of the wells in the town. Since the case has been filed, Atty Sandman has been made aware the water department is an enterprise fund and it will be necessary to make some adjustments to the lawsuit that has been filed, if the Board chooses to move forward, which is his strong recommendation. He stated this litigation originally came about as representing public water providers individually and was filed in state court. Those cases were then transferred into multi-district litigation in South Carolina. The purpose of this was to combine similar actions in an attempt to resolve the PFAS litigation on a national level. There are currently two cases going forward. The first settlement was against DuPont which resulted in 1.2 billion and the other was against 3M which resulted in a much larger settlement of 12.5 billion. He said there are other defendants remaining. Attorney Sandman stated a class action requires court approval and every public water entity is included in the class action lawsuits with both DuPont and 3M. Public water entities will have the opportunity to "opt out" if they wish not to be included in the settlement.

He went on to say that the terms of the settlement will be laid out more fully going forward. Atty Sandman stated a payout could be over a period of time for example, as much as 12-13 years. The payments would allow recipients to obtain treatment, filtration or, in very large systems, may involve new water treatment facilities. Attorney Sandman stated, based on his conversation with the town administrator, we filed an action. He believes Kingston has a good case based on the PFAS contamination. Historical data needs to be obtained, flow rates, treatment the town has paid money on, etc... It's based on wells, not entities. Each well is scored on highest flow rates, highest detection rates, etc... That score will dictate and be approved by a special master to determine what amount the town will receive.

Vice Chairman Erlandsen asked, what rights do we give up by pursuing the class action lawsuit?

Atty Sandman stated that was a great question. He responded, you give up your right to prosecute your own case. The

costs of doing so with hydrogeologists and other experts would probably outweigh any recovery. If there is a settlement, your wells are settled for all time. The thinking is you will receive enough funds to pay for any treatment over a long period of time. You will receive free testing and you will be able to go back to those companies for additional funds. Atty Sandman stated, the larger the contamination and the greater pumping capacity in each well, the greater the payments will be. He added, if you are above the MCL in Massachusetts at 20 parts per trillion, the EPA has come out with proposed regulations which will come out later in the year. If you are above 4 parts per trillion, and you are in several locations, you will receive an amount 4 times the agreed base payment. Atty Sandman said you have some readings that are good from a litigation standpoint and will result in a decent value.

Chairman Loring stated it was his understanding our levels have been zero for PFAS. He stated he was not interested in incurring litigation expenses for something that he understood was a firefighting issue. Atty Sandman stated this lawsuit is for any PFAS levels at any time. Chairman Loring stated he feels if an individual in town took it upon themselves to join litigation regarding our wells without the consultation of this Board, then he feels someone marched out of step, so to speak. Atty Sandman said he understood and asked, so you have never had any positive PFAS results in your wells? Chairman Loring stated, we had one well that resulted in PFAS due to a leak from a gasoline station, but that well has been off line for 15 years. It's not currently online and we have no intentions of bringing it back online. Atty Sandman reviewed the PFAS results for the affected Winthrop St well and stated we could receive compensation based on those results. Vice Chairman Erlandsen asked if any future use inhibits any award or is it just based on past use? Atty Sandman said that is a question he will get an answer to as he's unsure. A brief discussion took place regarding the review of the well sites. Atty Sandman stated he only went by the results from MassDEP and, after reviewing the results, he sees the numbers are relatively low and he can't speak of any potential amount that could be awarded.

Atty Sandman asked if the water department received any notification from the Dupont and 3M class action suits. Ms. Smith responded, yes. Atty Sandman stated, so you have been identified in those suits and are part of those settlements and you will have the option to opt out. One of the reasons you would opt out is that you don't want to bind yourselves in case you have some greater contamination in the future. He stated he believes the Winthrop St well has value. He went on to ask, what do we do with the action that was filed based on the information we received from the town indicating large amounts of PFAS contamination? Does the town still want to proceed and does the town have standing to proceed? Vice Chairman Erlandsen stated no one from the water department provided any such information. Atty Sandman claimed he received the information from Atty Jay Talerman. Superintendent Veracka stated at no point has he provided any information regarding our wells and PFAS to any attorney. Atty Sandman asked if Jay Talerman was the attorney for the water department? Chairman Loring states Atty Jay Talerman represents the town. A discussion continued regarding who has the authority to file legal action on behalf of the water department.

Vice Chairman Erlandsen stated that based on the results of the Winthrop St well, he would be interested in litigation for settlement. However, if the well is offline and we have no intention on placing it back online and that affects the amount of the settlement, then he's not sure he wants to give up any future right to sue. He added, it is something we would need to sit down with our town counsel to discuss. Atty Sandman stated once funds are available, a value will be determined. He said we need to get a sense of the next steps to take. Where the case has already been filed, he doesn't want to dismiss the case that has been filed unless it can be dismissed without prejudice. That leaves the town the right to file again in the future. Discussion continued regarding the litigation and the miscommunication regarding the firefighting foam. Vice Chairman Erlandsen asked about the potential dollar value based on our low readings. Atty Sandman estimated perhaps 5 digits such as \$25,000. He added, you have 6 wells and with the historical numbers that will all be considered in determining a value.

Chairman Loring asked what testing is done and is it comparable to what we already do for MassDEP. Atty Sandman stated kits are sent out and water samples are returned.

Chairman Loring stated he would like to table this discussion until a conversation could be had with Town Counsel. He also suggested any information that Atty Sandman has be sent directly to the water department.

Atty Sandman requested to speak with the Board at their next meeting on October 16, 2023.

Superintendent Veracka asked if the source of contamination wasn't from the source as listed in the class action suit, how would that affect the settlement.

Atty Sandman said it doesn't. When we started out on this we assumed we would have a time to demonstrate the cause of contamination. That time frame has been removed and sources are no longer a factor. The data is needed, not the source of contamination. The original factor was the firefighting foam and the courts saw this as a massive issue and wanted to get everyone at the same table.

Chairman Loring stated we will ask Atty Talerman to join us at our next meeting as well.

Atty Sandman left the meeting at 4:38pm.

Vice Chairman Erlandsen would like information regarding how town counsel could have filed this without the input of the Board. Chairman Loring stated it may have been under the direction of the town administrator. Ms. Smith wanted to just clarify the litigation. She referred the Board to their packets to see the Dupont class action information. She added, today she received the 3M class action information. We are already included in these two settlements and would have to decide whether to opt out. The litigation Atty Sandman referenced is a separate lawsuit filed on behalf of the town. Superintendent Veracka reviewed the timeline of the occurrence and the contract signed by the Town Administrator back in May with the law firm. Superintendent Veracka stated he was told by the town administrator this was not a water department issue as it involved the protective clothing of the fire department and the fire fighting foam. Continued discussion took place regarding the testing process, costs, etc...

Chairman Loring asked Ms. Smith to contact Town Counsel Jay Talerman for information and invite him to the next meeting.

KRISTEN BERGER, RESILIENT CE

WTP (GRASSY HOLE-I-86) STORMWATER POND AND PROJECT CLOSEOUT

Ms. Berger stated Winston Builders is scheduled to go out to the site tomorrow to address the stormwater repairs. She added, once completed, she can proceed with the closing out of the SRF. She stated the final pay requisition would include the unit heater.

I-86 WELL CLEANING AND PUMP REPLACEMENT

Ms. Berger stated Maher Services has said the motor is expected to arrive early October. She stated she will check in with them tomorrow to follow up. Work onsite can start as soon as it arrives.

MAIN ST WATER MAIN

Ms. Berger stated the remaining work left is to finish the design plans and give the Board a feel for the budget. She said the surveyor will add the DOT stationing to the existing survey. The bill will be labor/expenses according to our contract. A site visit will be next. After that, the fine tuning needs to be done to pull all the specifications together for the Mass DOT application and review. Once reviewed by Mass DOT, documents can be finalized and the goal is to have this all completed by the winter and have the project out to bid and an agreement with a contractor by early March 2024.

Chairman Loring asked if this allowed enough time. Ms. Berger stated, yes it allows just enough time. It also takes into account the gap of the Jones River Crossing to be completed later and it stays on schedule for the ARPA funding. Chairman Loring asked if it needed to be completed or committed by December 2024. Superintendent Veracka stated he spoke with the town accountant and all invoices have to be in by December 2024. Ms. Berger added, the project will be performance bonded so for example, the winter paving will be accounted for, as discussed in an earlier meeting with Superintendent Veracka to go over the plan details.

WMA GRANT - SOURCE CAPACITY EVALUATION & WATER RATE STUDY

Ms. Berger reviewed the WMA Grant and said the water department has benefited from this grant in the past, most recently, approximately ten years ago. The grant requires 20% cash/in kind match for labor. The proposal is due by October 17, 2023 via email. The anticipated start date is between January and April 2024 with a completion date no

later than June 30, 2024. Vice Chairman Erlandsen asked if this was something the engineer would do. Ms. Berger stated, yes this is something I would be doing. It involves a current water rate study. She added, it could be bundled with the existing capacity of the water system (demonstrated demand increases) over 3-5 years and the fact that Kingston is currently operating outside the WMA permit. Ms. Berger feels we could be granted some extra points for the demand increase. She said she could update the hydraulic model and explore locations for a new water tank in the high zone.

Chairman Loring stated this was a good project to look toward future goals. Vice Chairman Erlandsen asked what the match would be; 20%? Ms. Berger stated she wanted to lay the concept out for the Board and she will have to gather the figures. Chairman Loring asked Ms. Berger to pull the figures together for the next meeting on October 16th. Ms. Berger stated it's due the 17th so that won't be a problem.

WATER SUPERINTENDENT DEPARTMENTAL UPDATE:

LEAD AND COPPER SAMPLES (Q3) ARE UNDERWAY

Superintendent Veracka stated lead and copper samples are well underway. He stated participation from residents has been good, there are still a handful yet to be collected. He stated we would be wrapping up samples by the end of the week.

ELM ST WATER TANK PROJECT IS UNDERWAY. SYSTEM IS RUNNING ON PRESSURE AND MAINTAINING.

The Elm St Water Tank Maintenance project has started. According to the painting contractor, upon initial inspection of the inside of the tank, the conditions looked great.

Superintendent Veracka stated one of the costs included in this project was removing the cage on the access ladder. After discussion with the contractor, it was decided to leave the cage and extend the length of the cage 10-15 feet closer to the ground. This will allow for greater safety and stability for anyone who needs to climb the tank in the future. The high zone remains working on pressure while the tank work is being completed.

PUMP OPERATOR POSITION UPDATE

Superintendent Veracka stated we posted for the water repairman position after not receiving any qualified candidates for the pump operator position. We did receive one internal candidate for the water repair application and at the same time received an application for a candidate for the pump operator position. Based on the application, the applicant appears to be licensed. An interview will be granted next week. He added, if the pump operator applicant doesn't work out then the internal applicant, as well as any other external applicants, for the water repairman position will be reviewed. Superintendent Veracka stated he would prefer a licensed pump operator.

On another note, Superintendent Veracka stated he has not received an update from the Kelleher Estate. Chairman Loring stated it is important the estate know that the town, while eager to work out an agreement, is not eliminating the possibility of eminent domain rights.

NEW BUSINESS:

CERTIFIED LETTER RECEIVED FROM DUPONT CLASS ACTION SETTLEMENT RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION

Presented for information purposes only. No action or discussion taken.

UNFINISHED BUSINESS:

REVIEW PROPOSED CHANGES TO RULES AND REGULATIONS AND FEE SCHEDULE

Ms. Smith asked the Board to please take the rules and regulations home to review in preparation for a discussion and vote on October 16, 2023.

REVIEW LETTER TO SEASONAL RESIDENTS REGARDING NEW TURN ON/TURN OFF FEE

Ms. Smith presented a draft letter to seasonal residents notifying them of the fee for the turn on and turn off of water services. This change will take effect November 1, 2023 and will be assessed in a \$35.00 fee on the corresponding

quarterly bill. Ms. Smith was asking for a vote on this fee and approval to send the notification to seasonal residents. Vice Chairman Erlandsen approved the fee of \$35.00 for the turn on and turn off of water services and the letter notifying seasonal residents. Chairman Loring seconded the motion and it was voted unanimously (2-0-0).

WATER CORRESPONDENCE FROM LAST MEETING:

NONE

BUSINESS OF WATER QUALITY REVIEW COMMITTEE:

NONE

NEXT REGULAR MEETING:

MONDAY, OCTOBER 16, 2023 AT 4PM

ADJOURNMENT OF OPEN SESSION:

Vice Chairman Erlandsen made the motion to adjourn the meeting. Chairman Loring seconded the motion and it was voted on unanimously (2-0-0).

The meeting adjourned at 5:09 pm.

ZOOM INFORMATION

TOPIC: BOARD OF WATER COMMISSIONERS

TIME: SEP 25, 2023 04:00 PM EASTERN TIME (US AND CANADA)

JOIN ZOOM MEETING

HTTPS://US02WEB.ZOOM.US/J/87088733268?PWD=CKL4BFBFMHCOQNZKCGXTU2LSVEH1ZZ09

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Respectfully submitted,



Stacey L. Smith
Clerk