

March 8, 2022

A meeting of the Board of Water Commissioners was held on Tuesday March 8, 2022, at 4:30pm in the Michael G. MacPherson Meeting Room at the water department office located at 22 Elm St, Kingston Ma.

Chairman Richard W. Loring Jr. called the meeting to order at 4:31 p.m.

Present were Vice Chairman Robert Kostka, Commissioner Robert Erlandsen, Superintendent Matt Darsch, Clerk Stacey Smith, Town Administrator Keith Hickey, Human Resource Director Tina Betti, Mike Ohl and Mike Carmasine of CEI, Kristen Berger of Resilient CE, David Gilmore of Pyramid Group, Nick Clini of Atlantic Design, Atty Robb D'Ambruoso and Mark Roundtree. In attendance via ZOOM, David Aitken of the Pyramid Group.

A motion to accept the minutes as presented from February 8, 2022, was made by Vice Chairman Kostka, and seconded by Commissioner Erlandsen and voted unanimously (3-0-0).

Keith Hickey, Town Administrator & Tina Betti, Human Resource Director Re: Office Administrator Position- KTEU

Chairman Loring gave a brief history of the position and explanation of the argument the Board has made to keep the position out of the town union for the last eighteen years. He went on to say that the reasons that were given to keep the position exempt back then remain even stronger today. With that, he turned the conversation over to Mr. Hickey.

Mr. Hickey explained to the Board that the town is doing a lot of work in preparation to collective bargaining with union negotiations to begin in late spring/early summer of 2022. As part of that work, they are reviewing positions they believe should come out of the union and positions they believe should be included in the union. Mr. Hickey said he understands the 20-year discussion the Board has had in keeping this position out of the union; however, the review of the job description demonstrates that it should be in the union. This recommendation has been based on responsibilities in the job description. The town is "simply trying to be consistent" with the types of positions included in collective bargaining.

Vice Chairman Kostka asked Mr. Hickey, what positions were used to equate and compare to the position of Office Administrator? Mr. Hickey responded, every one of them as the position is like the other administrator positions in the level of responsibility. Chairman Loring stated it is our understanding there are positions being proposed to go in the union and positions proposed to come out of the union. If you are taking positions out of the union due to administrative and managerial responsibilities, understand the office administrator works closely with the Water Superintendent and in his absence, she is intimately involved with supervising the department personnel and making sure job responsibilities are being adhered to within the department as well as her duties with the Board.

Vice Chairman Loring stated he could offer historical perspective as he was on the Board at the time the argument was made to remove the position from the union in 2003. Prior to 2003, the position, at the time was in the union. The position of Office Administrator was created with new responsibilities and functions that would be inconsistent with union personnel. There were several lengthy conversations regarding this, and it was agreed upon this position would not be included in the union. He said looking at the job responsibilities, he sees nothing that has changed. He added, he is solidly opposed to this position being moved back into the union.

Commissioner Erlandsen asked, what the role of the Board of Water Commissioners is in this decision. Do we have a decision to make, or do we offer input? Who ultimately decides this? Mr. Hickey said he would have preferred to have had this discussion earlier and that the Board would have heard this from him directly and not from other sources. Mr. Hickey said he tries to work as collaboratively as he can. Regarding Chairman Loring's statement that the role involves supervisory duties in the Superintendent's absence, this position would be part of the clerical union which is separate from the labor union. Commissioner Erlandsen asked again, where are we in the decision tree? Mr. Hickey responded, this is all based on expiring union contracts in 2023. Commissioner Erlandsen said, so the Board of Selectmen will decide on this? Mr. Hickey responded, they already have. He presented to the Board of Selectman the rationale of why he was asking for positions to go in and be taken out of the union. He added, initially the Board of Selectmen were hesitant to add any positions to the union. However, he said he told them how he was concerned about maintaining consistency with positions inside and outside the union. He added the level of responsibility is the same as other administrative assistants.

Commissioner Erlandsen asked if there was any appeal process. Mr. Hickey stated he was unsure but there was probably an appeal available through the court. Vice Chairman Kostka stated again how he was troubled by the lack of discussion with the Board.

Commissioner Erlandsen said considering the Janus decision, there will not be any requirement of dues from the employee if she chooses not to, correct? Mr. Hickey said that is correct. She will have to join the union but will not have to pay dues if she chooses not to.

Vice Chairman Kostka referenced the Mass General Law which states the following:

"Employees shall be designated as confidential employees only if they directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage under this chapter"

Vice Chairman Kostka went on to say the Water Superintendent is excluded from the union. The Office Administrator directly assists the Water Superintendent. He asked, "what did I misread here that allowed this to change?" Ms. Smith pointed out this reference is on the front page of the labor opinion, about three quarters of the way down on the page.

Mr. Hickey said he was at the meeting to answer any questions the Board had but at this point he feels we will have to agree to disagree on this matter. He said he respects the opinion of the Board of Water Commissioners. Vice Chairman Kostka said he wanted to address that as well. If that were true, wouldn't we have been notified prior to meeting with the Board of Selectmen? Mr. Hickey stated, no he would never speak to the Board prior to speaking with the Board of Selectmen. Vice Chairman Kostka then asked, should someone from the Board of Selectmen have had a conversation with the Board of Water Commissioners. Mr. Hickey stated, that's me. Vice Chairman Kostka suggested a decision was made to force an employee of ours into the union without any discussion with us on how it may potentially impact the position within the department, and this is ok and how we are going to conduct business? Mr. Hickey stated he went to the Board of Selectman because that is who he works for. He realizes he should have spoken to the Board sooner and that is on him, he takes responsibility for it. It is in his opinion that this position being moved into the union will not change anything within the job description or how the position works within the department.

Chairman Loring asked Mr. Hickey if he really believed it was inappropriate to have a conversation with this Board prior to making recommendations, since some people making the recommendation have never stepped foot in this building? Mr. Hickey asked, who is that? Chairman Loring replied, Tina (Ms. Betti) has not. Mr. Hickey asked what relevance does that have. Chairman Loring asked, how do you find out what is happening in a department without speaking with that

department, to sit at town hall and say you know what is going on with a department and you know what the employees do without ever having a conversation with them? Mr. Hickey responded, I spoke with the water superintendent.

Vice Chairman Kostka referred to a statement made earlier by Mr. Hickey that he works collaboratively. He asked, how is this working collaboratively when we are being told what is going to happen to one of our employees without any previous conversation? Mr. Hickey responded that he would have liked to have had a discussion earlier and he acknowledges that is on him. However, he respects the Board's position but feels this position is consistent with the other administrator positions and should be included in the union. He added, it was labor counsel's opinion that the position of Office Administrator be included in the union. He went on to read from the opinion. Discussion ensued regarding the labor opinion and information shared with the Board of Selectmen regarding this position.

Chairman Loring asked if the Board of Selectmen was presented with a case from the City of Newburyport in which the department of labor relations ruled against the town in trying to place an exempt employee in the union. Mr. Hickey said he was unaware of the case and had no knowledge if labor council was aware of the case. Chairman Loring asked if Ms. Betti had seen the case. Ms. Betti responded, no and labor counsel did not bring it.

At approximately 4:59 p.m., both Mr. Hickey and Ms. Betti left the meeting.

David Aitken and David Gilmore of Pyramid Group, Nick Clini of Atlantic Design, Atty Robb D'Ambruoso and Mark Roundtree RE: Hyundai Dealership

Mr. Gilmore passed out handouts to use during the discussion of the parking lot discharge on the map. He referred to Nick Clini of Atlantic Design to explain the design. Mr. Clini pointed out the direction and flow of the drainage.

Mr. Ohl of CEI, Inc. had comments. He started by pointing out the three parcels of land recently filed at the Registry of Deeds. He stated at this moment, the land in question is not referring to a mall owned project. This is a separate parcel and a deed restriction still exists.

David Aitken offered clarification. The three deed restrictions were submitted and filed on February 16, 2022. The Board agreed to remove the deed restriction of the 2.1-acre parcel of land within the provisions of the resolution in addition to addressing the concerns of the drainage and the parking lot.

Mr. Ohl said, as a new parcel coming in, wouldn't it be subject to all impervious regulations? The amount of roof run off does not get the mall back to 15% impervious. Mr. Aitken said this would go back to the mall's impervious. Mr. Ohl stated, he strongly disagreed and said they can only use that impervious agreement with land owned by the mall. Mr. Ohl asked Mr. Clini how much of this project is impervious. Mr. Clini responded 64.8%.

Further discussion continued. Mr. Ohl stated if this goes through as presented and the Board agrees to it, the mall could potentially sell other pieces of land until they collectively get to the 20% impervious which would be counter intuitive.

Mr. Aitken interrupted and stated Sears was sold to Trammel Crow and Macy's bought their land. Commissioner Erlandsen said the 20% impervious is specific to the mall, a single entity. There is a legitimate concern other pieces will be sold off under the assumption those pieces will count towards the mall's impervious agreement. Mr. Ohl said, to get

to 15%, add a parcel and it just gets bigger. Mr. Aitken stated all the players and information were present from the beginning of this process. Chairman Loring stated he strongly disagrees. Commissioner Erlandsen stated he would like Town Counsel to review this proposal. Vice Chairman Kostka stated if we allow this to pass, this landowner can be negatively impacting the next landowner.

Mr. Ohl stated the difference within the water overlay district regarding Trammell Crow is they purchased land and turned a parking lot into apartments. This project is clearing a forest to create a parking lot. Vice Chairman Kostka agreed with having this reviewed by Town Counsel. Mr. Ohl stated the concern is the maintenance of the stormwater where it is all interconnected. Discussion continued regarding documents needed for review. Mr. Gilmore offered a suggestion for solution, what if the mall retained ownership and offered a 100 year lease? Would that be acceptable and allow the impervious to go toward the mall agreement? Mr. Ohl stated, that is a thought.

Commissioner Loring stated with more parcels out there available for sale by Pyramid Group, we need to be sure what we do today does not negatively impact the future. Mr. Aitken suggested facilitating a working group with legal counsel, a point person with the water department and Mike Ohl to get working on a resolution to this issue.

Mike Ohl and Mike Carmasine, CEI Inc. RE: Engineering Updates

Mr. Ohl updated the Board on the monthly construction progress meeting today. The project is still on track. He said start up for the performance testing should be done by the end of April. He said there will be items that linger on for instance, converting lime storage to the hypo chloric area. That project will wait but will be done within a month of the plant going online.

Mr. Ohl said Ms. Berger of Resilient CE has more information on the time extension. He added, we will be reviewing the budget for office and field work to see if there is any change with the time extension.

Ms. Berger stated there is budget remaining to the startup phase. One question she had for Mr. Ohl was the MBE. It was originally decided that MBE part would doing something in the project. She would like to know what that is as this will require SRF approval to change the MBE at this point. Mr. Ohl replied he would be looking into that.

Kristen Berger, Resilient CE RE: Manganese Treatment plant

Ms. Berger told the Board there are other pending change orders regarding the modification to the chemical feed piping and storage. Trackle Pond has aging pipes due to the chemicals, it seems to be deteriorating pipes. We are under bid on the project due to the sub bidders. We are losing considerable storage at Trackle Pond due to the second filter, so there was a suggestion to add a 20 x 20 cold storage facility out at Trackle Pond. Rough estimates bring this to 40K.

Vice Chairman Kostka recommended a plan be developed to plan for future replacement of pipes, like what we do with the water tank painting. Further discussion ensued regarding the replacement expenses in general terms.

Ms. Berger referenced the solar panels. She said the filed sub bid electrician understands he is responsible for this project. This could be delayed due to supply chain issues. However, the project looks positive regarding the budget and completion.

Matthew Darsch, Superintendent RE: Departmental Updates

Superintendent Darsch told the Board the quarterly billing for March is complete. He told the Board he met with capital planning on Saturday and gave them a tour of the treatment plant.

Superintendent Darsch brought before the Board a request for abatement from a resident at Treetop Condominiums. They had a toilet leak in their unit. Commissioner Erlandsen made the motion to adjust the bill by charging the total usage at the lowest tiered rate. Vice Chairman Kostka seconded the motion, and it was voted unanimously (3-0-0).

Chairman Loring mentioned he had heard from resident, Mark Guidoboni of Orchard Lane and he wanted to know if there was a plan to replace a 6-inch piece of main at the end of Old Orchard going to Gray's Beach. He said the neighbor behind him is expanding and will be digging up the driveway. Chairman Loring said the issue is the pipe is surrounded by 8-inch main on either side. Vice Chairman Kostka felt considering all the projects we have on the table and in the immediate future, this is not a priority.

Vice Chairman Kostka made the motion to adjourn. Commissioner Erlandsen seconded the motion, and it was voted unanimously (3-0-0).

Meeting adjourned at 5:46 pm.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stacey L. Smith". The signature is written in black ink and is positioned above the printed name of the signatory.

Stacey L. Smith, Clerk