

**BOARD OF COMMISSIONERS MEETING
MINUTES OF
June 1, 2021**

Buzzards Bay Water District 15 Wallace Ave. Buzzards Bay, MA 02532

Present:

Wendy Chapman, Chairperson
Joe Carrara, Commissioner
Galon "Skip" Barlow – Commissioner
Mark McMahon, Commissioner
TK Menesale, District Treasurer, Clerk
Steven Souza – Superintendent
Barry Woods, Admin. Support
James Chapman, resident
Kristin Murphy, Compass/MMA
Gary Maloney, Resident

Absent:

Robert Ethier - Commissioner

Meeting was held 15 Wallace Ave recorded by TK Menesale, District Treasurer, Clerk. The meeting was called to order by Wendy Chapman, Chairperson, at 4:01 pm.

Possible Vote on approval water allocation or tentative water allocation to Massachusetts Maritime Academy at 11 Buttermilk Way

Wendy Chapman opens discussion by reading a statement:

At the May 13, 2021, meeting the commissioners were apprised of the information surrounding the history of the new dorm, and the request for water allocation for the school to proceed with the plans to build a new dorm. Steve briefed the commissioners where we were in the process and the tentative approval of our permit. Part of the approval of the permit is mitigation. I confirmed with Mr. Adleman of the MS CBA who was involved with MMA and the new dorm. They are providing information to the district regarding mitigation. The email I received from Mr. Adelman states, "We have been and continue to work with your team in support of the DEP permit. Specifically, we are providing the mitigation information to Steve Souza, and Resilient Civil Engineering. We are happy to provide this information in support of your application. On a separate matter, I would like to speak with you to better understand what action the board can take at their June meeting to provide certainty, that we will be able to connect 11 Buttermilk Way when required next year at this time." I also received another email from Mr. Adelman as follows; "Good afternoon Chair Chapman. As you may know the MS CBA serves as a development entity for the nine Massachusetts state universities, including Massachusetts Maritime Academy. I was hoping to speak with you about the pending application for a water service connection at 11 Buttermilk Way. We realize why the district is seeking approval to increase its draw capacity and, in turn, its' service to the region. We are pleased with the positive indications, thus far, with the draft DEP permit. I also want to acknowledge the positive working relationship of your staff and our project team. I wanted to understand if the board can give a positive indication or take any other action at its next meeting to provide assurance that the water would be provided when required summer 2022 so that the bidding and financing of this project could proceed at this time. We are respectful of your process but are anxious about commencing construction this year. Perhaps a phone call would be helpful. Thank you very much."

Wendy reports she forwarded Mr. Adelman's email to Steve and his response was, that based on our engineer's comments we should be able to approve the project to keep it moving forward. They won't draw any water till probably the end of 2022 but based on Bob Troy's comments at the last meeting, it would need to be an agenda item for the board to bring up and vote. With Steve giving a positive email towards us approving the MMA application, Wendy felt we need to meet to discuss, and possibly vote on, the application, but she felt it needed to be a conditional approval. The conditional approval would allow MMA to proceed with their process of attaining funding for the project, while protecting the district. Wendy asked Steve if MMA is the only completed application on the waiting list.

Steve Souza states that there's one other completed application, completed in the late fall of 2020, for the gas station on Scenic Highway. He has been in touch with them, and they know we are still at a standstill.

Wendy asks if there are any questions and states that she has conferred with district counsel, and his response is as follows. "District officials, it is correct that I recommend a public process by which decisions as to allocation of water are made by the commissioners after a public hearing affording all interested parties the right to participate and dispute, through judicial process, determinations that could affect their rights. Obviously, the burden of proof in such a proceeding would be on the party claiming to be aggrieved by the district's decision. As to the application by the MMA, it seems well within the commissioner's discretion to subject any grant of application for water allocation to a condition subjecting the grant to all requisite approvals by the DEP. In my view, a conditional grant is a valid mechanism that balances the rights of the applicant with the obligation of the district to ensure that the determination allocation is fair and equitable. Please let me know if you have any other questions or comments. Thanks Bob." That is from Bob Troy District Council. In the spirit of the conditional approval, Wendy says that she would make a motion that the water commissioners issue a conditional permit for the completed MMA application for the water allocation requested for the new dorm at 11 Buttermilk Way. The conditional grant is issued with the stipulations that DEP approves the Buzzards Bay Water District's application, as requested, and that MMA will not be drawing the water until the end of 2022. She asks if there are any discussions on the motions or on the conditional approval of the MMA application.

Gary Maloney asks, what qualifies it as an approved project? Because it seems like there's quite a few pending approvals that the sewer commissioners have granted. For example, to the Bay Motor Inn for an allocation, so they could try to sell, and the Kendall Rae Place project. He asks about numbers of gallons allocated for sewer versus potential approved gallons of water for projects.

Steve Souza says that's the hard part of dealing with the Sewer Commission. They're approving projects without any approved water going to the projects. They handed out sewer allocations without water to back up the approvals.

Gary Maloney states he is glad there is an understanding of that. He asks what made this an approved project versus a pending project, because they're not drawing anything till 2022, that's pending to him.

Steve Souza says the only reason it's an approved project is they've come in and filled out all the applications for water. The only other approved project that has applied is the gas station project at 340 Main Street. There is a "queue" of people that have called and inquired about water, but they haven't filled out any paperwork. The only ones that have are Mass Maritime and the gas station.

Gary Maloney asks if the cost to get the mitigation information will be a big impact on customers/rates.

Skip Barlow says that most of the mitigation is on infiltration which is available at the town engineer's office, and he doesn't think it will cost us to get it. Mass Maritime is putting together their part.

Wendy Chapman summarizes that the only thing holding us up right now is the mitigation, and Steve's working on it. Mass Maritime has advised that they have supplied information. They must get the lots from town hall, the ones that have gone into open space or CPC, the wastewater plant is also mitigation.

Barry Woods explains that there's no mitigation costs from the district itself. Mitigation can occur after they've given us a new permit. Most of the mitigation must come from number one that's being the district. The state will go back to 2015 and different things that the town has done regarding buying open space to do research. They have time to do all that and that will be what some of the mitigation will be. The draft is verbal, once you get the actual permit itself and mitigation language will be there and there'll be a period of time that they give the town, whether it's two years, three years or whatever, to gather that information of what they've done in the past and what they're going to do over say the next five to 10 years in regards to providing more mitigation so it's all about not necessarily just the drinking water, but it's all about the groundwater, and other watershed issues,

Gary Maloney states he is concerned that there are restrictions that might go in place in the future that are not in place now. Different well bylaws, fertilizer bylaws, septic pump out regulation rules and bylaws. Those are things that we don't have to do right now but are going to be a cost associated with getting us the water maybe.

Jim Chapman asks if we are going to do the same thing for this second request of the person that abided by the rules and give them a pending approval based on in the motion that's going to be made just like Mass Maritime?

Jim Chapman discusses ramifications of giving a contingency to MMA, if other applicants will get a contingency, and selling something before you have permission to do so. He reiterates MMA is working with us now but did not in the past and that's why we have this problem.

Skip Barlow believes that Bob Troy's opinion was specific about how we should do it and we really need to protect ourselves. We'd have to do it for any applicant or if they had to get money we can do a conditional approval, and the conditional approval is on the condition that we get everything we want from DEP. He doesn't think anybody is trying to single anybody out. Nobody's favoring anybody, would favor any other applicant. We've only got two applicants that are completed.

Wendy Chapman says that's part of the reason that the hearing is a public hearing because Bob Troy specified that as long as we're doing it in a public hearing, anyone that is aggrieved by whatever we're doing here has the opportunity to attend and if the person who already had the other completed application had read the notice, they may have come here and said I would have liked to. But they did not. You can also come in later again and file.

Barry Woods adds for the record that this whole discussion about available water goes back to 2015 to the third period review of 20-year permit. Town Boards were uncooperative in giving us the information we needed about new projects. DEP could not alter our permit at all at that point because we only had speculative information.

There was some further discussion of partial DEP approvals and what that would mean for gallons of allocations. This contingency would be for a full DEP approval.

Wendy Chapman states that with the conditional approval Mass Maritime can at least move forward with trying to get the funding. It also protects the district, in case for some reason we're turned down, or the allocation is not adequate, because then we'd have to revisit it anyway. There is discussion on the wording of the motion, whether it is for just MMA and that if other applicants request a contingency they would come before the Board.

Barry Woods reminds the board that the board is the one that gives the authorization for the use of the withdrawal, not DEP. They have nothing to do with the permitting of who you let use the water. DEP controls how much water we can withdraw out of the ground.

Kristin Murphy arrives and asks for a clarification of the comments about mitigation.

Barry Woods explains the actual mitigation itself could take anywhere from two months up to several years because the state wants to see a plan for extra water, they give us. Mitigation is to make up for all of that. They give you time over the period of the permit to do that mitigation. Mitigation so they can look back, look back in 2015 and see what can happen. The problem is the district can't be the one to do that mitigation because we're just providing the water. It's the town over mitigating privileges associated with the Source Protection.

Kristen Murphy thanks Barry for the information and clarifies we were talking about doing the mitigation versus finalizing the plan on the mitigation to finalize your permit.

There is discussion about wording and timelines for MMA being able to draw water.

MOTION for Conditional Approval of the MMA Water allocation:

Wendy Chapman made a motion that the water commissioners issue a conditional grant for the completed MMA application for the water allocation requested for the new dorm project at 11 Buttermilk Way. That conditional grant is issued contingent upon that the DEP approves the Buzzards Bay Water District's application as requested, and that MMA will not be drawing the water until July of 2022. This will be our ongoing process for completed applications.

Approval of the motion to grant conditional water allocation to MMA

Wendy Chapman made a **MOTION** to approve the conditional MMA Water allocation. Galon "Skip" Barlow seconded that motion, and all in favor. The motion passed unanimously.

Present and Discussion of the amended T-Mobile Lease

Steve Souza says that T Mobile recently came to us asking for additional lease space up at their property at the hydropillar. They want to put a backup generator for their site and a propane tank. Their current lease site doesn't allow for that. They want to extend their lease site and they will investigate modifying their lease. They need it to be a vote of the board whether they wish to grant that extension of lease.

Joe Carrara asks what will be the increase to the district?

Steve Souza states they are paying \$150 per month extra a month for the additional lease space, which is about \$1800 more a year from their lease

Discussion about negotiating more money.

Steve Souza says they had a 20-year lease with 3% escalating every year, 3.8%. So, in 21, their lease is \$38,246.

Wendy Chapman asks about other cell towers up there.

Steve Souza states there are 3 and that they all vary a little bit in payments, they're all at different portions of their lease, Verizon being the newest. They've only been up five years, and T Mobile is already in the last five years of their existing lease.

Joe Carrara asks if they are combining with another carrier.

Steve believes they were bought out by Sprint, but currently they're still operating as separate sites.

TK Menesale says Verizon is at \$45,000 per year, and Sprint is at \$36,000 per year, in the same ballpark. It will be at \$39,680.93 for fiscal '22.

Barry Woods asks if they're proposing that flat amount also to increase and that 3% each year also, so they're going to write the lease that way? So that will get the 3% increase that we're currently getting.

Steve Souza states he will find out.

Jim Chapman asks about liability and insurance.
Steve Souza says they're covered by their own insurance.

Barry Woods adds that some of the original agreement requires that they must take equipment down so that we can do maintenance or if it is an extra cost for us to do maintenance and they can't take their equipment down, they pick up the cost so there's a whole number of different things written into the leases going back-to-back to the midmid-2005 and 2006.

Wendy Chapman asks Steve Souza if he thinks they'd be open to the \$200 instead of \$150?
Steve Souza says he will ask.

Gary Maloney says it would be worth the money to let them have a generator and have his phone service working during a hurricane.

There is discussion about approving \$50 now, if this extends their lease, do we have back-up power there.

Approval of the T-Mobile Lease as Adjusted by \$200 per month for 40 additional sq ft
Wendy Chapman made a **MOTION** to approve the adjusted T-Mobile Lease. Mark McMahon seconded that motion, and all in favor. The motion passed unanimously.

Commissioners Comments

None

ADJOURNMENT

Galon "Skip" Barlow made a **MOTION** to adjourn the meeting at 4:53 pm. Wendy Chapman seconded that motion, and all in favor. The motion passed unanimously.

Prepared by: TK Menesale, District Treasurer, Clerk
Buzzards Bay Water District