

REPORT OF THE TISBURY WATER WORKS
CHARTER REVIEW COMMITTEE
November 13, 2008

INTRODUCTION

The Charter Review Committee was created in November 2007 by the Tisbury Board of Selectmen in cooperation with the Commissioners of the Tisbury Water Works (TWW). The Committee was charged with reviewing the legislation which created the TWW (MGL CH 394, 1905) and to present recommendations concerning the authority of the TWW Commissioners and a number of contentious issues which have been prominent in recent years. Members are Tristan Israel (representing the Board of Selectmen), David Schwab (representing the TWW Commissioners), Larry Gomez (Chair of the Tisbury Finance Committee) and two at-large members: Pamela Street and Roland Miller.

PROCESS

As authorized by the Committee, Larry Gomez, Pamela Street, and Roland Miller interviewed more than 20 people including town officials, TWW personnel, state officials, and others familiar with the operation of municipal water operations in Massachusetts. They also reviewed a number of policy and legal documents pertaining to the local operation.

OPTIONS CONSIDERED

The fundamental question for the committee was a question of governance: How should the municipal water organization in Tisbury be structured to ensure a quality product and efficient and effective operation? We considered these options:

- (1) Maintain the status quo of having the TWW operate under the original 1905 Charter.
- (2) TWW becomes a department within the Town of Tisbury either as a part of the DPW or as a separate department operating under the Enterprise concept.
- (3) Organize TWW as an independent water district which would involve creating a new legal entity along the lines of what Oak Bluffs has done. This could be accomplished by creating a district just for the Town of Tisbury or by merging with other water suppliers (i. e. Oak Bluffs, Edgartown)
- (4) TWW is put up for sale and a private company would purchase and operate the system.
- (5) TWW/Town of Tisbury contracts with a private firm to operate the system for an annual fee.

At its October 17 meeting, all five members endorsed the following recommendations for presentation to the Board of Selectmen and the TWW Commissioners.

RECOMMENDATIONS

- (1) **STRUCTURE:** TWW should become a department of the Town of Tisbury but not under the Department of Public Works. The newly formed department would be subject to all relevant Massachusetts statutes pertaining to public water supplies. We further recommend that the Town Meeting authorize the creation of an Enterprise Fund under which TWW would operate as outlined in MGL Ch. 44, Section 53F1/2.
- The Town of Tisbury will have to consult with legal counsel on the proper procedure to follow to implement this recommendation. Within the Commonwealth, municipal water operations are governed by a number of state statutes (MGL Ch. 41, Sections 69 A & B and Ch. 40, Section A-G) as well as the above –referenced law concerning the establishment of Enterprise Funds. The Charter Committee does not have the legal expertise to lay out the proper legal steps but notes that this recommendation will require action by Tisbury voters at a Town Meeting.
 - As part of the process of clearly defining TWW as a department of the town, the TWW Commissioners and the Board of Selectmen should develop a memo of understanding covering how in-kind services rendered by both TWW and other Town personnel will be handled.
 - The issue of the 1905 Charter needs to be resolved. The Committee sees several options:
 - i. Rescind the 1905 Charter and rely on newly drafted language to reflect the intended structure.
 - ii. Maintain the 1905 Charter but adopt one or more Town Bylaws to clarify all outstanding questions of authority and operation.
 - iii. Revise the 1905 Charter to address all outstanding questions of authority and operation and then submit to a Town Meeting and, if necessary, to the General Court for approval.Note: Option (i) would be the cleanest and most effective option but there may be compelling reasons for considering Option (iii). Option (ii) has the potential, in our judgment, of spawning continuing issues of disagreement concerning the authority of the TWW Commissioners and should not receive serious consideration.
- (2) **GOVERNANCE:** When TWW becomes a department of the town, the TWW Commissioners should continue to be an elected body and members shall continue to have the authority to oversee and direct the operation of the organization subject to Town bylaws. Commissioners will be authorized to hire and supervise personnel, to review and set water rates, to enter into contracts with vendors, to develop operating and capital budgets for review

under the budget development procedures established for all town departments, and to carry out all responsibilities as stipulated under Massachusetts law for water commissioners.

(3) FINANCIAL OPERATION:

- All TWW revenues and expenditures will be handled under the Enterprise accounting system as established by state law. The Enterprise concept provides for the segregation of all TWW revenues, strict accounting procedures for all operating and capital expenditures, a calendar for developing operating and capital budgets, and assurance that any surplus or excess will be reserved for TWW projects as approved by the voters. Revenues will be deposited in a TWW account and any interest will be credited to TWW.
- In general, TWW financial operations will be transferred to Town Hall personnel. We have been assured that this can be accomplished without any addition to current staffing levels and without any charge to TWW. These operations include payroll, accounts payable, and the like. The separate checking account now held by TWW will no longer be necessary and will be phased out.
- Water meters shall be read by TWW personnel and, in the short term, bills will be sent out from the TWW office. Looking to the long term, the TWW Commissioners should work with its consultant to develop the most efficient system for reading meters, sending bills, and collecting revenue.
- The separate financial audit for TWW as authorized for the commissioners shall be phased out at the first opportunity. In its place, the TWW financial operation will come under the single audit for the Town of Tisbury with a separate section devoted to the TWW Enterprise account.

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(4) SALARIES AND BENEFITS

- TWW shall follow all Town Bylaws pertaining to salaries and benefits for management and non-union personnel.
- TWW shall work with the Town's Personnel Board on job descriptions, salary ranges, etc. as reflected in the town's MMP Plan.
- Union personnel will continue to be covered by the current collective bargaining process.

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(5) STAFFING: TWW should complete its current review of overall staffing needs for managerial and hourly personnel and develop a long-range staffing plan with updated job descriptions for all positions. This plan must ensure that (1) all DEP licensing requirements are met; (2) staffing reflects financial procedures shifted to Town Hall personnel; (3) management personnel shall have the skills, background, and training to oversee the entire TWW operation.

- (6) COOPERATIVE ARRANGEMENT WITH OAK BLUFFS: Our understanding is that MA DEP, the Oak Bluffs Water District, and TWW Commissioners have agreed that the current cooperative arrangement with Oak Bluffs for sharing management personnel will be phased out and we support that action. However, we suggest that in the future there may be ways for Oak Bluffs and the Town of Tisbury to arrange for cooperative purchasing and mutual assistance during emergencies
- (7) LEGAL COUNSEL: As a town department, TWW should use the Town of Tisbury legal counsel as provided for all departments. The Charter Committee, however, acknowledges that the TWW Commissioners may need to consult with independent counsel on matters where special expertise is needed related to water operations. The Committee recommends that such consultation be allowed following prior consultation with the Board of Selectmen.

NEXT STEPS

- (1) Charter Committee meets jointly with TWW Commissioners and Tisbury Board of Selectmen to present and discuss recommendations. (Suggested date November 13)
- (2) Board of Selectmen and TWW Commissioners meet independently within the next few weeks to discuss Charter Committee's report. At-large members would be available to attend these meetings.
- (3) Charter Committee meets jointly with Board of Selectmen and TWW Commissioners to discuss their responses to the report. Suggested date: December 11, 2008
- (4) Additional steps will depend on the extent to which the parties agree with the above recommendations.