

**Westborough Board of Selectmen
Meeting Minutes
May 10, 2011
6:00 p.m. – 7:22 p.m.**

Present: Selectman Lydia Goldblatt, Selectman Tim Dodd, Selectman George Thompson,
Selectman Ian Johnson and Selectman Leigh Emery

Also Present: James J. Malloy, Town Manager; Kristi Williams, Assistant Town Manager; Greg
Franks, Town Counsel

Reorganization of the Board of Selectmen

Selectman Thompson nominated Lydia Goldblatt as Chairman. Selectman Emery seconded.
4-1 (Lydia Goldblatt abstained)

Selectman Emery nominated Tim Dodd as Vice Chairman. Selectman Thompson seconded.
4-1 (Tim Dodd abstained)

The Board welcomed Ian Johnson to the Board of Selectmen and congratulated him on his
election.

Open Forum

**Suspension of Class II Used Car Dealer's License Hearing Continuation/Westborough
Mobil, 24 East Main Street/Jack Azar**

Present: Attorney Heineman, Jack Azar, Owner; Lieutenant Fryer, Police Chief Gordon

Lt. Fryer and Police Chief Gordon recapped their findings as stated at the Board's April 26, 2011
hearing (police report attached).

Lt. Fryer informed that the Board that the next morning (April 27, 2011) after the Board
requested an inspection of Westborough Mobil to determine if the registration book existed and
was at the premises as confirmed by Mr. Kallini and Mr. Azar at their hearing of April 26, 2011.
Mr. Azar and Mr. Kallini were not able to produce the book and told Lt. Fryer that Mr. Azar's
brother has it and would be able to call him to retrieve it. Lt. Fryer noted to Mr. Azar and Mr.
Kallini that the book is required to be on the premises at all times and proceeded to inspect the
property lot. He noted that he found 1 vehicle with a "repair" plate on it and another with a
"dealer" plate on it. There were also 2 damage vehicles with no plates on them. When Lt. Fryer
questioned Mr. Azar on these two vehicles without plates Mr. Azar said that those 2 vehicles
were owned by him and were for repair then they would be sold. Lt Fryer said that after he
inspected the lot Mr. Azar came to him with a blank new records keeping book. He told Mr.
Azar that he will report his finding to the Board of Selectmen and that there was no registration
book on the premises as required by Chapter 140, Section 62 of the Massachusetts General
Laws.

Lt. Fryer also informed the Board that Mr. Kallini came (April 27, 2011) to the Police Station with a "Record Book" and informed Lt. Fryer that the book was in Jack's brother's car and where unable to find it until this morning. Lt. Fryer said that he reviewed the records book and did not find the entries of the two vehicles that were on the lot without plates (these vehicles belonged to Mr. Azar and were being repaired to be sold).

Police Chief Gordon said that he had a conversation with Mr. Kallini this morning regarding the registration book showing only 13 vehicles were sold and noted that they have sold more than 13 vehicles. Mr. Kallini said that they have two different books one for vehicles that are sold at auctions and another for vehicles that are sold on the property. Police Chief Gordon informed Mr. Kallini that they are required to keep one registration book with all types of sale written not two different books for two different sales. Police Chief informed the Board that he has inspected the property since the hearing took place and that at this time Mr. Azar seems to be in compliance with his Class II License and the Town Bylaw. He has also spoken to Mr. Azar and has informed him that he or a designee will be conducting inspections once a week.

Selectman Thompson voiced his concerns and noted that Mr. Azar has not been in compliance for a very long time and is very disturbed by that. He also noted that at the previous hearing the Board requested to see the registration book after Mr. Kallini and Mr. Azar confirmed that they had the book at the station and agreed to have Lt. Fryer escort them to the station and bring back the book for the Board's review. Selectman Thompson said that Lt. Fryer reported that the registration book was not there as stated and now the Police Chief is informing the Board of the double books and is very concerned with the lack of responsibility regarding the operation of this business.

Selectman Thompson asked Town Counsel Franks what is the Board's responsibility as the licensing authority regarding the Class II Dealers' License. Town Counsel Franks said that the licensing authority is the first line of enforcement of the rules that applies to all car dealers. One of the rules (statue requirement) is that every car dealership should have on their premises a registration book outlining every single car that has been acquired and sold by the dealership. Failure of compliance requires the Board to revoke the license of the business as stated in Chapter 59, Section 29 in the Massachusetts General Laws

Selectman Thompson asked Town Counsel if the Board has any discretion as to the number of days the license may be suspended or revoked. Town Counsel noted that the Board does not have discretion under this statue. Town Counsel said that if they choose to appeal they would do so at the Superior Court.

Selectman Thompson asked Police Chief Gordon why there were two registration books. At this time, Attorney Heineman requested to ask a question and was advised by Selectman Thompson that he is not allowed to ask questions at this time and would have that opportunity after the Board had all of their questions answered for this hearing. Attorney Heineman spoke over Selectman Thompson's comment saying that "this is a hearing on the violation that occurred on February 24, 2011 only". Selectman Thompson reiterated his question to Police Chief Gordon.

Police Chief Gordon said that he got the impression, this morning, after meeting with Mr. Kallini that they did not understand what they are suppose to be doing with the book. He said that he was told that they have two different books; one with transactions of cars on the lot (Mobil Station) and the other of transactions of cars shipped overseas. Selectman Thompson further asked were the cars that were shipped overseas at the Mobil Station lot. At this point, Attorney Heineman interjected and announced that his client will not answer Selectman Thompson's question and noted that that his client is here to be heard on the February 24, 2011 violation specifically for the number of vehicles on the property. If there is a violation of the license of not keeping a book then his client needs to be informed by the Town of a hearing regarding that violation and they would discuss that at that point. Selectman Thompson asked Attorney Heineman if he was advising his client of self incrimination. Attorney Heineman said that he is not informing his client to do that but that there is a due process that is required for that line of questioning. Selectman Thompson noted that the Board did discuss and questioned the registration book at their previous meeting and he would like further clarification as to why they hold two books instead of one.

Attorney Heineman said that the Police Chief is giving them one view of why and that he is able to give them a better explanation as to why there are two books. Selectman Thompson welcomed Attorney Heineman's clarification. The reason for two books is because one is to keep track of cars sold on site; the other book is for vehicles that are purchased at auction and might come to the site to be repaired and then are shipped overseas. Attorney Heineman said that records are maintained of these two books in a computer format and Mr. Azar and his staff is now writing the transactions on the book as requested by the Police Chief. He noted that there is no statute stating that this information should be in the book and that his client has always had this information on their computer database. Attorney Heineman also noted that if the Police Chief and the Board requires that information written on the books then maybe his client might agree to it after he and his client are notified of that violation not during the current violation hearing that they are here for that occurred on February 24, 2011. He also noted that it is unfair that the Board is asking his client about the books since he is not here to discuss that.

Chairman Goldblatt made the announcement to Attorney Heineman that the Board of Selectman will hold a hearing in regards to the Revocation of the Class II Dealer's License on May 24, 2011 for the Mobil Station, located at 24 East Main Street for the record keeping violation.

Chairman Goldblatt stated that when his clients were before the Board of Selectmen on May 10th she personally asked three times if the book was at the station and they both reply with a yes. When Lt. Fryer went to retrieve the book it wasn't there.

Attorney Heineman noted that the book needs to be on the premises during business hours. When Lt. Fryer was asked to retrieve the book it was after hours. He further explained that the book has always been on the premises and that Mr. Azar's brother has an issue with one of vehicles purchased at auction and had taken the book with him to resolve the matter, unbeknown to Mr. Azar and Mr. Kallini when they were before you on May 10th.

Selectman Emery asked Town Counsel Franks if the violation of February 24, 2011 (too many vehicles on the lot) is the only issue the Board should be addressing at this time as Attorney Heineman has noted. Town Counsel said that he does not believe speaking and asking questions about the book is an issue due to fact that the licensee was the person who brought that to the Board's attention; however, Town Counsel did note that if it removes an argument on appeal why not just give the notice and both violations will be taken up then.

Mr. Malloy suggested the Board vote on the current violation hearing of too many vehicles on the premises first and then proceed with the second violation of the book at their meeting of May 24, 2011 and also noted that under Chapter 140 Section 62 that "every licensee shall keep a book on the licensed premises" and is not to be removed. Attorney Heineman noted that the registry book says very clearly "during normal business hours".

Selectman Thompson asked Town Counsel Franks what is the range of sanction for this violation. Town Counsel said that the Board has the discretion of imposing whatever they deem reasonable and noted that the last time Mr. Azar was before the Board for the same violation they received a 5 day suspension.

Mr. Malloy noted that the Board issued progressive action in 2006 when Mr. Azar was before the Board for a violation hearing and that the reprimand stated that additional violations would lead to suspension of their license and also noted that in 2008 the Board issued a 5 day suspension for the same violation.

Attorney Heineman submitted the letters from the owners of the three vehicles that were on the premises on the day of the inspection that were not owned by Mobil Station with their statements for the Board's consideration and noted that Mr. Azar's business not only sells vehicles but also repairs them and then sells them. He also noted that Mr. Azar's license is to sell vehicles and with the omission of the three vehicles that were in question and now have explanations for them Mr. Azar is not in violation of his license. Mr. Azar's license states 5 vehicles to sell and 1 unregistered vehicle on the premises.

Police Chief Gordon informed the Board that his department has never been able to regulate Mr. Azar's license requirements because he has never shown proper identification on vehicles for sale or repair. He also noted that Mr. Azar often has more vehicles on his property than what his license allows.

MOTION:

Selectman Thompson moved to suspend the Class II Dealer's License for the Mobil Station located at 24 East Main Street for 30 days and also set a revocation hearing of Mr. Azar's Class II Dealer's License at the Board's May 24, 2011 meeting. Selectman Emery seconded.

Mr. Malloy noted that Mr. Azar stated at the Board's previous meeting that he buys junked vehicles, fixes them and then sells them and that Attorney Heineman made the same statement. Mr. Malloy said the statement made by Mr. Azar is not a Class II Dealer's License but a Class III Dealer's License (Junk Dealer's License) and proceed to recite the statute and further noted that Mr. Azar does not hold a Class III license; therefore, he is not allowed to have junked vehicles

on his property to fix and to be sold. Mr. Malloy noted that the question was raised by Attorney Heineman as to whether a Class III license is the license that Mr. Azar should have instead of a Class II.

Board of Selectmen Voted 5-0.

Chairman Goldblatt noted that the Class II Dealer's License should be turned in to the Police Chief tomorrow (May 11, 2011). Police Chief Gordon informed the Board that with the suspended license Mr. Azar is allowed one unregistered vehicle on the premises. Police Chief Gordon said that Mr. Azar will not be able to sell vehicles. Chairman Goldblatt stated that at the Board's meeting of May 24, 2011 the Board will also hold a hearing on the Class III License issue in addition to the revocation.

Request to Change Class I Dealer License Conditions/Colonial Volkswagen, 89 Turnpike Road/Mark Shelfhault

Mr. Shelfhault requested that the Board approve the change of the following conditions to their Class I Dealer License for Colonial Volkswagen located at 89 Turnpike Road. He said they need the extra area to store 80 additional vehicles on 161 Milk Street and noted that these vehicles on the property will not be for sale (property behind Gerardo's Bakery).

Selectman Thompson moved to amend the Class I Dealer's License of Gordon Volkswagen, dba, Colonial Volkswagen to allow storage for 80 vehicles, but not the sale of vehicles, at 161 Milk Street as per their application. Selectman Emery seconded. 5-0

Request to Award the Bituminous Concrete Bid/DPW Manager

Selectman Emery moved to award the Bituminous Concrete Bid in place to JH Lynch & Sons, Inc., for bid items 1-6 as per their attached proposal and further to authorize the Town Manager to execute any related contracts. Selectman Thompson seconded. 5-0

Request to Award the Chip Seal Asphaltic Oil Bid/DPW Manager

Selectman Emery moved to award the Chip Seal Asphaltic Oil Bid for bid items 1-4 as per their attached proposal and further to authorize the Town Manager to execute any related contracts. Selectman Thompson seconded. 5-0

Request to Award the Water Meter Readers Contract/Fiscal Year 2012/DPW Manager

Selectman Thompson moved to award the Water Meter Readers Contract to Claudine Campanale and Kate Houle for water meter reading services as per their bid price of \$17,000 each and further to authorize the Town Manager to execute any related contracts. Selectman Emery seconded. 5-0

Update of Language Change on Article 25-Release of a Deed Restriction Foreign Wars Post No. 9013/Citizen's Petition/John Matson and George Perry, Members

Mr. Matson reiterated his request as stated at the Board's meeting of April 26, 2011 and noted that he did research the change of language that was suggested by Selectman Thompson.

He said that the Post members and the Lender were in agreement of the change and he is here to have the Board support the change of language **from** “In the event said post shall ever liquidate or disband or move to another location so that said post does not require said premises, the same will automatically revert back to the Town of Westborough” **to** “in return for this release the Board of Selectmen shall obtain from the trustees of the Veterans of Foreign Wars Post No. 9013 a commitment to grant the Town of Westborough a right of first refusal in any mortgage of the real estate which constitutes these premises”. Mr. Matson presented the attached motion to be read at town meeting and noted that the Town Moderator and the Town Manager have reviewed it and is in agreement with the language.

Selectman Thompson moved to support the amended language and Article 25 as presented by Mr. Matson and Mr. Perry, members of the Foreign Wars Post No. 9013. Selectman Dodd seconded. 5-0

Request to Waive Right to Notice, 16 Indian Pond/Town Counsel

Steve Liedell, Chairman Housing Partnership Committee, requested that the Board Waive its Right of Notice for 16 Indian Pond. He said that this affordable property has been vacant for a few years and now is on the process of foreclosure and would like to hurry the process along so the Housing Partnership Committee would proceed with the Affordable Lottery and hopefully have the home occupied soon. Mr. Liedell also informed the Board that the previous owners of this property refinance the home several times without the State’s approval that is required.

Selectman Emery moved to Waive the Right to 60 day Notice for 16 Indian Pond Road. Selectman Thompson seconded. 5-0

Town Counsel Report

Town Manager Report

10 Year FTE Report

Mr. Malloy presented the Board with a 10 year history report of employees by department that he recently provided to the Advisory Finance Committee (AFC). This report shows that in the last year the town and school have decreased full-time equivalent (FTE) employees by 1.1 and that over the past 10 years decreased by 29.4 FTE (report attached).

Advisory Finance Committee Votes

Mr. Malloy informed the board that he has watched the AFC meetings and took notes on budget items or articles that the AFC voted differently than the Selectmen. The following are from his notes:

Budget:

	<u>BoS</u>	<u>AFC</u>	<u>Diff</u>
Town Counsel Expenses	49,900	48,700	(1,200)
COA Salaries/Wages	229,777	222,099	(7,678)
COA Expenses	34,128	31,424	(2,704)
Total	313,805	302,223	(11,582)

Mr. Malloy said that he has spoken with Town Counsel Franks regarding the AFC budget recommendation figure for his budget and believes that Town Counsel is comfortable with the AFC's recommendation. He also informed the Board that he has spoken to Ms. DeManche, Council On Aging (COA) Director, regarding the budget differences and that she indicated that the COA would be meeting on Monday to determine if they wished to pursue the higher figure.

Selectman Johnson requested that the Board vote on the change of salary and wages for the COA budget of \$222,099. The Board agreed with Selectmen Johnson's request and voted the following:

Selectman Johnson moved to support the Salary and Wages as recommended by the Finance Committee of \$222,099 (lower figure). Selectman Emery seconded. 5-0

Articles:

Article 7D – Regularly Recurring Articles - The AFC voted to fund the AFC Reserve Fund through Free Cash and not as a Raise and Appropriate Article.

Article 13 – Hastings Roof – The AFC voted to fund through a Free Cash appropriation not a borrowing article as Mr. Malloy had recommended and stated on the warrant.

Mr. Malloy informed the Board that he drafted a separate memo (copied to the Board) to the AFC on Articles 7D and 13 because he believes using an additional \$550,000 out of free cash is too much and that the articles should be voted as he has recommended.

The Board voiced their agreement of Mr. Malloy's recommendation of raise and appropriate on articles 7D and 13 as explained above.

Selectman Johnson noted that he supported Article 13 as a free cash appropriation when he was a member of the AFC and also noted that if this amount is small enough not to affect the town's bond rating then he would support the raise and appropriate language.

The Board supported Selectmen's Johnson's suggestion.

Article 12 – Energy Audit - The AFC voted against funding this article on a 4-3-1 vote. Mr. Malloy said that Article 12 is from the Green Technology Advisory Group and that Selectman Emery can address this issue with the Board at the upcoming meeting

Mr. Malloy indicated that he will notify the Finance Committee of the Board's decisions on these items.

Wastewater Treatment Plant letter for State Revolving Fund (SRF)

Mr. Malloy requested that the Board approve to sign the Wastewater Treatment Plant Letter for Mr. Jack Hamm from the Department of Environmental Protection for the SRF request. He said that both the Shrewsbury and Westborough Treatment Plant Boards have agreed on requesting that this project be funded at a 0 percent vs. a 2 percent loan for this project.

Selectman Emery moved to sign the Westborough Wastewater Treatment Plant Project Upgrade Project SRF request as submitted. Vice Chairman Dodd seconded. 5-0

Issues and Correspondence of the Selectmen

Selectman Johnson thanked everyone who elected him for the Selectman position and looks forward to working with the Board. Selectman Johnson asked Mr. Malloy the status of the South Street road project. Mr. Malloy informed Selectman Johnson that he and DPW Manager have agreed to hold off on the project until School is out to minimize traffic jams and confusion. Mr. Walden said that the project will be completed in about 5-6 weeks.

Vice Chairman Dodd thanked everyone who ran for election and reelection and encouraged everyone to attend the Annual Town Meeting on May 14th at the Westborough High School starting promptly at 1:00 p.m. and noted that the town meeting does not have a requirement of a quorum. He also requested that the 300th Anniversary Committee discussion be placed at a Board's future meeting.

Selectman Emery thanked Tim Novak for filming the Board's meeting tonight and reiterated Vice Chairman Dodd's comment of attending the annual town meeting. She also noted that the DPW has started to restripe the town roads and also thanked everyone that helped her to understand the debt service line item and suggested that the Board take a budget line item to educate our residents of what this information means and present this information at a Board's meeting. Selectman Emery announced that Kara Vautour daughter of Don and Marilyn Vautour of Westborough was honored recently during a special ceremony at the American International College in Springfield.

Selectman Thompson congratulated all who ran for election and got elected and reelected and requested that the Town Manager develop ballot questions policy for the Board to review and to explain what a town ballot request is vs. a state ballot request. Selectman Thompson requested that Mr. Malloy research the status of a Supreme Judicial Court ruling to remove state funding on the Massachusetts Health Care regarding legal immigration and voiced his concern of having the town's state aid decrease because of this action. Mr. Malloy acknowledged the request.

Chairman Goldblatt thanked her fellow Boards members for nominating her as Chair and announced that the 9/11 10th Anniversary Committee will meet on May 17th at 6:00 p.m. in the Selectmen's Room and further requested that we keep and remember our servicemen and women in our hearts and prayers who are so far from home.

Executive Session/Labor Negotiations

Vice Chairman Dodd moved to go into executive session for the purpose of discussing Labor Negotiations/Litigation. Selectman Emery seconded. Vice Chairman Dodd declared that an open meeting would have a detrimental effect on the bargaining position of the Town. The Board voted unanimously in favor of the motion by roll call vote to go into Executive Session. Chairman Jané announced that the Board will not reconvene in Open Session after the Executive Session.

Adjourn Open Session

Selectman Emery moved to adjourn the Board of Selectmen meeting at 7:22 p.m. Selectman Dodd seconded. 5-0.

Submitted by Nidia Ruberti

Chairman Goldblatt

Vice Chairman Dodd

Selectman Emery

Selectman Johnson

Selectman Thompson