

Westborough Board of Selectmen
Meeting Minutes
October 28, 2008
7:00 p.m. – 9:10 p.m.

Members Present: Chairman Thompson, Vice Chairman Emery, Selectmen Goldblatt, Dodd and Jane´

Also, Present: Henry Danis, Town Coordinator; Maryanne Bilodeau, Assistant Town Coordinator; Town Counsel Gregory B. Franks

The meeting was called to order at 7:00 p.m. by Chairman Thompson. Town and School payroll and expense warrants were approved and signed.

Pledge of Allegiance/Open Forum

The following committee vacancies were announced to the public by Chairman Thompson. Anyone interested in serving may submit a letter of interest to Nidia Ruberti, Town Hall, Selectmen's Office, 34 West Main Street:

Open Space Preservation Committee (2) 1-Non Voting Associate
Sandra Pond Conservation Area Wardens (2)

Approval of the Board of Selectmen's Meeting Minutes

- October 7, 2008
- October 14, 2008

Selectman Goldblatt moved to approve the Board of Selectmen's Meeting Minutes of October 7, 2008. Selectman Dodd seconded. 5-0

Selectman Goldblatt moved to approve the Board of Selectmen's Meeting Minutes of October 14, 2008. Selectman Jane´ seconded. 5-0

Request for a Pole Petition/South and Cottage Sts/Massachusetts Electric/Linda Hagan

Mr. Dana Larson requested that the Board approve a Pole Petition to install pole #1-150 on Cottage Street and to relocate pole #6 on South Street to service the new Central One Federal Credit Union.

Vice Chairman Emery moved to approve the Pole Petition to install pole #1-150 on Cottage Street and to relocate pole #6 on South Street to service the new Central One Federal Credit Union. Selectman Goldblatt seconded. 5-0

Class II License Hearing/Westborough Mobil, Inc./Jack Azar

Present: Attorney Michael Heiman, Mr. Azar

Police Chief Gordon informed the Board in great detail of several past and current violations of Mr. Azar's Used Class II Dealer's License. He also indicated that he verbally warned Mr. Azar about the violations several times but to no avail. Police Chief Gordon recommended to the Board that they support a five (5) day Used Class II Dealer's License suspension. He said that by imposing the suspension Mr. Azar will not be able to buy cars at the auction lot or to sell cars overseas; however, his daily repair shop and the selling of gasoline will continue (timeline attached and police reports).

At this point, the Chairman requested the Board's comments regarding Police Chief Gordon's recommendation.

Selectman Dodd asked Police Chief Gordon why he is recommending a five (5) day suspension. Police Chief Gordon said that the reason why he is recommending a five (5) day suspension is because he has personally and repeatedly, along with the Board, given Mr. Azar several verbal warnings and no corrective action has been taken from Mr. Azar. These violations are progressing to the point of Mr. Azar losing his Used Class II Dealer's License.

Selectman Jane' said that he is perplexed as to why these violations are still taking place after the Police Chief has repeatedly verbally warned Mr. Azar and he has not changed his behavior.

Attorney Michael Heiman said that there has not been a repeated course of conduct and does not believe that is being spoken about at this hearing. He said that on January 6, 2006 his client believed that he was able to store additional vehicles on Tufts Machine property. At that meeting that particular issue was rectified and the Board clarified that Mr. Azar could not have additional vehicles other than what his license states; which is only five (5) unregistered vehicles on his property to sell.

Attorney Heiman noted that the only condition Mr. Azar's license has is to be able to sell, or have on his property, no more than five (5) vehicles. The license does not limit the number of unregistered vehicles; that is a zoning bylaw and has a daily violation fine attached. He said that since the January hearing Mr. Azar has done everything he could to keep the vehicles to five (5) per his license. On August 1, 2007 there was an incident of Mr. Azar having two vehicles over the limit, which he corrected right away. On September 16, 2008 for the first time his client was informed by Police Chief Gordon that the car hauler he uses to move the vehicles couldn't park on the street because of traffic concerns. Mr. Azar and his staff immediately solved that issue. On the following day there was a scheduled vehicle pick-up; the staff moved the vehicles onto Mr. Azar's property to comply with Chief Gordon's statement. Mr. Alden, owner of Westborough Auto Exchange, and Mr. Azar have agreed to sell Mr. Azar's vehicles on consignment so Mr. Azar is not violating the number of vehicles allowed per his license. If the vehicle is not sold it is placed on the car hauler. On this day there were more than five (5) vehicles; there were thirteen (13) vehicles on Mr. Azar's property due to the fact that his staff was trying to move these vehicles onto the car hauler since the hauler is no longer able to park on the street.

Attorney Heiman said that because of the car hauler not being able to park on the street Mr. Azar entered into an agreement with Tufts Machinery. The agreement is that when there is a car shipment to be done the car hauler would park at the Tufts Machinery lot and the staff would drive the cars to the hauler. On October 9, 2008 this agreement took action and the car hauler was not able to turn into Tufts Machine lot because of road work being done. This caused the car hauler to stop and ask the patrolman what to do and was told that he had fifteen (15) minutes to do what they had to do and to pull off on Willow Street. The staff drove the vehicles to the car hauler with Mr. Alden's dealer plates; which, has been rectified and Mr. Azar has filed to get his own dealer's plate.

Attorney Heiman said that his client has not been dismissive to the Board or the Police Chief's recommendations. He said that his client has been a good neighbor and contributor to this community and has done everything he can in order to comply with his license and continues to do so. Attorney Heiman said that there is no provision for a suspension on such a license. He said that he has not found a provision anywhere that he can find which provides a suspension. The license is governed by statute and is not bound by any town bylaw or ordinance that he has been able to find and feels that his client is not warranted such action.

Chairman Thompson asked Attorney Heiman if he disputes anything on the timeline submitted. Attorney Heiman said that he does not dispute anything that is noted on the timeline.

Chairman Thompson now asked for the Board's and the Town Coordinator's comments.

Mr. Danis said that over the years it has been his understanding from consulting with various attorneys that a license is a privilege not a right and that the Board has the authority to issue licenses if the applicants meet the requirements deemed necessary and also the Board of Selectmen has the right to place restrictions on the license. Inherent with that it is the right of the Board to make a decision as to whether the license is being operated properly in the public good and also has the right in its entirety to impose sanctions on a license up to revocation if warranted. Mr. Danis said that the fact that because there maybe no written provision to state that the local authority (the Board of Selectmen) may or may not impose sanctions on a Used Class II Dealer's License is illogical and to follow that any local licensing authority cannot discipline a license.

Attorney Franks said that he is in agreement with the fact that the statute does not tell you what the Board can or can not do on a license nor does it limit the Board's right to impose sanctions; however, the Board is the body that oversees and controls the license and it is legally assumed that the Board has the power and the right to impose any reasonable sanction that they deem appropriate up to and including revocation when presented with violations of that license.

Selectman Goldblatt said that Mr. Azar came before the Board on January 2006 and apologized for the violations brought forward and ensured that he would not duplicate the incident again. Selectman Goldblatt said that she is very disappointed that these incidents have once more occurred.

Vice Chairman Emery said that she would like a clear definition as to how many vehicles were for sale. She said that she is having trouble determining whether all of the vehicles were for sale or not.

Selectman Jane' noted that he believes that the unregistered vehicles that were there were for sale not for repairs.

Mr. Azar said that some of the cars were being repaired to be shipped out. Selectman Jane' asked Mr. Azar and Attorney Heiman if shipped out meant being sold. They both agreed that "shipped out" means sold for money.

Selectman Jane' asked Attorney Heiman if he thought the five (5) day suspension is an unduly harsh sanction with the information that has been presented to the Board. Attorney Heiman said that he believes that it is an unreasonable sanction.

Selectman Goldblatt moved to suspend Mr. Azar's Used Class II Dealer's License for five (5) days. Selectman Dodd seconded.

Vice Chairman Emery said that she is not in favor of the five (5) day suspension. She said that her concern is that she does not think the Town has proven that all thirteen (13) vehicles were for sale and does not think that having the vehicles on Mr. Azar's property for two hours given the traffic situation is not like having the vehicles on Mr. Azar's property for two (2) days or two (2) weeks with verbal warning from the Police Chief and no action is taken.

Police Chief Gordon clarified that a five (5) day suspension means that Mr. Azar will not be able to purchase any vehicles from Auctions and/or sell any vehicles from his place of business (Mobil Station) and requested that the physical Class II Dealer's License be handed over to the Town. Mr. Azar will be allowed to keep his business of selling gasoline and repairing vehicles.

Mr. Danis reiterated that a license is a privilege not a right. He said that when a person goes before the registry you need to prove to them why they won't take your license. Mr. Danis noted that it is very important to understand that. Mr. Danis also noted that a violation of a license is one thing but violations of other bylaws or statutes can impede the license that a person holds.

3-2 (Chairman Thompson and Vice Chairman Emery)

Selectman Dodd moved to suspend the Used Class II Dealer's License for the following dates: November 14, 15, 16, 17, 18, 19 (calendar days) and to have Mr. Azar bring the Used Class II Dealer's License to the Police Station on November 14th by the end of the day (5:00 p.m.). Town Hall Offices close at noon on Fridays. Selectman Goldblatt seconded.

3-2 (Chairman Thompson and Vice Chairman Emery)

Vice Chairman Emery requested that Town Counsel investigate the meaning of "For Sale". Town Counsel acknowledged the request.

Minutes: October 28, 2008

Request to Appoint a Citizen at Large to the Government Study Committee II

Selectman Goldblatt moved to appoint Lynn Watts as the Human Resources Member at Large to the Government Study Committee II, ad Hoc. Selectman Jane´ seconded. 5-0

Request for a Liquor License Change of Manager/Courtyard by Marriott/Attorney Albert DeNapoli

Attorney DeNapoli requested that the Board approve a Change of Manager to Charles Weed for the Courtyard by Marriott located at 3 Technology Drive.

Selectman Goldblatt moved to approve a Change of Manager to Charles Weed for the Courtyard by Marriott located at 3 Technology Drive. Vice Chairman Emery seconded. 5-0

Clean Energy Choice Discussion/Doug Mosher

Mr. Mosher from 112 Upton Rd requested that the Board support the Clean Energy Choice Program and also requested permission to have an insert in the town's real estate bills in December 2008 that would promote the Clean Energy Choice Program, at no cost to the town. He said that this program is sponsored by the Massachusetts Technology Collaborative (MTC) and it consists of supporting renewable energy. Any Massachusetts household or organization can participate by choosing to pay a bit extra to support the development of clean electricity supplies. This program will reduce our reliance on polluting fossil fuels that contribute to global warming, strengthen energy independence by supporting the development of renewable energy supplies to Massachusetts communities and aid in the growth of the clean energy economy in the Commonwealth. Mr. Mosher also said that the MTC will match your funds. For every dollar any Massachusetts household or organization contributes to the Clean Energy Choice supplier to support new renewable energy sources, MTC will give two dollars for the following:

- One dollar goes directly to your city or town to spend on renewable energy projects.
- One dollar goes to renewable energy and energy conservation projects that benefit the state's low-income residents.

In addition to that your contribution may be tax deductible from your federal income taxes depending on which supplier you choose.

Selectman Goldblatt moved to support the Clean Energy Choice Program. Vice Chairman Emery seconded. 5-0

Selectman Goldblatt moved to approve that an insert promoting the Clean Energy Choice Program be add to the town's December tax bill, at no cost to the town. Vice Chairman Emery seconded. 5-0

Energy Program Discussion/Board of Selectmen

Vice Chairman Emery said that a few months back she brought forward the Citizen's Clean Tech Study and explained that this study would be to explore the potential application of environmental technology, green technology, or clean technology in current and future Town buildings and properties as well as the potential to improve environmentally compatible commercial and industrial development in Westborough. The group would then make recommendations to the Board of Selectmen which might result in changes in management of Town property, recommendations to various Town boards and committees to revise current building regulations or zoning codes, or strategies to attract green companies (proposal attached).

Vice Chairman Emery noted that Selectman Dodd also presented a proposal called the Community Energy Challenge and suggested that in order to have these proposals move ahead that Selectman Dodd and herself draw up a draft mission and composition statement for both proposals and present them at a future Board meeting.

Selectman Dodd said that the Community Energy Challenge proposal consists of all sort of tools to track and lower your energy costs for any New England city or town and agreed with Vice Chairman Emery's suggestion of working together to develop a draft mission and composition statement of both proposals to present at a Board's meeting (proposal attached).

The Board agreed with Vice Chairman Emery's plan of developing a draft mission and composition statement for both proposals. The Board thank Vice Chairman Emery and Selectman Dodd for all there efforts in researching these proposals.

Discussion of Question 1/Board of Selectmen

Selectman Jane' suggested that the Board take a stand to let the public know as to whether they support Question 1 (the elimination of the state income tax) or not.

Chairman Thompson opened the floor for public comments regarding Question 1.

Ann Tortora from 19 Beach Street voiced her concern stating that if Question 1 passes this will cause a lot of money issues for the town and also eliminate town programs.

Selectman Dodd voiced his concerns and said that he was not in favor of Question 1.

Selectman Goldblatt also is not in favor of Question 1.

Vice Chairman Emery agrees with Selectmen Dodd and Goldblatt and opposes Question 1.

Selectman Jane' agrees with his fellow Selectmen and also opposes Question 1.

Chairman Thompson agrees with the Selectmen and opposes Question 1.

Selectman Jane' moved to oppose Question 1 on the Ballot. Vice Chairman Emery seconded. 5-0

Request Letter of Support for Cedar Swamp Conservation Trust/John Craycroft

Present: Mr. Paul Graham, John Craycroft

Mr. Graham and Mr. Craycroft requested that the Board approve a letter of support for the Cedar Swamp Conservation Trust to work together with the Town on the Denny, Jackstraw, Piccadilly, Rutters and Whitehall Brooks which are located on the upper watershed. Mr. Graham informed the Board that the Cedar Swamp Conservation Trust (CSCT) was formed in 2003 and is an established 501 © (3) non-profit organization. CSCT's Board of Directors has experience in coordinating and managing projects in the Upper Sudbury Watershed. The CSCT's volunteers have focused their efforts on the protection of the Cedar Swamp Area of Critical Environmental Concern (ACEC) and the resources of the Upper Sudbury River Watershed. Mr. Graham said that their organization has received several grants over the past four to five years helping support the organization and that funding provides educational opportunities for CSCT to inform the public about water supplies and keeping the water clean.

Mr. Graham said that through their organization the Town would be able to receive a state grant from the Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA) to help the Town with the restoration and culvert replacement at the Jackstraw Brook Morse Road crossing in Westborough.

Mr. Craycroft said that the CSCT submitted an application to the EOEEA on September 5, 2008 and now they are waiting for a support letter from the Town to move forth. He said that there is about over 4 million dollars available for these kinds of projects. There are three trustees involved (EOEEA, US Fish and Wildlife Game, NOAH) that will review the applications and will develop a watershed plan that will be part of the grant.

Vice Chairman Emery said that this sounds consistent with the town's efforts and dovetails with what the town is doing at the Jackstraw Brook Morse Road crossing and the Warren Street culvert issues but would suggest holding another meeting to research more information regarding the grant and to have our Town Engineer, DPW Manager and the Conservation Commission be involved. Vice Chairman Emery said that the Board just received this material today. Vice Chairman Emery asked Mr. Craycroft when the application was filed. Mr. Craycroft said that the application was filed on September 5, 2008 and because it is a project related to the town the CSCT needs the town's written support to move forth with the application process.

Mr. Craycroft said that a public meeting will be held on November 4, 2008 to start the review process and will like to have the Board's support.

Chairman Thompson asked Mr. Sarri, Assistant Town Conservation Officer, and Mr. Walden, DPW Manager, if they had a chance to read through the materials. Mr. Sarri said that he has not since he just received the materials today and has prepared a statement regarding his concerns. Mr. Walden said that he has not been able to thoroughly review the materials yet.

Selectman Dodd asked Mr. Craycroft if the \$300,000 amount that the CSCT is requesting firm or would it change along the way. Mr. Craycroft said that the amount could change either for more or less money.

Selectman Jane' asked Mr. Craycroft if the program allows flexibility in the deployment of funds based on how and when the Town would need to use it in conjunction with the Town's plan which is already in place. Mr. Craycroft said that he doesn't anticipate the funds to be available until six months from now so the Town's project might be completed by then.

Mr. Sarri recommended that the Board not support the CSCT's request, at this time, because the Town has not been able to review the application thoroughly and the Town has had no contact with the EOEEA or the US Fish and Wildlife Game or the CSCT. In addition to those concerns Mr. Sarri also stated that Town Meeting supported the \$60,000 request made by the DPW Manager and the Town Engineer to conduct a full assessment of the Jackstraw Brook Watershed and its Stormwater issues from past developers. The town study is the first pre-requisite before any solutions can be properly discussed or permitted (letter of concerns attached).

Mr. Walden said that his concern is that anything that is done at Warren Street and Jackstraw Brook area will impact Cedar Swamp in one way or another; therefore, suggests that the Board wait until the assessment report is completed (January 2009) before conducting any work on that area.

Mr. Danis noted that the grant is being applied by a private group, not by the Town, and doesn't think that the Town will have a say as to how the money will be administered. Mr. Danis also noted once the Board renders it support in writing the Board does not have the option to agree or disagree with any alterations that the grant description states. It will be taken as the Board completely agrees with the scope of the work that will be done.

Chairman Thompson asked Mr. Craycroft if the scope of services may be amended (broaden). Mr. Craycroft said that he did not think that the scope of services may be amended. Chairman Thompson asked if the Board is able to write a letter of approval with conditions. Mr. Danis said that at this point no one knows if the State will accept the letter with conditions.

Selectman Dodd said that his main concern is that the other agencies have not been in contact with our town personnel and would like to have the organization and the town to review and coordinator their efforts together.

Selectman Jane' said that he would support the request with conditions.

Selectman Goldblatt said that she is not in support of the request because of the town personnel's concerns at this time and the fact that this request was submitted to the Board at the last moment.

Chairman Thompson asked for a motion to support the CSCT request tonight.

Selectman Dodd moved to approve the Cedar Swamp Conservation Trust applicant as presented tonight with an amended letter. **Motion failed for lack of a seconded.**

Vice Chairman Emery moved to have the Town Counsel, the Town Coordinator, the DPW Manager and the Assistant Conservation Commission Officer write a letter of support that protects the Town regarding the culvert replacement application. Selectman Jane´ seconded.

Selectman Jane´ requested that the “no risk to the town” be added to the draft letter of support.

Motion Amended:

Vice Chairman Emery moved to have the Town Counsel, the Town Coordinator, the DPW Manager and the Assistant Conservation Commission Officer write a letter of support that protects the Town regarding the culvert replacement and to include the following language: “no risk to the town”. Selectman Jane´ seconded.

3-1 (Selectman Goldblatt)

Town Counsel Report

Town Counsel Franks informed the Board that at their previous meeting a request to waive the Sewer and Water Privilege Fee from an elderly resident was heard and is very sad to say that the town is not able to accept the request. He said that the regulation and bylaw legislation will not allow for the approval of the request. He said that the only solution the resident has is to take advantage of the apportionment payment schedule. Town Counsel Franks said that he would respond in writing to the resident.

Town Coordinator Report

Mr. Danis reminded the Board of their upcoming meetings; November 4th and 18th.

Issues and Correspondence of the Selectmen

Selectman Jane´ requested that the Board appoint a Board member to the Economic Development Committee (EDC). He also said that once that appoint is made the EDC will meet to spell out the criteria for the appointments of the business members.

Selectman Goldblatt moved to appoint Selectman Jane´ as the Board of Selectmen Member to the Economic Development Committee with a term to expire June 30, 2009. Selectman Dodd seconded. 4-1 (Selectman Jane´ abstained)

Vice Chairman Emery thanked Anna Tortora for filming the Board’s meeting tonight.

Selectman Goldblatt thanked Maryanne Bilodeau, Assistant Town Coordinator, and Frank Cornine, Building and Grounds Supervisor, for coordinating the repair of the Veterans’ Memorial light. Selectman Goldblatt reminded our town residents to vote on Tuesday, November 4th and also requested that we remember our servicemen and women so far from home.

Selectman Dodd announced that the Senior Center held their first of three community wide dinners tonight and that it was very well attended.

Chairman Thompson echoed Selectman Dodd’s comments and thanked the Westborough Athletic Soccer Association (WASA) for the food drive that they coordinated and contributed to the Westborough Food Pantry. He said that the Association gathered over 2,000 pounds of food and over \$3,000 dollars.

Adjourn Open Session

Selectman Goldblatt moved to adjourn the Board of Selectmen meeting at 9:10 p.m. Selectman Dodd seconded.

Submitted by Nidia L. Ruberti

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Chairman George Thompson	Vice Chairman Leigh Emery	Selectman Lydia Goldblatt

_____	_____
Selectman Timothy A. Dodd	Selectman Rod Jané