

**MERRIMACK VILLAGE DISTRICT
BOARD OF COMMISSIONERS
FEBRUARY 28, 2022
MEETING MINUTES
(approved March 21, 2022)**

A regular meeting of the Board of Commissioners was conducted on February 28, 2022, at 5:01 p.m. at 2 Greens Pond Road, Merrimack, NH.

Chairman, Donald Provencher presided:

Members of the Board present: Wolfram von Schoen, Vice Chairman (electronic participation)
 Kenneth Ayers
 John Lyons
 Paul McLaughlin

Members of the Board Absent:

Also in Attendance: Ron Miner, Superintendent
 Jill Lavoie, Business Manager

REGULAR SESSION

1. Board of Commissioners to review the Flatley mixed use development project with Kevin Walker.

Chairman D. Provencher explained that the board members were in receipt of a report from Underwood Engineers regarding the water demands on the Flatley project. At this time, he asked if any of the commissioners had any questions regarding the report. Commissioner K. Ayers asked about the time frame of the completion of the development compared to the time frame of the MVD wells becoming fully operational. He noted that he would like a better understanding of whether or not MVD will be paying Pennichuck Water Works (PWW) for the water of supplying it themselves. An answer from Mr. Walker was not readily available. Tom Page of Underwood Engineers explained that Underwood has done several development reviews, and this is one of the larger ones. He explained that they are looking at the ability of MVD's system to serve the proposed additional domestic demands and fire flow, and the impact on supply. Page informed the commissioners that they look at the total potential demands of the mixed-use development. This includes looking at annual average flows, peak flows, and potential fire flow. This is added to all other potential demands within the systems. Potential demand versus current capacity is reviewed during the process and Underwood has kept in mind that MVD has been managing maximum day demands in the summer with conservation measures. Chairman D. Provencher noted that the conservation measures mentioned are primarily irrigation bans. He stated that he would like the source capacity to allow MVD customers to irrigate in the summer, when not in a drought. Chairman Provencher also pointed out, as noted in the report, that many of the MVD wells are not pumping at the approved withdrawal rate and are therefore operating in a deficit, and he does not feel that MVD has enough water to meet a 5M gpd demand with the actual pumping capacity, even with all wells operational.

Chairman D. Provencher stated that the report notes that Flatley is proposing an amount of 2,510 gpd for design average domestic flow for irrigation. He noted that this is a very small fraction of the overall potable demand they are asking for. He ran some numbers using the information of 1 inch per week of irrigation water over the area to be irrigated. Chair Provencher explained that using this knowledge,

2,510 gpd only allows for irrigation over an area of .65 acres. Chairman Provencher questioned the reality of this amount. Kevin Walker, of the Flatley Company, explained that the irrigation at the apartments is generally in the front, where there is landscaping, and minimal elsewhere. He stated that there is no irrigation in the back of the buildings or on the sides. Walker stated that there will be even less irrigation at the high bay building, if any at all, and very little at the flex building. Walker also stated that the amount of water being used in the apartment buildings is just over half of what was originally assumed and would likely be covered under the number of gallons that were put forth in the initial development agreement for five apartment buildings. Chairman Provencher asked if those numbers were averaged over the year, as that does not properly indicate peak usage. Walker stated that he does not have the actual domestic usage number for the summer, but he believes it to have been below 7,000 gpd and will verify this with Superintendent R. Miner and Tom Page. Walker asked if the commissioners would like a meter to be put on that can read monthly usage and stated that Flatley would be willing to help out in gaining an accurate understanding. The board stated their appreciation for Flatley's willingness to work with MVD. Vice Chair W. von Schoen stated that there is some ambiguity because this falls at a time when MVD is between two standards. He noted that in the past MVD has only looked at the average consumption, rather than peak consumption, and once again stated appreciation for Flatley's willingness to work with MVD. Vice Chairman von Schoen stated that MVD would like to lower the peak demands in general and was unsure of the ability to give conditional approval. He stated the possibility of granting the approval based on known numbers from Flatley as long as MVD has control over the peak demands in the future. K. Walker stated that he does not feel that would be a problem on Flatley's end. Commissioner D. Provencher stated that he would feel comfortable if Flatley was willing to accept the calculation he had worked out earlier, with the 2,510 gpd being able to cover an area of .65 acres. He then stated that he would be willing to put that into an agreement if Flatley was willing to abide by that amount. K. Walker stated that it would be a small amount of land that Flatley would be irrigating and estimated it to be roughly 2,000 square feet. Vice Chair W. von Schoen stated that one obvious problem is how this would be enforceable, noting that the developer could sell the property in the future. K. Walker suggest a development agreement, which would pass on with a land transfer. He then stated that he believes this should be recorded in the registry of deeds. This suggestion was supported by the board. Superintendent R. Miner stated that he feels moving forward there should be a separate meter for irrigation. Walker stated that he did not think that would prove to be a problem.

K. Walker informed the commissioners that there is discussion about a 12-inch main on the 150-acre site from the apartments all the way through the site. This will provide a secondary loop for MVD. Walker stated that there is a development going in across the street from the site and he was wondering if MVD could have the other development put in the 12-inch line and Flatley would connect to that. He noted that the property only needs an 8-inch line but is helping MVD by using a 12-inch line. Commissioner P. McLaughlin stated that the other development has yet to be approved. He explained to the other commissioners that there is a proposed self-storage unit going in across the street from the Flatley property, and not only has it yet to be approved, but it has already changed from a proposed hotel to the proposed storage unit, and that project keeps being continued with the planning board. Superintendent R. Miner informed the commissioners that in the first phase of the Flatly project MVD wanted Flatley to continue the 16-inch main up the west side, but the DOT would not allow MVD to run that main up the side of the road. Superintendent R. Miner also explained that Flatley has less real estate on the west side of the road and MVD would require easements of existing properties in order to run the main up that side. It was noted that the main is on the side of the road where the Flatly property is located. K. Walker than exclaimed that he did not realize that and could not ask someone else to take on the responsibility in that case.

Chairman D. Provencher stated that he was unsure of what K. Walker was looking for at this time. K. Walker explained that he was looking for the approval of the water allocation that was outlined for the

apartments, the flex building, and the high bay warehouse, with the understanding that Flatley will put together a development agreement that will go before the board or Superintendent R. Miner. Flatley will also add in the irrigation meters. Chairman D. Provencher stated that he was looking at the draft development agreement that the commissioners had received in the board packet and noted that there were some items that he would like to review and address. He specifically noted that he is not comfortable agreeing to certain statements, for example, where it says that MVD is determined that no improvements to the system are required at this time, among others. Chairman D. Provencher stated that he is not in disagreement with the amount of potable water that Flatley is requesting. Commissioner J. Lyons noted that he was not sure that concrete numbers could be realized this time of year and proposed that MVD uses the irrigation meters to monitor the water usage, and any time it is above what Flatley has proposed, Flatley will be charged PWV's rates to cover the usage. This will cover MVD's costs. Commissioner K. Ayers was in agreement. The commissioners stated that they were not prepared to vote tonight. K. Walker asked if the commissioners would be comfortable voting on the proposed gallonage. Commissioner K. Ayers asked when the construction is expected to be completed. K. Walker explained that the Planning Board Process is taking longer than expected, as are other boards, but the current plan is to have the flex building completed first, followed by the high bay warehouse, with the apartments running simultaneously. The hope is for the first apartment building to be completed in 2023. Commissioner K. Ayers stated that he would like a better idea of what things look like with Wells 7 & 8 being operational, in regards to MVD's reliance on PWV. K. Walker noted that the Flex building is currently the most crucial, as they are prepared to start work on the Flex building. He stated that the Flex building is only a couple of thousand gallons per day. Chairman D. Provencher stated that he would be willing to grant approval on the flex buildings as a compromise but stated that he needs further review before being able to approve anything else.

Vice Chairman W. von Schoen stated that the only reason that the board is having the discussion is because there is not yet a new standard at MVD. He continued to say that typically staff is able to assess the situation with the engineers and the applicant, and the board should only receive a proposal with the recommendation. The board should not typically be in a position to do the engineer work. He suggested that moving forward there should be a work session between the board, engineers, and staff, to develop the new standards so the guidelines and metrics can be in front of everyone in the future. Tom Page stated that Underwood would be happy to work with MVD on that. He would also like to discuss with legal counsel, the best way to document any such agreements like the one previously discussed. Superintendent R. Miner asked Commissioner P. McLaughlin if the Merrimack Premium Outlet agreement is attached to the site plan. Commissioner P. McLaughlin stated that he does not believe so. Chairman D. Provencher stated that he thought the suggestion of putting an agreement with the registry of deeds was excellent, as this follows the property, and any potential buyer will have to go the registry and the deed restriction will be flagged.

Chairman D. Provencher noted that Flatley has included 2,344 gpd for the three commercial flex buildings and asked where the number came from. T. Page explained that K. Walker provided some estimates based on similar facilities and the number is based on actual experience elsewhere. It was noted that these buildings are not using water to produce anything, such as a restaurant. Vice Chair W. von Schoen asked Superintendent R. Miner how to monitor maximum usage above what is permitted for a property. Superintendent R. Miner answered that MVD is currently migrating over to new software so there may be more tracking methods available, but currently if the usage amount is large then the system is flagged prior to billing so MVD can review. Vice Chairman W. von Schoen proposed adding two action items, the first to organize a work session to discuss new metrics for permitting allocation based on peak consumption rather than average consumption, and the second to discuss monitoring overall consumption versus permitted consumption. There was no disagreement from the board. Chairman D. Provencher informed K. Walker that he was unsure if the board could move forward with an approval

prior to having the numbers that Flatley had provided, verified. K. Walker asked if there was a chance to receive conditional approval with the conditions being that the numbers are verified prior to the next board meeting and a development agreement is put together. The board was willing to do that. Vice Chairman stated that the average rate was not a concern, and he would have no problem approving this based on the current average rate also representing the peak rate. The approval would allow Flatley to bring the information to the Planning Board.

MOTION BY COMMISSIONER W. VON SCHOEN TO MOVE FORWARD WITH A PRELIMINARY INTENT OF APPROVAL OF THE DESIGN AVERAGE DOMESTIC FLOW FOR THE THREE COMMERCIAL FLEX BUILDINGS OF 2,344 GPD, CONTINGENT UPON THE NUMBER BEING CONFIRMED AND THE PEAK DEMANDS CLARIFIED PRIOR TO THE MARCH 2022 BOC MEETING

MOTION SECONDED BY COMMISSIONER D. PROVENCHER

A Viva Voce was conducted, which resulted as follows:

Yea: Donald Provencher, Wolfram von Schoen, Kenneth Ayers, John Lyons
4
Nay: 0

MOTION CARRIED

4-0-1

Commissioner P. McLaughlin abstained.

PUBLIC HEARING

- PFAS Remediation Loan Fund Grant - \$3,369,375

The Public Hearing for the acceptance of grant money from the New Hampshire Department of Environmental Services PFAS Remediation Grant Fund for Wells 2, 3, 7 and 8 in the amount of \$3,369,375 was opened at 6:08 p.m. and was closed at 6:14 p.m.

MOTION BY COMMISSIONER J. LYONS TO ACCEPT THE GRANT MONEY FROM THE NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES PFAS REMEDIATION GRANT FUND FOR WELLS 2, 3, 7, AND 8, IN THE AMOUNT OF \$3,369,375 AS PRESENTED AT THE MERRIMACK VILLAGE DISTRICT’S PUBLIC HEARING ON FEBRUARY 28, 2022.

MOTION SECONDED BY COMMISSIONER K. AYERS

A Viva Voce was conducted, which resulted as follows:

Yea: Donald Provencher, W. von Schoen, Kenneth Ayers, John Lyons, Paul McLaughlin
5
Nay: 0

MOTION CARRIED

5-0-0

- Source Water Protection Grant - \$25,000

The Public Hearing for the acceptance of grant money from the New Hampshire Department of Environmental Services 2022 Local Source Water Protection Grant in the amount of \$25,000 was opened at 6:15 p.m. and was closed at 6:19 p.m.

MOTION BY COMMISSIONER W. VON SCHOEN TO ACCEPT THE GRANT MONEY FROM THE NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES 2022 LOCAL SOURCE WATER PROTECTION GRANT IN THE AMOUNT OF \$25,000 AS PRESENTED AT THE MERRIMACK VILLAGE DISTRICT’S PUBLIC HEARING ON FEBRUARY 28, 2022.

MOTION SECONDED BY COMMISSIONER J. LYONS

A Viva Voce was conducted, which resulted as follows:

Yea: Donald Provencher, W. von Schoen, Kenneth Ayers, John Lyons, Paul McLaughlin

5

Nay:

0

MOTION CARRIED

5-0-0

REGULAR SESSION

2. Board of Commissioners to discuss and assign Warrant Articles for the March 29, 2022 Annual Meeting.

Chairman D. Provencher informed the commissioners that the Warrant Articles would be read aloud at the Public Hearing. Together, the board assigned a commissioner to present each Warrant Article. The following assignments were made:

Article 1: N/A

Article 2: N/A

Article 3: Commissioner J. Lyons

Article 4: Chairman D. Provencher

Article 5: Commissioner P. McLaughlin

Article 6: Commissioner K. Ayers

Article 7: Commissioner J. Lyons

RECESS

The public session of the MVD Board of Commissioners was recessed at 6:29 pm to be reconvened after the Public Hearing at 38 McElwain Street, Merrimack, NH.

PUBLIC HEARING

The Public Hearing relative to the Merrimack Village District's Proposed Operating Budget for Fiscal Year 2022-2023 and the Warrant Articles for Fiscal Year 2022-2023 was opened at 7:01 p.m. and was closed at 7:07 p.m.

RECONVENE REGULAR SESSION

The commission reconvened at 7:09 pm.

**MOTION BY COMMISSIONER P. MCLAUGHLIN TO MOVE THE WARRANT ARTICLES TO THE ANNUAL MEETING AS PRINTED
MOTION SECONDED BY COMMISSIONER J. LYONS**

**MOTION CARRIED
4-0-0**

ADJOURNMENT

**MOTION BY COMMISSIONER J. LYONS TO ADJOURN
MOTION SECONDED BY COMMISSIONER P. MCLAUGHLIN**
A Viva Voce Roll Call was conducted, which resulted as follows:

Yea: Donald Provencher, Ken Ayers, John Lyons, Paul McLaughlin
4
Nay: 0

**MOTION CARRIED
4-0-0**

The February 28, 2022 meeting of the Board of Commissioners was adjourned at 7:15 p.m.

Submitted by Amanda McKenna, Recording Secretary