

Meeting Minutes of the Special meeting of the Old Lyme Shores Board of Governors held on January 31st at 12:00 PM via Zoom. The meeting focused on certifying the bond resolution vote and approving Table 4 for the Clean Water Fund application.

#### Attendance

##### Board of Governors

- Tim Larson
- Jack Thomas
- Jerry Vande Werken
- Mary Kate Reynolds
- Bob Palazzo
- Jay Moynihan

##### Officers

- Paul Yellen (President)
- John Cunningham (Vice President)
- Rob Cappellucci (Treasurer/Tax Collector)

##### Consultants

- Kurt Mailman (Fuss & O'Neill)
- Walter Dylag (Fuss & O'Neill)
- Attorney Norbert Church

##### Public Participants

- Martin Merritt (active participant with multiple questions)
- Approximately 30 total participants on the call

##### Detailed Discussion Topics

###### 1. Bond Resolution Vote Certification

##### Vote Results

- **Yes votes:** 57
- **No votes:** 43
- **Total participation:** Approximately 100 people (proxy or in-person)
- **Location:** Old Lyme Middle School

##### Vote Counting Process

- **Counters:** Rob Cappellucci and Mark Bernacki
- **Witnesses:** Paul Yellen and Attorney Church
- **Verification:** Numbers counted multiple ways by different parties, all results matched

#### Meeting Details

- Meeting started late (10:20 AM) due to proxy verification and counting
- One resident spoke extensively about cost estimates, contingency accounts, and state statute on affordability
- Brief discussions from Rob Cappellucci and John Mandraccia
- Meeting proceeded smoothly after opening

#### Board Vote to Certify

- **Motion:** Tim Larson
- **Second:** Mary Kate Reynolds
- **Result:** Unanimous approval (6-0)
- DEEP was immediately notified of the vote results

#### 2. Table 4 Presentation - Shared Infrastructure Project

##### Project Cost Breakdown

| Category                             | Amount       | Notes                           |
|--------------------------------------|--------------|---------------------------------|
| Total Shared Project Cost            | \$30,056,307 | Before Old Colony adjustment    |
| Old Colony Portion (to be extracted) | -\$766,000   | For constructability reasons    |
| Adjusted Shared Project Total        | \$29,290,366 | After Old Colony adjustment     |
| Old Lyme Shores Share (30.1%)        | \$8,818,400  | Based on cost-sharing agreement |

#### Technical Services

- **Previously authorized design:** Completed planning and permitting work
- **Construction administration:** Office work including submittal review, contract interpretation, paperwork submission to DEEP

- **Resident representative services:** Field inspection, quality control, quantity measurement, service connection coordination
- **Specialty services:** Record drawings, O&M manuals, project closeout requirements

#### Construction Costs

- **Shared pump station:** Revised number based on current contractor commitment
- **Shared shoreline sewer:** Now includes force main and dioxide station as change order
- **Market escalation clause:** 10% added (approximately \$2.2 million total)
  - Primarily applies to pump station equipment
  - Contractors estimate \$600,000-\$700,000 for pump station escalation
  - Pipe and roadway costs remain relatively stable
  - Contractors must document all escalation with schedule of values
- **Contingency:** 5% on construction costs
- **Interest during construction:** 1%
- **DOT Bridge project:** Removed from original bid, added back as separate line item
- **Capitalized IMA buy-ins:** Downstream treatment facility costs (could be O&M cost over 20 years)

#### Market Adjustment Process

- **Timing:** Contractors have 15 days after notice of award to submit escalation documentation
- **Basis:** Material costs from bid date to notice of award date, plus prevailing wage rate changes
- **Documentation required:**
  - Schedule of values for lump sum pump station bid item
  - Updated bid schedule with revised costs
  - Comparison of original bid to January 31, 2026 costs
- **Lock-in:** Once escalation is submitted and approved, prices are locked regardless of future construction start date
- **Pump station timing:** Likely constructed in spring 2027, but prices locked at notice of award

### 3. Table 4 Presentation - Internal Old Lyme Shores Project

#### Project Cost Summary

| Category | Amount |
|----------|--------|
|----------|--------|

|  |              |
|--|--------------|
| Total Internal Project Cost            | \$13,625,743 |
| Construction Contingency               | 3.5%         |
| Combined OLS Costs (Shared + Internal) | \$22,442,143 |
| Bond Authorization Cap                 | \$22,700,000 |
| Remaining Capacity                     | \$257,857    |

Key Differences from Shared Project

- **No escalation clause:** Bid remains open until February 8th, so no extension needed
- **Lower contingency:** 3.5% vs. 5% for shared project
  - Simpler construction (pipe in ground)
  - No complex pump station equipment
  - Some rock and groundwater challenges
  - Contractor confident in pricing stability
- **Storm drainage eligibility:** Assumed at 45% Clean Water Fund eligibility (pending DEEP confirmation)
- **Includes storm drainage:** Can be removed as change order if needed to manage costs
- **Includes 4-inch HMA paving:** Most expensive paving option with full road reconstruction

Design Costs Clarification

- Previous design costs included in Table 4 at DEEP's request for complete project cost picture
- These costs already covered by previous Clean Water Fund application
- Will be removed from final CWF application to avoid double counting
- DEEP also requested inclusion of downstream IMA buy-in costs

4. Grant Calculation Controversy

The Issue

- **Expected calculation:** 25% grant applied to eligible costs, then \$15M loan forgiveness applied
- **DEEP's position (as of January 12):** \$15M loan forgiveness applied first, then 25% grant on remainder
- **Financial impact:** Approximately \$1 million additional cost (~\$5,000 per homeowner)

- **Table 4 shows:** Grant at approximately 11% instead of expected 25%

#### Historical Context

- All previous communications and homeowner presentations assumed 25% grant applied first
- Original understanding: 25% grant off eligible costs, plus \$15M loan forgiveness
- DEEP changed position without prior notice to associations
- This is the first Clean Water Fund project with a loan forgiveness component
- No precedent exists for how to apply these two benefits

#### Current Status

- **Not finalized:** Kurt Mailman stated this is "not a dead item yet"
- **Still under discussion:** DEEP provided "non-committal answer" about how to handle it
- **DEEP's consideration:** Still reviewing eligibility methodology
- **Recommended action:** Association counsel should work with DEEP and other associations to reverse the decision

#### John Cunningham's Explanation

- DEEP originally planned to take \$15M off top, then apply 25% grant
- In November/early December, John argued this didn't make sense (loan forgiveness vs. project funding)
- Treasury staff agreed with John's interpretation at that time
- Someone found regulation requiring "other funds" applied before Clean Water funds
- DEEP likely stated current position conservatively to avoid trouble with superiors
- Question remains open because "you can't call it loan forgiveness if you're not applying it to the loan"
- Associations should continue pressing for correct order of operations

#### 5. Contingency Concerns

##### Martin Merritt's Analysis

- **Shared project contingency:** Calculated at 4.3% (stated as 5% by Kurt)
- **Internal project contingency:** Calculated at 3%
- **Historical contingencies:**
  - May presentation to homeowners: 23%
  - Typical project minimum: 5%
  - Usually carried at: 8%
  - With additional buffer: 15% total

- **Current situation:** Contingencies are "fallout numbers" worked backwards from bond cap

#### Marty's Recommendations

- Apply for higher contingency in CWF application (15-20%)
- No cost to request higher amount (not a line of credit)
- Provides approved funding if costs exceed estimates
- Would require changing bond authorization limit
- Better to do it correctly now than apply for amendments later
- Current low contingencies don't reflect project risks

#### John Cunningham's Response

- Some "compounded contingencies" exist in the numbers
- Actual contingency slightly higher than 3% when examined closely
- Strong expectation town will rejoin project
- Town's return would free up approximately \$3 million
- This would restore contingency to 15-18% range
- No need to panic - items are manageable and trackable
- Uncertainty is normal in any project

#### Jay Moynihan's Concerns

- Contingencies have been discussed for over a year
- Project challenges require adequate budget recognition:
  - Additional permitting requirements
  - Amtrak coordination
  - Bid crossing verification
  - Software and systems for project management
  - Change order costs
- Construction contingency "so low" for proper project planning
- Concerns that DEEP and F&O prioritize project advancement over fiscal protection

## 6. Project Timeline and Process Issues

#### Timeline Uncertainty

- **Key driver:** DEEP approval process speed
- **Steps required:**
  - Clean Water Fund application submission

- DEEP review and approval
- Attorney General's office signature
- EFT account setup for contractor payments
- **Estimated timeframe:**
  - Best case: 2 months
  - Design phase precedent: 6 months
  - Likely range: 2-6 months
- **DEEP's commitment:** Energized to expedite this project

#### Notice Process

- **Notice of Award:**
  - Tells contractor they will work on the project
  - Triggers 15-day deadline for escalation documentation
  - Allows contractor to order supplies and equipment
  - Enables pre-construction coordination
- **Notice to Proceed:**
  - Issued after Notice of Award
  - Directs when and where contractor can start
  - Includes any caveats (e.g., storm drainage delay, hammer law restrictions)
  - Contractor provides proposed schedule at this point

#### Hammer Law Consideration

- **Current rule:** No construction between July 1 and Labor Day
- **Board decision needed:** Whether to waive hammer law for this project
- **Marty's position:** Should work through summer given project scope
- **Status:** Board has not yet voted on waiving the restriction

#### Process Criticisms

##### **Jay Moynihan's Concerns:**

- Not a collaborative process - numbers provided by DEEP/F&O without input
- Table 4 appeared January 26th, changed by January 29th meeting
- No advance discussion of numbers before presentation
- Meeting at 4:30 PM Thursday to approve never-discussed table
- Process has been "lurching from crisis to crisis"
- DEEP never proactively reaches out to discuss issues or work together
- Board members spending excessive time on last-minute changes

- Process needs significant improvement going forward

#### **Bob Palazzo's Concerns:**

- DEEP pushed for vote on Monday/Tuesday, then changed numbers Thursday
- Would have voted on wrong numbers if board had complied with Monday/Tuesday deadline
- 5 years of confusion about \$15M loan forgiveness application
- Never received straight answer until just before vote
- Feels like "shell game at the last minute by the state"
- Should know grant calculation answer before voting
- \$1 million impact (\$5,000 per resident) is significant

#### **Paul Yellen's Response:**

- Dealing with state has been "challenging, to say the least"
- Brand new process for DEEP - no procedural book to follow
- State changes positions and guidance regularly
- Sometimes assumes associations can figure out their intent
- State has full-time staff (40 hours/week) on this project
- Volunteers attempting to juggle constantly changing information
- Many balls are still in the air, but decision must be made

## 7. Archaeological Concerns

### Background

- Archaeological report sent by Kurt to Bob Palazzo
- Bob sent emails with approximate locations and timing
- Specific incident occurred prior to 11 AM on documented date
- Related to Connecticut Water main installation by VMS

### Findings

- **Sensitive area identified:** Near Old Lyme Shores Beach Association
- **Unique situation:** OLS is only beach association considered archaeologically sensitive
- **Inspector:** Likely Snyder Engineering (per Kurt's recollection)
- **Implication:** May require special handling during construction

## 8. Budget Mobility and Line Item Flexibility

### Jerry Vande Werken's Questions

- What does "mobility" mean for budget line items?
- What's the difference between resident representative services and construction administration?

### Kurt's Explanations

#### **Budget Mobility:**

- Clean Water Fund Agreement includes table similar to Table 4
- Each service category has assigned budget
- Bottom line total is "carved in stone"
- Some flexibility exists between line items
- Can apply to modify budgets from one category to another
- Example: Could move funds from one line to legal costs if needed

#### **Service Distinctions:**

- **Construction Administration (office work):**
  - Reviewing submittals
  - Interpreting contract documents
  - Submitting paperwork to DEEP and associations
  - Getting signatures for pay requisitions
  - Approving submittals
  - Processing work change directives and change orders
  - Managing contract adds and deducts
- **Resident Representative (field work):**
  - On-site observation of work
  - Quality control and quality assurance
  - Verifying quality materials used
  - Ensuring work conforms to bid documents
  - Measuring quantities (unit price contract)
  - Verifying monthly pay requisition accuracy
  - Coordinating service connections with homeowners
  - DEEP Clean Water Fund requirement
- **Specialty Services:**
  - Record drawings

- Project closeout requirements
- O&M manuals

#### Prevailing Wage Oversight

- **Bob Palazzo's question:** Does resident rep review worker classifications?
- **Kurt's response:**
  - Contractor submits certified payrolls
  - Office and field staff validate correct wage rates
  - F&O reviews for conformance
  - Will escalate to Department of Labor if needed to resolve issues

#### 9. Table 4 Vote

##### Pre-Vote Discussion

##### **Martin Merritt's Final Objection:**

- Table prepared with unfavorable grant calculation
- Voting on this version signals acceptance to DEEP
- Negotiation will be over if board approves as-is
- Recommended: Change table to show 25% of larger number, then vote
- Submit revised version to DEEP showing what board actually approved
- Don't show DEEP the negative version

##### **Jack Thomas's Suggestion:**

- Vote on revised version
- Submit to DEEP and await their response

##### **Mary Kate Reynolds's Question:**

- Can we make a motion to edit the current motion?
- Haven't we done that before?

##### **Tim Larson's Position:**

- Motion is on the agenda as presented
- Table 4 prepared by professional organization hired to represent obligations
- Concerns raised by individuals, but not provided ahead of time
- Inappropriate to change motion based on "hearsay or conclusion"
- Public has seen this table
- Speculating on contingency funding for estimates is "a far reach"
- Prepared to vote on agenda item as presented and available to members

**Jay Moynihan's Compromise:**

- Agrees with Tim that motion should stand
- Down to final moments - DEEP needs and wants the vote
- Alternative approach:
  - Take vote on the motion as presented
  - Continue commitment to work with state on 25% calculation
  - Approach state after vote to continue discussion
  - Other beaches support this position
  - Keep pressing for order of operations correction
- Gets process through while continuing advocacy efforts

Vote Results

| <b>Board Member</b>  | <b>Vote</b> |
|----------------------|-------------|
| Jack Thomas          | Yes         |
| Mary Kate Reynolds   | Yes         |
| Jerry van der Werken | Yes         |
| Tim Larson           | Yes         |
| Bob Palazzo          | Yes         |
| Jay Moynihan         | No          |

- **Final result:** Motion carries 5-1
- **Motion made by:** Tim Larson
- **Seconded by:** Jack Thomas

10. Fuss & O'Neill Bills Approval

Bill Details

- **Total amount:** \$18,445.71
- **Reimbursement:** Will be reimbursed by Clean Water funds
- **Cash flow:** Money out and money back in
- **Submission:** Bills to be submitted to DEP for payment

Vote Results

- **Motion made by:** Tim Larson
- **Seconded by:** Mary Kate Reynolds
- **Result:** Unanimous approval (6-0)

Adjournment 1:28 pm

- **Motion made by:** Tim Larson
- **Seconded by:** Mary Kate Reynolds
- **Result:** Unanimous approval