

**Westborough Board of Selectmen  
Meeting Minutes  
August 21, 2012  
6:00 p.m. – 9:00 p.m.**

Present: Chairman Emery, Vice Chairman Johnson, Selectmen Dodd, Barrette and Drewry

Also Present: Jim Malloy, Town Manager; Gregory Franks, Town Counsel

**Request to Approve the Board of Selectmen's Meeting Minutes**

Selectman Barrette's motion to approve the minutes of April 24, 2012 was seconded by Selectman Drewry. Vote: 5-0

Selectman Barrette's motion to approve the minutes of May 8, 2012 was seconded by Selectman Drewry. Vote: 5-0

Selectman Barrette's motion to approve the minutes of May 22, 2012 was seconded by Selectman Drewry. Vote: 5-0

**Open Forum**

**Request to Appoint Election Officers / Nancy Yendriga**

Ms. Yendriga appeared before the Board to request the yearly appointment of the Election Officers for a term ending August 31, 2013.

Selectman Drewry's motion to appoint the Election Officers as recommended by Town Clerk Nancy Yendriga on the attached August 7, 2012 memorandum was seconded by Selectman Dodd. Vote: 3-0-2 (Barrette, Johnson)

Ms. Yendriga reminded the public to vote in the State Primary on September 6, 2012 and the polls will be open from 7:00 a.m. to 8:00 p.m.

**Request to Approve Short Term Notes and Refinancing / Joanne Savignac**

Ms. Savignac requested approval for bond refunding and Bond Anticipation Notes (BANs) for water mains and culverts that are being rolled over and new BANs for the Town building designs and Crownridge Sewer Project. She reviewed the bid process and the winning bids were 1.297792% for the bonds and 0.306% for the BANs.

Selectman Johnson's motion to approve the authorization of the Treasurer to issue the bonds in accordance with the vote drafted by bond counsel was seconded by Selectman Drewry. Vote: 5-0

**Continuation of Public Hearing / Dunkin' Donuts Site Plan Review / Attorney Donald Borenstein / Michael J. Scott, Waterman Design**

Attorney Borenstein came before the Board to request approval for a drive-thru window at Dunkin Donuts, which is the subject of a site plan denial by the Board a year ago. An appeal was filed and the land court has remanded the decision back to the Board. The applicant has agreed to consider some widening to Colonial Drive in response to the Board's concern regarding traffic safety, the Town is requesting four traffic lanes however it is the client's opinion that three lanes and a shoulder is the best alternative, which is on the current plan. Regarding the five foot easement, the client does not own the land and cannot deed it to the Town and Attorney Borenstein suggested that it be noted on the plan that it is a snow storage area, is a condition of the approval and in Condition 1 remove "owner" and change "easement" to "area". The applicant still has a concern regarding the requirement of a police detail at the discretion of the Chief of Police and Attorney Borenstein and reviewed the results of the Town's traffic study which indicated that at the busiest hour during the busiest season there is an 8% chance the line will exceed 12 cars. Attorney Franks stated that it is a reasonable alternative to note on the plan that the five foot area would be for snow storage and add it as condition to the motion. The site plan can be approved subject to the changes made tonight.

Selectman Drewry did not have a concern regarding the police detail requirement but was not comfortable voting or signing a document that is "subject changes made". It was agreed that the language is clear and should remain that if vehicles are queuing up on East Main Street a police detail should be at the Police Chief's discretion. Chief Gordon explained that this language was in the original approval, he has never had to assign a detail and comfortable with the wording.

Selectman Barrette read for the record the six conditions. Attorney Franks advised removing from Condition 1, "with an indemnification agreement...Counsel". Mr. Malloy reviewed the documents that were added to the materials considered in the decision.

Selectman Barrette's motion to approve the site plan as per the attached decision dated August 21, 2012, subject to the conditions recommended by the departments as contained in the decision and including the changes made tonight was seconded by Selectman Johnson.

Discussion: Selectman Drewry concerns and why he cannot vote in favor were that he would prefer to vote when all documents are complete; there was a Town Meeting vote that changed the zoning that allowed a reversal of the original vote when Dunkin' Donuts was built; and that vehicles may stall/breakdown in lane which is dangerous. Attorney Franks explained that if the Board votes against the request it will go back to the appeal in land court that is still open. Selectman Barrette will vote for four lanes and nothing less as a compromise for safety and consideration for other business on Colonial Drive. Selectman Emery explained that the applicant agreed to widen to four lanes and the Board is requesting that they stripe the road to reflect the fourth lane. Selectman Johnson is not in favor of a drive thru and has not heard from a single resident who is in favor; because it is now an allowed use he would like to see a requirement for a bypass lane, but as it is not in the bylaws it cannot be enforced; it is imperative to stripe four lanes; the Board's hands are tied because of the zoning change and it is important to put conditions in place that the Town is comfortable with. Selectman Dodd echoed Board members' sentiments and agreed with the request for four lanes. In response to his question, Mr. Malloy explained that there has been enough time for all Town departments to review the site

plan and there were no major changes. Selectman Emery pointed out that the Board has received good advice from all departments and all the decisions are fully defensible.

Dr. Dan Fanslow, owner of Family Chiropractic, thanked the Board for their safety concerns, the four traffic lanes and explained that his practice's busiest time generates 10 – 20 cars on Colonial Drive between 6:00 a.m. and 7:30 a.m. He pointed out that a long term tenant can petition the landlord for an easement. He suggested that the remainder of the last sentence after "Colonial Drive" be removed in Condition 1 so that the Police Chief has the right/option to impose a detail if there are accidents, etc. Dr. Fanslow requested adding a condition that the construction work should be done at an appropriate time and would not interfere with the other businesses on the street. Attorney Franks explained it is not necessary to change the language regarding the Police Chief's discretion for posting a detail and that there is a bylaw that addresses hours of construction. The Town Engineer pointed out that it is unusual to condition hours on a site plan review and it can be stipulated at the pre-construction meeting.

Vote: 4-1 (Drewry)

Selectman Barrette's motion to close the public hearing for Dunkin' Donuts site plan review was seconded by Selectman Johnson. Vote: 5-0

#### **Public Hearing for Water Privilege Fee Revision / Carl Balduf**

John Walden explained to the Board that the revision is to update the water regulations so that they mirror the Sewer Apportionment Bylaw updated by Town Meeting so that they are consistent.

Selectman Barrette's motion to amend the Westborough Water Regulations by adopting the attached Water Privilege Fee Regulation was seconded by Selectman Johnson. Vote: 5-0

#### **Request to Accept the Easements Granted to the Town at 129 East Main Street / John Walden**

Carl Balduf appeared before the Board to request that they accept three easements which were required under the permitting process for the Retirement Residence for which construction is currently underway. The easements relate to road widening, drainage and a trail along the former streetcar right of way.

Selectman Barrette's motion to approve the easement agreements between the Town of Westborough and Westborough Retirement Residence LLC as described in the easement documents was seconded by Selectman Johnson. Vote: 5-0

#### **Town Buildings Storage / Paula Less**

Ms. Less appeared before the Board to discuss her storage solution proposal that she presented in June. Selectman Barrette thanked Ms. Less and informed her that he read the proposal, made copies and provided them to the Municipal Building Committee (MBC), which they did discuss. The MBC currently has one issue that they are focusing on and actively investigating which is the new Fire Station and the renovations of the Town Hall and Forbes Municipal Building have been delayed. Selectman Barrette explained that the storage issue is important and the MBC will

take the proposal under advisement. Ms. Less also expressed her concern regarding the Board's discussion of the Open Forum format and some of the comments made and Selectman Emery explained that the Board's discussion was a clarification of the use of Open Forum. She informed Ms. Less that the Board did what was required regarding the storage issue and as it is not in their purview, the MBC will address it. The Board thanked Ms. Less for her proposal.

**Request to Appoint Chris Hughes, Donna Avery and Thomas Smith to the Westborough Bicycle and Pedestrian Advisory Committee / Bruce Tretter**

Mr. Tretter informed the Board that there are three new applicants for the Bicycle and Pedestrian Advisory Committee and he reviewed their backgrounds. He recommended that the Board appoint them and that would complete the seven member committee. Mr. Tretter invited residents to attend the meetings.

Selectman Barrette's motion to appoint Chris Hughes, Donna Avery and Tom Smith to the Bicycle and Pedestrian Advisory Ad Hoc Committee was seconded by Selectman Drewry for indefinite terms. Vote: 5-0

**Request to Approve the Town's Donation of 1 Upton Road & 45 High Street to Habitat for Humanity / Hank Rauch / Jyothi Grama**

Representatives of Habitat for Humanity, Hank Rauch, a volunteer from Westborough, Tim Firment, Executive Director of Metro West/Greater Worcester and Steven Liedell, Westborough Housing Partnership Committee appeared before the Board to request approval to develop vacant lots into housing units. Mr. Rauch provided information on Habitat for Humanity which builds modest housing for people with modest incomes. Possible sites were investigated with the appropriate Town departments, and at this time 1 Upton Road is the more feasible site to develop however it will require some zoning relief. 45 High Street is a more difficult site and will need further due diligence. Habitat for Humanity raises the funds to build the homes and Mr. Rauch reviewed the process that is required to move forward. Westborough has supported Habitat for Humanity in the past and it was very successful.

The Board supports Habitat for Humanity and the work that they do. No motion was made due to following issues/concerns: The Board is under pressure from residents regarding the tax rate and will need more time to consider giving property away; there are questions tonight and there may be more, some are regarding financial issues and permitting; neighbors are a priority their input needs to be considered. The Board agreed to put this item on the September 25, 2012 agenda for further discussion.

**Request to Approve the Term Change for the Housing Partnership Committee from 1 Year to 3 Years / Steven Liedell**

Mr. Liedell appeared before the Board to request term changes for the Committee. Selectman Dodd had met with the Committee, Attorney Franks and Mr. Malloy and determined that there is nothing in the Charter regarding the length of terms, only that they are to be staggered.

Selectman Dodd's motion to appoint Steven Liedell and Gary Sanginario for a term ending June 30, 2015 and to appoint Kris Allen and Joan Pavolis for a term ending June 30, 2014 was

seconded by Selectman Johnson. Selectman Barrette amended the motion to add that the terms will be three years. Vote: 5-0

**Request to Appoint Gerard Gagnon and David Lamothe to the Zoning Board of Appeals as Permanent Voting Members from Alternate Voting Members / Jim Johnson**

Jim Johnson, Zoning Board of Appeals Chair, informed the Board that due to the passing of Don Gillis and John Rainey moving out of Town, the two voting alternate members have expressed interest in becoming regular members.

Selectman Barrette's motion to appoint David Lamothe to a term ending June 30, 2014 and to appoint Gerard Gagnon for a term ending June 30, 2015 was seconded by Selectman Drewry. Discussion: Board commended the alternate members for their commitment to the Board. Vote: 5-0

**Request to Appoint Martin Smith to the Historical Commission / Christine Kurtz**

Selectman Barrette's motion to appoint Martin Smith to the Historical Commission for a term ending June 30, 2014 was seconded by Selectman Drewry. Discussion: Mr. Smith reviewed his background for the Board. Vote: 5-0

**Request to Approve the Release of Chapter 61A from Parcel 2A, Chestnut Street / Marcus Emery and Elizabeth O'Leary**

Selectman Emery will not participate in the discussion or vote as Mr. Emery is a direct relative and Selectman Johnson will chair this portion of the meeting.

Mr. Emery informed the Board that he and his sister are selling one of two parcels which are in Chapter 61A and are requesting that Parcel 2A be removed from Chapter 61A by offering the Town the right of first refusal.

Selectman Barrette's motion that the Town does not exercise its right to match the purchase and sale offer and to release the property from Chapter 61A pending any taxes due to the Town are paid was seconded by Selectman Dodd. Discussion: Memos were sent to all Town departments that might have an interest and there was none due to the small size of the parcel and Attorney Franks confirmed that all departments that needed to make comments did. The Board then discussed the Town Meeting vote which abolished the Chapter 61A Ad Hoc Committee and transferred the responsibility to the Open Space Preservation Committee and concerns that the Town is not well positioned should a large piece of 61A property become available. The Board agreed that Mr. Malloy and Attorney Franks review the Town Meeting vote and report back at the next meeting. The Planning Board voted unanimously to approve the release of Chapter 61A from Mr. Emery's property. Vote: 4-0

Selectman Johnson turned the meeting over to Selectman Emery.

**Request to Approve Common Victualer License for Sachi Restaurant, 200 Union Street, B106, Westborough / Tina Wang**

Ms. Wang appeared before the Board with her brother-in-law who is the owner of Sachi Restaurant along with her husband.

Selectman Barrette's motion to approve the Common Victualer Permit for Sachi LLC located at 200 Union Street, B106 was seconded by Selectman Drewry. Discussion: Mr. Robbins informed the Board that there was a unanimous vote from the Design Review Board. The plan is to open in September and they are still seeking employees. Vote: 5-0

**Request to Appoint Edward St. Pierre as a Reserve Intermittent Police Officer / Chief Alan Gordon**

Chief Gordon explained that Mr. St. Pierre, a resident of Shrewsbury, expressed interest in the position a year ago and was endorsed by James Brown, a Reserve Intermittent Police Officer as well. Mr. St. Pierre graduated from the Reserve Intermittent Academy in January and is fully certified.

Selectman Drewry's motion to appoint Edward St. Pierre as a Reserve Intermittent Police Officer for a term expiring June 30, 2013 was seconded by Selectman Johnson. Discussion: This position primarily works details. Vote: 5-0

**Request to Grant an Extension for a Site Plan Review for 20 & 26 Walkup Drive / Tin Htway**

Mr. Malloy explained that the company that is moving into the vacant building at 20 & 26 Walkup Drive is requesting site plan approval for parking lot improvements and there are currently drainage issues that have to be addressed before they can come before the Board.

Selectman Johnson's motion that the Board approves the site plan extension request granting 30 additional days from September 6, 2012 for a new deadline of October 6, 2012 was seconded by Selectman Barrette. Vote: 5-0

**Discussion on Response Letter to Mass. Housing Partnership re: 346 Turnpike Road / Town Manager**

Mr. Malloy received a letter dated July 19, 2012 from the Massachusetts Housing Partnership (MHP) requesting comments regarding Fran Zarette's project at 346 Turnpike Road. In response, Mr. Malloy sent a memo to all Town departments for comments and the only response was from the School Department regarding the impact on the school population and busing, which the proponent will have to address. Mr. Malloy provided the Board with a draft letter to Amanda Roe at MHP and will set up a meeting with her next week. The Selectmen expressed concerns regarding the possible increase to the school population, the exit ramp onto Route 9 and requested the development of a merge lane, which can be discussed when the project goes before the Zoning Board of Appeals. Mr. Zarette informed the Board that he has been working with school Department and Mass. DOT who has approved the acceleration lane. He is adding a bus turn around and bus stop which has been approved by the School Committee and bus company. The consensus of the Board was to send Mr. Malloy's letter adding that the Town reserves the right to make additional comments.

**Discussion on Anti-Fraud Policy / Town Manager**

Selectman Barrette's motion to approve the Anti Fraud Policy and Response Program as attached was seconded by Selectman Johnson. Discussion: Town Accountant explained that risk



assessment is a part of the auditing process and a policy should be in place in order for the auditors make the assessment. Town Counsel was involved in the process as well. Vote: 5-0

### **Signatures on Tax Increment Financing Agreements / Board of Selectmen**

As no vote was required this item was removed from the agenda.

### **Nathan Fisher House Proposal / Town Manger**

Mr. Malloy informed the Board that the proposal from Mark Gum was deemed incomplete, conditional, and non-responsive as outlined in the Attorney Franks letter dated August 6, 2012, which is included in the Board's packet. Mr. Malloy explained the financial proposal made by Mr. Gum and what the Town owes to the Mass. Historical Society and DCAM if the property is sold.

Selectman Barrette's motion to reject the proposal of Mark Gum on the Nathan Fisher House as being non-responsive and not meeting the requirements of the Request for Proposals was seconded by Selectman Johnson. Discussion: Attorney Franks explained that the Town has the authority to waive non-statutory requirements in certain situations, but there was a complete disconnect between what the Town was looking for and what was offered in this proposal. The Board further discussed Mr. Gum's proposal to pay \$500 per month for twenty years, interest and tax free for the property and that the Town would have to pay a total of \$110,000 up front to the Mass. Historical Society and DCAM. Vote: 5-0

### **Request to Approve the Agreement with Holbrook Investments Realty Trust / Town Counsel**

Attorney Franks explained that this agreement allows Holbrook Investments Realty Trust to begin the renovations, which the Board previously approved, in the area that the Town owns. This will need a Town Meeting vote to permanently transfer the rights.

Selectman Barrette's motion to approve the agreement between the Town of Westborough and Holbrook Investments Realty Trust as attached was seconded by Selectman Drewry. Discussion: The Board supports the opportunity to rehabilitate a building in center of Town that is in need. Mr. Malloy explained that should the vote to transfer the land fail, a revocable license could be issued. The agreement allows them to begin work before Town Meeting vote. Vote: 5-0

### **Board of Selectmen Goals / Selectman Emery**

Selectman Emery had asked the Board to review the "Board of Selectmen Executive and Administrative Procedure and Protocols" and provide comments/concerns. Selectman Emery suggested asking the Assistant Town Manager, who is currently working from home, to make basic revisions. The Board briefly discussed possible changes to the Open Forum section and will address specifics at the next meeting. The intent is to finish by the final September meeting.

### **Town Counsel Report**

Attorney Franks reported that the zoning case that was pending in Appeals Court concerning R&D Realty against the Town was dropped.

### **Town Manager Report**

Mr. Malloy informed the Board that the Town earned \$39,592 in FY12 for participating in various training programs aimed at reducing risks.

The owners of Bay State Commons are requesting that the Town seek special legislation to add an additional liquor license to the Bay State Commons through a home rule petition. One of the three liquor licenses issued was given to Tavolino and there are three restaurant locations in the Commons. They are having difficulty attracting a third restaurant without a liquor license and the Board agreed to include this on the Fall Town Meeting Warrant.

The Town was reviewed by Standard & Poor's and has maintained their AA+ rating.

Mr. Malloy provided the Board with a copy of a letter from Robert Moylan, Worcester DPW Commissioner to the Worcester City Manager regarding the First Circuit Court's decision on the Upper Blackstone WWTP appeal challenging the EPA's permit limits and how it has impacted them. The Westborough/Shrewsbury permit is overdue, Shrewsbury has already taken a position that the Clean Water Act needs changes and the Board agreed that Mr. Malloy draft a letter to the Governor for their review and discussion at the next meeting.

Mr. Malloy informed the Board that he recently became aware of an option to lease space at Bay State Commons for the Town Hall and Forbes Municipal Building Offices. He has worked with the architect on the layout and cost which is included in the handout and reviewed the pros and cons for this option. The Municipal Building Committee will hold an advertised public meeting on September 12, 2012 to provide the public an opportunity to give input.

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

Selectman Drewry asked to remember the troops overseas and that two more from Massachusetts were killed in action.

Selectman Barrette attended the Players Club performance of "Working" at the Willows, it was outstanding and there will be performances next Friday, Saturday and Sunday afternoon.

Selectman Johnson reviewed an article from July 27, 2012 Telegram & Gazette that reported on a public forum in the Quabbin area where unfunded mandates were addressed and was informational as the Town is continuing to work on its list. Selectman Johnson is Co-chair of the Westborough Good Scout Committee on behalf of Knox Trail Council and asked that the Board generate a proclamation to be presented at the dinner in November honoring the owner of Julio's Liquors, Ryan Maloney. He invited the Board and community to attend.

Selectman Dodd informed the Board that the Veteran's tax work-off program has to be approved at Town Meeting and once the statute has been accepted a policy has to be created by the Board. He suggested that the Board accept a draft policy before Fall Town Meeting so that the public is aware of the Board's support. Selectman Dodd will provide the Board with a draft of the policy for a vote at the next meeting.

Selectman Emery thanked Tim Novak for producing the meeting. She informed the Board that she and Mr. Malloy attended the Advisory Finance Committee (AFC) meeting last night where



the budget process was addressed. As a result Selectman Emery asked Mr. Malloy to clarify the role of the Town Manager, Board of Selectmen and Finance Committee. He provided copies of a power point presentation that was presented to the Board and AFC a year and half ago during the public hearing on the budget process. Mr. Malloy reviewed the roles as outlined in the presentation. In order to clarify an issue that was discussed last night he read the section of the Town Bylaw which states that the Town Manager presents the budget to Town Meeting and not the AFC. Town Counsel will be asked to draft a legal opinion for the AFC. Mr. Malloy distributed copies of what he provided the AFC last night which pinpoints cost centers in relation to property taxes and how it could change year to year. Selectman Emery requested that this be on the next meeting agenda and reviewed the language in the Board of Selectman goals that emphasized their role in the budget process. Selectman Emery attended the Rotary's third annual triathlon on behalf of the Board, which raises funds for the Diabetes Association.

### **Executive Session**

Selectman Johnson's motion that the Board enter into Executive Session for the purpose of discussing collective bargaining, as an open session would have a detrimental effect on the Town's bargaining position was seconded by Selectman Dodd.

A roll call vote was taken: Selectman Drewry – yes; Selectman Barrette – yes; Selectman Emery – yes; Selectman Johnson – yes; Selectman Dodd – yes.

*Submitted by Paula M. Covino*

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**Chairman Emery**

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**Vice Chairman Johnson**

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**Selectman Dodd**

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**Selectman Barrette**

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**Selectman Drewry**