

**Westborough Board of Selectmen  
Meeting Minutes  
September 13, 2011  
6:00 – 8:30 p.m.**

Present: Chairman Goldblatt, Vice Chairman Dodd, Selectmen Emery, Thompson and Johnson

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

**Request to Approve the Board of Selectmen's Meeting Minutes of June 14, 2011**

Selectman Emery's motion to approve the minutes of June 14, 2011 was seconded by Selectman Johnson. Vote: 5-0

**Open Forum**

Jason Nappa Westborough, Co-chair of the Westborough Historical Commission and Kerry Mulrane, President of the Westborough Historical Society presented invitations to the Board for the Civil War Union Soldiers Camp Reenactment. Mr. Nappa read the invitation for the record. It will take place on Saturday, September 24, 2011 from 10:00 a.m. to 4:00 p.m. at Westborough High School on the front lawn. Ms. Mulrane and Mr. Nappa reviewed the activities that will take place. The event is free to the public. The Board thanked them for sponsoring this event.

Selectman Emery thanked 9-11 10<sup>th</sup> Anniversary Committee for the wonderful work they did and read the Committee members' names.

**Request by Bertucci's Italian Restaurant for Liquor License Change of Manager / Sandra Woodin, Peter Lyford**

Thomas Demakis, Attorney for Bertucci's, came before the Board. Mr. Demakis reviewed Mr. Lyford's background. He pointed out that the three municipalities that he worked for previously did not take issue with his affirmative answer to one of the application questions and Police Chief Gordon had no issue as well.

Selectman Thompson's motion to approve the Change of Manager application for Bertucci's at 160 Turnpike Road naming Peter Lyford as the Manager was seconded by Selectman Emery. Vote: 5-0

**Go Green Solutions / James Kelly and James Fisher**

Selectman Emery has spoken with John Walden and Frank Desiata and they both agreed that it might be worth a trial with three units. It could be economically beneficial to the DPW. Mr. Desiata met with Paul McNulty, Board of Health Director, and Go Green Solutions in May and discussed the proposal. The Recreation Commission was supportive of the idea but had some concerns regarding the appropriateness of the advertising on the containers. The Recreation Commission postponed their vote until the Board makes a decision. Mr. Desiata did not see any negatives to the proposal. Selectman Johnson agreed with Selectman Emery's recommendation on a trial basis. Mr. Kelly informed the Board that the advertising could promote Town events.

Selectman Dodd was in agreement as well, and in response to his question Selectman Emery explained that Mr. Walden's recommendation was to place two downtown, one in front of the package store, one on the corner at Rotary Pizza and a third one would be placed in a recreation field. Mr. Fisher addressed Selectman Dodd's question regarding their experience in downtown areas explaining the six areas where they are located in downtown Worcester. He also reviewed individual events where they are used. Attorney Franks has reviewed the proposal and it is legally permissible. Selectman Goldblatt expressed her concern that the Town is allowing the placement of the bins on its property, they are making money and the Town is receiving no benefit and Mr. Fisher explained the Town is receiving a recycling program at no cost. They are trying to create a sustainable recycling program with the opportunity to promote businesses in the community.

Selectman Emery's motion to move forward with the trial of this program with two bins placed where the DPW recommends and where the Recreation Commission suggests once they have a chance to consider it, for a twelve month trial period according to the contract that has been reviewed by Town Counsel was seconded by Selectman Johnson.

Discussion: Selectman Thompson asked if this falls under the Design Review Board's (DRB) purview and Attorney Franks and Building Commissioner Htway reviewed the Zoning Bylaw Section 1245 and found that it pertains to fixed structures. Selectman Thompson's concern is that the purpose of the bylaw was to give the DRB a voice over the esthetic content of the downtown district and that when it was voted a situation of this type was not considered. The DRB becomes involved when a building permit is pulled. Go Green custom designs the bins and is amenable to working with the Town on a specific design. Selectman Emery stated that her motion would stand. Selectman Dodd's concern was that placing them downtown versus in a field were two separate issues, downtown is an esthetic issue and the ball fields generate more waste so the need there is much higher.

Selectman Dodd moved to amend the original motion to accept placing two at recreation fields and none in the downtown area. Selectman Emery questioned what the benefit would be to test only at the fields and not in the downtown area. Selectman Thompson seconded the amendment to the motion. Selectman Emery pointed out that it could save a significant amount of money for the Town according to Mr. Walden and Selectman Johnson agreed it is a better idea to test in both places as it will allow for public comment/feedback.

The Board voted on Selectman Emery's motion: Vote: 2-3 (Selectman Goldblatt, Dodd and Thompson).

Selectman Dodd's motion that the Town approves two Go Green containers to be placed at the recreation fields at the recommendation of the Recreation Director and Commission was seconded by Selectman Thompson. Selectman Thompson's moved to amend the motion that two bins be placed at recreation fields and that the proponents meet with the Design Review Board for approval and if approved two bins will then be placed downtown. Selectman Dodd accepted the amendment and the motion was seconded by Selectman Emery for discussion purposes. Discussion: Selectman Emery was disappointed with the vote and if the concept is to test them in Town, testing them on the fields only is not actually testing the product and the DRB

process can be difficult. Go Green does provide the Board with a proof of the design which they must approve. Selectman Johnson proposed due to the timing and that the bins will not be ready until winter those designated for the fields should be placed there in the spring as the fields are not used in winter. Vote: 4-1 (Selectman Goldblatt)

Go Green Solutions agreed to meet with the DRB.

#### **Tighe & Bond Contract Amendment / Town Manager**

Mr. Malloy explained that the contract amendment is for the LSP services on the Milk Street property that the Town purchased. Additional testing was needed, the funds are available and it has been reviewed and approved by the Municipal Building Committee.

Selectman Emery's motion to approve the contract amendment between the Town of Westborough and Tighe & Bond for installation of a monitoring well at 8 Grove Street in the amount of \$1,900 and further to authorize the Town Manager to sign any contract documents related thereto was seconded by Selectman Dodd. Vote: 5-0

#### **Longmeadow Road Pump Station Engineering Amendment / Town Manager**

Mr. Malloy explained that a change order was issued for this project, which has been completed, for additional hours required making it a 48 week construction period from the original 16 weeks. A reduction of the wet well coatings resulted in a substantial savings and the project came in under budget making the funds available for the amendment.

Selectman Emery's motion to approve the contract amendment between the Town of Westborough and Woodard & Curran for construction phase engineering on the Longmeadow Pump Station Upgrade in the amount of \$20,700 and further to authorize the Town Manager to sign any contract documents related thereto was seconded by Selectman Dodd. Discussion: Town Counsel has no concerns. Vote: 5-0

#### **Firefighter Contract Approval / Town Manager**

The contract has been ratified by firefighters and it is within the amount that the Board authorized Mr. Malloy to negotiate. They will receive a 1% increase for the current fiscal year, 1.5% the next and 2% in the third.

Selectman Johnson's motion that the Board approves the contract was seconded by Selectman Emery. Vote: 5-0

Selectman Thompson thanked all parties involved. The firefighters could not be here tonight as they are in a training session.

#### **Dunkin' Donuts Site Plan Review / Town Manager**

For the record, Selectman Goldblatt stated that there was no one from Dunkin' Donuts present for the site plan review.

Gail Fanslow, read a statement on behalf of her husband, Dr. Dan Fanslow, who was unable to attend due to a previous commitment. The Board has a copy of the statement and it is part of the

record. Dr. Fanslow has a chiropractic office at 6 Colonial Drive, has been there for six years and his hours are Monday through Friday, 6:00 a.m. to 7:00 p.m. His major concern was the traffic issue and the potential back up on Colonial Drive which would inhibit access to the other businesses, emergency vehicle access, and the safety of walkers. Dr. Fanslow was not in favor of the drive-thru and asked that the Board vote to oppose it. Resident Marsha Goldman spoke in favor of Dr. Fanslow's statement.

Selectman Emery's motion to deny the site plan application was seconded by Selectman Thompson. Discussion: Attorney Franks stated that the motion would have to include a very good reason with a detailed explanation for the reasons in the motion. Selectman Emery withdrew her motion.

Selectman Emery moved to deny the site plan review based on the findings presented by the Planning Board, of which there are seven, which in summary finds the proposed drive-thru creates increased traffic congestion and possible public safety issues on existing public ways specifically Colonial Drive and Route 30; and take into consideration the Police Chief and Chief of the Fire Department's recommendations that this also poses a distinct public safety issue. Selectman Thompson amended the motion, in addition to the reasons Selectman Emery stated, to incorporate by reference all the documents behind Tab #7 at the September 13, 2011 Board of Selectmen meeting, in addition the September 13, 2011 letter from Johnson & Borenstein which contained a report from VAI Transportation Engineers. Selectman Emery accepted the amendment, and the motion and amendment were seconded by Selectman Dodd.

Discussion: Selectman Emery stated that all the Town Departments have spent a great deal of time reviewing all the documents, have taken them seriously and the lack of space on the site and safety issues are a major concern to them. Selectman Johnson supports the motion and is concerned about doing what is right on behalf of the Town and insuring that the denial is sustainable, that the Town Boards and residents, whom he has heard from, are unanimously against this and he wants to insure the decision will be upheld. Attorney Franks was asked for his guidance and he stated that the denial of a site plan review is rare, there must be a good reason to deny it and not that he would lose the case if they were to appeal, but that it would be a difficult case. Selectman Thompson stated, for the record, that representatives from Dunkin' Donuts sent a letter informing the Board that they would not attend the meeting tonight. In response to his questions, Attorney Franks that explained that if they appeal it would go to Superior Court, would be a bench trial and an administrative review citing erroneous application of the law or a decision that was not based upon substantial evidence. Their decision to not appear tonight to address questions/concerns supports the Boards denial of the site plan review. Selectman Goldblatt pointed out that the Board relies on the Town departments and boards' information and opinions as well as their own judgment and it is her opinion that it is an unsafe place to put a drive-thru window. Selectman Johnson also expressed concern regarding the fact that this Dunkin' Donuts is frequented by pedestrians as it is in the downtown area and the only access will be through the drive-thru lane, which is a large public safety issue. He has had comments from the adjacent property owner who currently has Dunkin' Donuts patrons using his parking lot without permission and Dunkin' Donut trucks that find it easier to pull straight across through his parking lot to exit instead of turning left onto Colonial Drive. Selectman Johnson

does agree that from a public safety standpoint this why the Board cannot support this site plan review. Vote: 5-0

### **Contract Approval Policy / Town Manager**

Based on previous discussions with the Board regarding what the law and Town Charter require, Mr. Malloy prepared a proposed contract approval policy for their consideration and approval. The increased number of contracts that have to come before the Board have added to the length of the meetings. Mr. Malloy found that limiting the authority by a dollar amount was not feasible and is proposing that the Board authorize the Town Manager to sign those contracts that the Board has previously voted to support through funding at Town Meeting, that all procurement laws have been complied with, that Town Counsel has approved the contract and the Town Accountant has signed off on the funds.

Selectman Emery's motion to approve the policy on contract approval as attached dated September 13, 2011 was seconded by Selectman Thompson. Discussion: In response to Selectman Thompson's question, Mr. Malloy reviewed examples where this policy would be appropriate and where he could not sign, such as an unanticipated expense during the year that went before the Finance Committee and a transfer of funds was approved and the Board was not aware of it. Mr. Malloy read the policy for clarification. Vote: 4-1 (Selectman Thompson).

### **Request for a 60 Day Site Plan Review Extension / Sikh Temple / Town Manager**

Waterman Design has requested a site plan review extension on behalf of the New England Sikh Study Circle, Inc. for sixty days. The current deadline of September 29, 2011 will now be November 28, 2011.

Selectman Dodd's motion to extend the deadline for the Sikh Temple Site Plan Public Hearing for 60 days through November 28, 2011 was seconded by Selectman Emery. Discussion: Mr. Malloy explained that the site is plan is close to being ready but there is a minor issue relative to an easement and this should be the last extension. Vote: 5-0

### **Town Counsel Report**

The Westborough Village project has been taken over by Toll Brothers and it is moving forward. Attorney Franks has been working with their attorney, Chris Senie and the Town Engineer on an agreement for the offsite improvements. The location is across from the train station.

### **Town Manager Report**

#### *Comprehensive Fiscal Management Policies*

The Board has copies of the final draft of the Fiscal Management Policies, which was discussed with the Finance Committee. Mr. Malloy has combined the Fiscal Policies and the Debt Management Policies into one document. It was forwarded to department heads and their comments have been incorporated. The Finance Committee discussed it at their meeting last night and if they have any changes Mr. Malloy will forward them to the Board. He asked that the Board review the document and it will be on the September 27, 2011 agenda for a vote.

#### *Fall Town Meeting Warrant*

Mr. Malloy provided the Board with a hard copy of the draft Warrant, which included an Article not on the electronic copy previously sent, for the planned sewer extension and funding. The Conservation Commission had a request to accept a gift of land, which does not need a vote of Town Meeting. The Conservation Commission has voted to accept the land and the documentation will be provided for the next Board meeting for their vote and signature. The Warrant will be voted and closed on September 27, 2011 by the Board.

#### *Jackstraw Brook*

Mr. Malloy met with the DPW Manager, Town Engineer and David White, from Woodard & Curran, regarding the alternative route for the flooding on Warren Street, which fits within the budget approved at Town Meeting. Mr. Malloy is meeting with residents and getting their feedback over the next couple of weeks.

#### *FY13 Budget Schedule*

Mr. Malloy provided the Board with a copy of Budget Schedule in their packets as Town Meeting is two months sooner next year. Selectman Thompson asked that the School Committee provide their comments on the Management Policies before the Board votes. Selectman Dodd thanked Mr. Malloy for the effort that went into developing the Management Policies. The election will be held on March 13, 2012 and Town Meeting on March 24, 2012.

#### **Issues and Correspondence of the Selectmen**

Selectman Thompson thanked the DPW for their hard work and long hours to mitigate the water's flow on Warren Street and all the Town departments as well for preserving life and the safety of the community.

Selectman Emery pointed out that the efforts on Warren Street were not only during the storm, but began days ahead taking proactive measures to mitigate any flooding. In response to Selectman Emery's question, Mr. Malloy informed the Board that regarding the sewer hook-up costs and issues, the committee has begun to rewrite the entire section of the bylaws and it will be ready for Annual Town Meeting.

#### **CSX Public Hearing** – as continued by the Board at the 08/09/11 hearing

Representatives for TRANSFLO came before the Board for their fourth hearing. They have had several meetings with the Town departments and have received the Order of Conditions and Earth Moving Special Permit.

In response to Selectman Thompson's question there was a meeting with the Southborough Town Administrator and other staff regarding truck traffic through Southborough, what routes would be used, and the issue of truck traffic during construction, which was raised at the Westborough Planning Board meeting, and they were all addressed. The truck route during construction was outlined and when the terminal is operational, CSX will make every effort to educate the drivers regarding the route. A special link on CSX's website was set up for Southborough residents and it has received limited, if any, comments. Mr. Malloy informed the Board that there have been several meetings where the different departments' expectations were defined and they are included in the written decision for the Board. The Fire Department's issues have all been addressed. An off-site mitigation fund will be established by TRANSFLO



and Mr. Malloy reviewed the prioritized list of items for which it would be used. Before operations begin they will deliver a check for \$1,000,000 to the Town. Once the money is received a gift fund will be set up and the Board will vote on how the funds will be used. The TRANSFLO representatives agreed with this process. One of the items on the list is a height sensor to prevent trucks from getting stuck under the bridge and Mr. Malloy explained how it would work and the approximate cost is \$150,000. Selectman Emery asked about the height sensor as she has received feedback from residents whose perception is that CSX has not been responsive regarding a solution for the bridge and this will be a helpful remediation. It was explained, in response to Selectman Emery's question, that the primary hours for the transfer station will be 6:00 a.m. to 6:00 p.m. and there are times when a customer needs to be serviced during the night. Should a customer frequently request night service it would cost them overtime and they would discourage it. An added condition to the site plan states that transfers outside of 6:00 a.m. to 6:00 p.m. would require a phone call to the fire department and the transfer would have to be performed by trained TRANSFLO employees/contracted operators.

Selectman Emery's motion to approve the site plan according to the conditions set out in the September 14, 2011 memo to the Town Clerk from the Board of Selectmen was seconded by Selectman Johnson. Discussion: Selectman Thompson thanked the Planning Board, Mr. Robbins, Mr. Malloy, Mr. Saari and the department heads for their commitment, attention to detail and he will support the motion. Selectman Johnson concurred and thanked CSX for treating the Town with respect. Selectman Dodd echoed their sentiments. Selectman Goldblatt agreed and that she takes the Town boards' recommendations seriously and thanked CSX.

Vote: 5-0

The representatives from TRANSFLO and CSX thanked the Board, Mr. Malloy, Mr. Balduf, and Mr. Saari. A Southborough resident expressed concerns regarding the commodities list and whether the Board has seen it, how the truck traffic will be enforced and what the penalty would be if it is not complied with, and she gave a copy of a letter from the Department of Environmental Protection to the Board. Mr. Malloy explained the traffic management plan.

### **Executive Session**

Selectman Emery's motion to enter into Executive Session to discuss the value of real estate and labor negotiation for non-union personnel and that the Board will return to Open Session at the close of Executive Session for the final agenda items was seconded by Selectman Johnson. A roll call vote was taken: Selectman Thompson – yes; Selectman Emery – yes; Selectman Goldblatt – yes; Selectman Dodd – yes; Selectman Johnson – yes.

### **Quik Mart Change of Manager / Anis Alam**

Anis Alam came before the Board to request a change of manager as the current manager has moved. He will be full time and assured the Board that he is very strict with the sale of alcohol and cigarettes.

Selectman Johnson's motion to approve the Change of Manager application for Quik Mart at 11 Milk Street naming Anis Alam as the Manager was seconded by Selectman Emery. Vote: 5-0

### **Proposed Solar Farm / Mike Scaglione**

As Chris Egan was unable to attend, Marc Verreault came before the Board to discuss the proposed solar farm. The plan is to put a solar array between 40 Washington Street and Flanders Road. Mr. Verreault pointed out the location on the board and it will supply most of the power that the building uses. Any excess power generated will be allocated to 50 Washington Street. He reviewed the plan for the site. This is Mr. Egan's first solar farm and the presentation tonight was informational only as a site plan review is not needed until there are six or more parking spaces on the site. The Board thanked Mr. Verreault for coming in.

### **Issues and Correspondence of the Selectmen - Continued**

Selectman Dodd echoed the sentiments of the Board and thanked the Town's emergency responders, DPW and all Town departments for making safety a priority during the storm. He also thanked Selectman Goldblatt and the Committee for the 9-11 10<sup>th</sup> Anniversary Memorial. Selectman Dodd asked the Board if they would be interested in addressing the casino issue, which has come back and may be headed for a vote in the House. There is one being considered for Milford and he proposed the Board become involved in whether abutting towns should have a say in the process. Selectman Goldblatt would prefer to wait until something has been approved. Mr. Malloy explained how the two casinos were allowed in Connecticut.

Selectman Johnson encouraged the public to see the World Trade Center beam in front of the Forbes Municipal Building and thanked those responsible for bringing it here. E.L. Harvey's is celebrating their 100<sup>th</sup> year anniversary. Selectman Johnson's motion to issue a citation from the Town and that the Town Manager prepare it was seconded by Selectman Thompson. Vote: 5-0 The event is Saturday, September 24, 2011 and Selectman Goldblatt will attend and present the citation. Selectman Johnson urged the community to attend Arts in The Common on October 1, 2011 at the Bay State Commons green.

Selectman Goldblatt thanked the Board for the approval to organize the 9-11 10<sup>th</sup> Anniversary Memorial and the committee members that worked on the event. The Town received notice from Representative Peterson that it will receive a one-time unrestricted local aid disbursement of \$70,870, which will be put in the General Fund. Selectman Goldblatt asked to keep the men and women serving our country in their thoughts and prayers.

### **Adjourn Open Session**

Selectman Emery's motion to adjourn at 8:30 p.m. was seconded by Selectman Dodd. Vote: 5-0

*Submitted by Paula M. Covino*

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**Chairman Goldblatt**

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**Vice Chairman Dodd**

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**Selectman Emery**

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**Selectman Thompson**

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**Selectman Johnson**