

**Westborough Board of Selectmen
Meeting Minutes
January 22, 2013**

6:00 p.m. – 9:06 p.m.

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

Also Present: Jim Malloy, Town Manager; Kristi Williams, Assistant Town Manager/HR Director

Open Forum None

Meeting with Legislators

Senator Jamie Eldridge, Representatives Beaton, Dykema and Gregoire came before the Board. Danielle Gregoire, the newest Westborough Representative, thanked the Board for the invitation and provided her background.

Selectman Dodd thanked the legislators and pointed out that while the Town anticipates having one Representative at some point, he is looking forward to maintaining the strong relationship with this team, continuing to meet and work with them.

The first question was regarding the Governor's tax proposals and how will the legislators guarantee that the money will be allocated for education and transportation; and will the formula used to allocate education funds remain the same or be more equitable. Sen. Eldridge supports the Governor's proposal in the amount of revenue that will be generated and how he proposes to accomplish it, which is to create a more progressive system and cutting the sales tax. The proposal includes that the sales tax revenue will be dedicated to transportation infrastructure and as in the past a penny of it will be dedicated to school building. He agrees that each community should receive their fair share of funding for education and will advocate for that.

Rep. Dykema expanded on the Senator's comments and stated that she will focus on regional equity especially for transportation due to the economic opportunity Westborough provides and that the funding also focuses on the commuter rail, which is important to the residents. The Governor has a ten-year transportation plan and Rep. Dykema pointed out the importance of following through with the plan to the end. She will also work toward ensuring that Westborough's educational needs are met and that it is equitable.

Rep. Beaton supports the sales tax reduction and finds the Governor's \$2 billion increase in taxes unsettling as it is his opinion that long term it will slow down the economic recovery. The plan is to provide an early resolution regarding the amount of local aid and he informed the Board that it would be wise for the upcoming fiscal year to plan on level funding in those areas. Rep. Beaton also pointed out that there are areas that the government should first look closely at spending reductions before considering the income tax rate. He also pointed out that the formula for educational funds should be reassessed as they are disproportionately distributed and Westborough seems to get penalized for encouraging business growth.

Rep. Gregoire echoed Rep. Beaton's comments and pointed out that what the Governor has proposed right now is a plan and 5,000 bills have been filed as of Friday. The House and Senate

have not yet presented their budgets and she will work to get a resolution to the Town for planning purposes.

Mr. Malloy pointed out that sales tax in Massachusetts is paid partially by residents, tourists, and people who visit for business purposes. He asked the legislators to consider that if the tax is reduced as proposed much of the State government's costs will be shifted from non-residents to residents. Mr. Malloy also suggested that towns be rewarded for attracting business with the option to levy a sales tax to lessen the burden of the inequitable education formula.

Selectman Emery suggested looking at an option to offset the costs of the commuter rail parking areas as they are not owned by the Town. The rates to use the commuter rail are increasing and the public has to pay to park as well.

Rep. Dykema addressed the question regarding the State Hospital acquisition, what their role will be as legislators, and the relocation of Allen Hall for the property to be marketable. She reviewed where the process is currently and has requested a meeting with DCAM regarding the Board's recent letter outlining their concerns. The agreement will be between the Town and the State, the Town will choose how the property will be used and the State would receive a percentage of the income. Selectman Johnson thanked the legislators for the support on this issue, it is an excellent opportunity, and it is important for the property to be under the Town's control. Sen. Eldridge asked the Board to provide copies of all correspondence regarding the State Hospital to each of the legislators.

The legislators addressed the Board's question regarding the potential development of casinos in the area. Sen. Eldridge was a strong opponent to the casino legislation and voted against it. There is a provision in the law that ensures community mitigation by the developer, for adjacent towns as well and beyond. Rep. Dykema has focused on this issue as the proposed casino in Milford is adjacent to two communities in her district. The facility is close to neighborhoods and the impacts, which include crime and bankruptcy, do span to the surrounding communities. There will be a process where any town that believes they should be considered a surrounding community based on local impacts can apply to the Commission and if they grant the community that status they will have seat and can participate in discussions regarding mitigation and impacts. Rep. Dykema reviewed the competition for the single available resort casino license and believes that there are other businesses that could be brought to this area that would have a more positive impact. Rep. Gregoire pointed out that they do work with the legislators from surrounding communities, that there have been challenges when it comes to funding or having a voice, but they have developed a strong bipartisan group and will continue to work together for the Town. Rep. Beaton will be filing a bill that is modeled after some of the problems they have had in Rhode Island and Connecticut. It will ensure that the State does not become reliant on the revenues, prevent providing any financial assistance to the casino and will not allow them to renegotiate their percentage. For the record, Rep. Dykema voted against the bill as well.

The legislator's commented on the Governor's proposal for increasing gun control in Massachusetts, which has a low gun related crime rate and is in the top six in the nation. Rep. Beaton stated that at a recent meeting there was focus on keeping schools safe, but he hopes the major focal point will be on mental health issues. The national conversation regarding this issue is to catch up to where Massachusetts is concerning gun control. He emphasized the need for understanding the existing laws and enforcing them. Rep. Dykema pointed out that the common ground is to do everything to protect the public by making guns safer and improving training and

that respecting law abiding gun owners. Sen. Eldridge stated that it is important to consider high crime areas, where it is a serious problem as well, along with suicides and the mental health implications and he supports strengthening the gun laws. Selectman Emery questioned the proposal to insure guns and asked that police chiefs be consulted regarding the ramifications of enforcing that law and consideration be given to middle class and lower income people who are legitimate gun owners. Selectman Drewry pointed out what is required in Massachusetts to own a gun as opposed to other states, the need to educate people on the different types of guns, and that he appreciates the consideration of other issues as there is more to the issue than more gun control. Rep. Gregoire informed the Board she was involved in the legislation that passed several years ago requiring gun owners to carry an identification card with their fingerprint. She reiterated that Massachusetts has some of the strongest gun laws but they have to be enforced before further laws are enacted.

Request to Approve the Board of Selectmen's Meeting Minutes

Selectman Barrette's motion to approve the minutes of December 17, 2012 was seconded by Selectman Johnson. Vote: 5-0

Request to Approve Common Victualer Permit / Sodexo at BJ's Wholesale Club, 25 Research Drive / Donna White

Ms. White came before the Board to request approval of Common Victualer Permit for the corporate cafeteria at BJ's headquarters at 25 Research Drive where they serve breakfast, lunch, snacks and beverages from 7:00 a.m. to 4:00 p.m. Monday through Friday.

Selectman Barrette's motion to approve the license application for a Common Victualer License for Sodexo @ BJ's Wholesale Club at 25 Research Drive was seconded by Selectman Drewry. Vote: 5-0

Public Hearing for a Pole Petition / Relocate P61 at 129 East Main Street / Angela Birch

Selectman Barrette's motion to open the public hearing was seconded by Selectman Drewry. Vote: 5-0

Daniel Larson, on behalf of National Grid, came before the Board to request the relocation of a pole in order to install a new driveway for the new retirement residence at 129 East Main Street.

Selectman Barrette's motion to approve the pole location for Pole #61 as per the Joint Pole Location Application and Plan #13627282 of Massachusetts Electric Company and Verizon New England, Inc. dated 12/4/12 was seconded by Selectman Drewry. Discussion: Mr. Walden explained that it is National Grid's responsibility to move the poles, but Verizon has to finish their work by removing the double poles, of which there are several still in Town. Mr. Malloy will write a letter to Verizon requesting that they address the remaining double poles. Vote: 5-0

Selectman Johnson's motion to close the public hearing was seconded by Selectman Barrette. Vote: 5-0

Public Hearing for Site Plan Review for E. L. Harvey's Photovoltaic Generation at 120 South Street (a.k.a. 7 Maple Avenue) / Attorney Adam Brillard / Charles Jenkins / James Harvey

Selectman Johnson's motion to open the public hearing for site plan review of Harvey's Photovoltaic Generation at 120 South Street was seconded by Selectman Drewry. Vote: 5-0

Attorney Braillard, Charles Jenkins, Mark Kyela, Jim Harvey, and Tin Htway came before the board. Attorney Braillard reviewed the components of the project, issues they are reviewing and the access to the facility. The intent tonight is to hear questions from the Board and the public. Mr. Htway explained that he received today from Attorney Braillard a response to the various departments that he has yet to review. He will make sure that the Town departments received a copy so that they can begin working to resolve any outstanding issues. In response to Selectman Drewry's question both parties agreed that the first meeting in February would allow enough time to complete what is required. Selectman Barrette pointed out that the issue with Chapter 61A is a State issue and requires a different process.

Selectman Dodd's motion to continue the site plan review to February 12, 2013 at 6:30 p.m. was seconded by Selectman Johnson. Vote: 5-0

Request to Approve the Release of Chapter 61A from Parcel 200, 120 South Street (a.k.a. 7 Maple Avenue) / James Harvey

Attorney Braillard explained that the parcel must be released from Chapter 61A in order to use it for the solar farm as it is a change of use. The proposal is to take 335,000 square feet, approximately 8 acres of land, out of the 61A restriction and use it for a ground mounted solar project. The power is proposed to be utilized by the Town from the system. According to State law and the agreement with the Town and Assessors Department, that portion of the property must be released from Chapter 61A.

The Town received notice December 20, 2012, and Mr. Malloy explained the process for the State 30-day timeline for the Town to obtain an appraisal when there is a use change for Chapter 61A land. He pointed out that it is difficult to get an appraisal done in the required timeframe due to the commercial and utility use and the different type of valuation. It is Mr. Malloy's opinion that the Town cannot exercise its option as the thirty day time frame for the appraisal was not met.

Mark Silverberg came before the Board and it is his opinion that the notice of intent was not adequately filed under the State guidelines as the plot plan had no dimensions and the way the notice was filed precludes obtaining an appraisal. Mr. Silverberg stated that the Assessor has asked for clarification on the plot plan, it is his opinion that the 30-day requirement has not begun and the notice of intent should be resubmitted. He is in favor of solar energy, but requested that there be a mechanism in place with the Town and Mr. Harvey to continue the right of first refusal process to keep the Town's rights intact as it is a valuable resource as a farm, it would remain in the Harvey family and as open space.

Attorney Braillard stated that the process was followed correctly. They filed the Statement of Intent, the explanation of the new purpose of the land, and the plan drawn to scale from the Assessor's map. It showed the location of the facility on the parcel and that it is 335,000 square feet. Attorney Braillard believes that they filed accurately.

Linda Swadel, Chief Assessor, appeared before the Board and explained that she is unable to delineate anything from the plan, the picture of the array can be identified, but the language used in the notice states approximately 8.5 acres and 335,000 square feet, which according to Ms. Swadel is only 7.6 acres. She is unable to determine from the paperwork filed what the roll-back penalty tax should be and what is being removed from Chapter 61A.

Attorney Braillard reiterated that they filed correctly and Mr. Jenkins pointed out that the 8.5 acres overstates the usage as a certain amount is needed to build the array and that may change as the project moves forward. The 8.5 acres would be the maximum and what would be assessed.

Selectman Barrette's concerns were not about the solar farm installation, but about the 61A issue, the timing of the filing, that the process is slowed down to ensure it is being done the right way, and that Ms. Swadel was not comfortable and Town Counsel is not present to answer questions. Selectman Dodd's concerns were that the legislature needs to address the 30-day time frame as it is not fair to either party; he is disappointed that the Dept. of Agriculture has not continued the research as to which plants would grow under the solar panels; and that the solar farm should be able to coexist with 61A. Selectman Johnson stated that this is not what Mr. Harvey wanted, but is what the State requires and the delay it is unfortunate as they have been trying to work with the Town.

Mr. Harvey informed the Board of the inadequate notice given for one meeting of the Open Space Preservation Committee (OSPC), which did not have a quorum and the item was not discussed. The meeting was rescheduled, but never took place and Mr. Harvey was not notified of the change. Mr. Jenkins pointed out that the parcel is in the middle of the property with no access and it would be costly to provide access.

Selectman Barrette's motion that the Town does not exercise its right of first refusal on the property at 7 Maple Street that is being converted from its Chapter 61A use was seconded by Selectman Johnson. Discussion: The Board discussed the unfairness of the process to the applicant; they are sympathetic to their issues; the parcel is not viable for the Town as there is no access; if the solar farm is not successful the parcel can be placed back into Chapter 61A; and that the work of the OSPC is important but they are advisory only. Vote: 5-0

Town Hall Project and Fire Station Update / Municipal Building Committee (MBC)

MBC members came before the Board:

Fire Station: Brian Humes, project architect, reviewed the process that has been followed and that they have been working to reduce the cost of the project without compromising the quality. There has been a reduction of 1,100 square feet in the building size or eliminations made. Once the new fire station is completed, the Fire Department will relocate and current building will be demolished. Mr. Humes explained that there is no historical consideration for the building which was determined when the public safety complex was proposed. He reviewed the site plan, entrances and exits and the memorial area. The floor plan was reviewed next which is dedicated to function. The plans have gone before the Design Review Board (DRB), positive comments were received, and the finishes will be presented to them for approval. The MBC will continue to hold public meetings through February.

Comments: Capt. Lawrence informed the Board that Chief Perron agrees with the reductions they agree that the changes were good compromises. Selectman Dodd commended the MBC and suggested that the progress and final plans be posted on the website. The MBC confirmed, in response to Selectman Johnson's question, that the piece from the 9/11 towers will be located on site. Selectman Johnson asked for comments on the flat roof versus pitched and Mr. Brown explained that the configuration of the building did not lend itself to a pitched roof and it was too expensive. The roof is pitched inward, will have a 30-year guarantee and the manufacturer insisted that their contractors perform the installation. Selectman Barrette is confident and

comfortable that the roof will not be an issue. Selectman Drewry questioned the DRB's authority. Mr. Htway, Building Inspector, explained that the DRB makes recommendations, they are non-binding and he tries to abide by them. If a recommendation is outside of the scope, it is up to his discretion whether or not to enforce that element; the DRB is strictly an advisory board. Selectman Barrette pointed out that the DRB had asked for the plans for the interior of the building, which he did not think was within their purview. In response to Selectman Emery's questions, Capt. Lawrence explained that hoses no longer require to be dried out as they are synthetic the Emergency Operations Center, which was a topic of some controversy at Town Meeting, is a function and the new design is adequate and better than what they currently have. It will act as training and meeting room as well. Mr. Humes confirmed that it is a fifty year building and commended the Fire Department for their active involvement in the process. Mr. Blois emphasized that the Chief has been actively involved in the meetings, design and review of project. Mr. Htway clarified that the DRB is part of the Planning Board and their request to see interior plans is appropriate.

In response to Mr. Borkowski's question Mr. Brown explained that the roof will not need to be shoveled after a snowstorm as it will be strong enough to withstand the weight and has an internal drainage system.

In response to Mr. Capriole's question Mr. Brown explained that the Committee is not in the position to provide costs for the project yet as they will be starting the interior design at next week's meeting, which impacts the cost. Mr. Capriole also questions the whether the occupancy number has been reduced and Mr. Blois explained the building design is projected out for 20 years and for a total of 50 occupants.

Town Hall: Mr. Humes explained that the Town Hall renovation has been funded for design only. He reviewed the exterior and interior renovations and floor plans. The building will be completely handicap accessible. The new front entrance was reviewed with the DRB and some changes are being made per their request. Mr. Malloy explained that he met the property owner abutting the Town Hall regarding the addition to rear of the of building and they have agreed to provide land to the Town at no cost, which the Board can accept without a Town Meeting vote. Some of the design funds will be used for the survey. The MBC will be holding weekly meetings and information will be posted on the website. The projects will be phased so that the funding will be within Proposition 2 ½ and will meet the Board's goal of maintaining the debt level below 7% of the operating budget. Information will be provided to the public in the weeks before Town Meeting. Mr. Humes explained the changes to the balcony/mezzanine level.

In response to Mr. Capriole's question Mr. Malloy explained that he has asked the engineer if there has been any escalation in the cost estimate from last year and because of the improving economy he was informed that the cost estimate listed in Article 9 in the draft Town Meeting Warrant will increase about 5%, which will add approximately \$300,000 to \$350,000. He also explained that the cost estimate does not include moving the employees out of the building, which he is recommending, due the unsafe conditions during the asbestos abatement and mold mitigation for employees as well as the public. Removal of walls, windows, plumbing and electrical work would also be a safety issue and Mr. Malloy is expecting the cost including the move and leasing space to be approximately \$7.1 million.

Mr. Malloy informed the Board that an Article will be added to the Warrant to replace the membrane and repair the roof on the Forbes Municipal Building, which will cost more than what was allocated last year.

Request to Approve a Common Victualer Permit for Northeast Foods LLC d.b.a. Burger King Turnpike Road / Luis Palma

Mr. Palma, District Manager, came before the Board. He explained that Burger King Corp. has sold the restaurant to Northeast Foods LLC, who will be the new owner of the Burger King at 139 Turnpike Road.

Selectman Johnson's motion to approve the Common Victualer Permit for Northeast Foods LLC d/b/a Burger King located at 139 Turnpike Road was seconded by Selectman Barrette. Vote: 5-0

Request to Approve a Common Victualer Permit / Five N.S., Inc. d/b/a Christina's Café / Nader Abdelmalek

Mr. Abdelmalek came before the Board to request a Common Victualer Permit for Christina's Café, which he is purchasing. The restaurant name will remain the same as well as the hours of operation. Maged Amin, who has operated the restaurant for the past eight and a half years, thanked the Board for their support.

Selectman Barrette's motion to approve the Common Victualer Permit for Five N.S. d/b/a Christina's Café located at 20 South Street was seconded by Selectman Drewry. Discussion: The Board thanked Mr. Amin and wished the new owner luck. Vote: 5-0

Request to Confirm the DPW Manager's Revision to the Sewer Regulations (Article 27 of the General Bylaws) / John Walden

Mr. Walden explained that the Waste Water Treatment Plant is attempting to receive a 0% loan from the SRF and in order to do so there were conditions that required amending the sewer regulations. The single most important change is that the SRF does not want the Town to go beyond what the Waste Water Comprehensive Management Plan identifies for sewer extensions. The 0% loan will save the Town approximately \$11 million. Mr. Walden, as Sewer Commissioner, held a public hearing January 15 at 6:00 p.m. at the DPW and recommended adopting the amendment with ratification from the Board.

Selectman Barrette's motion to confirm the DPW Manager's amendment to Article II of the Sewer Rules and Regulations dated 1/15/13 was seconded by Selectman Drewry. Vote: 5-0

Request to Approve the SEIU, Local 888 (Public Works Unit) / John Walden

Selectman Barrette's motion to approve the contract between the Town and SEIU Local 888 DPW Unit for FY14-16 as negotiated was seconded by Selectman Drewry. Vote: 5-0

Request to Approve the SEIU, Local 888 (Clerical Unit) / Town Manager

Mr. Malloy explained that this contract's settlement was the same all the other units. The Police Patrolmen's contract should be ready for approval by the next meeting. The Board thanked the Department Heads and Union members.

Selectman Johnson's motion to approve the contract between the Town and SEIU Local 888 Clerical Unit for Fy14-16 as negotiated was seconded by Selectman Dodd. Vote: 5-0

FY 2014 Budget Approval

Mr. Malloy reviewed each department's budget and explained the increases/decreases. The following budgets were questioned: Communications, Council on Aging and Library. The overall general government budget increase is 2.6% and the School Department budget is increasing by 3.4%.

Selectman Barrette's motion to approve the budget with the exception of the three departments questioned, Communications, Council on Aging and Library, was seconded by Selectman Johnson. Vote: 5-0

In response to Selectman Johnson's question, Mr. Malloy explained that the budget does not reflect the \$400,000 savings in the insurance budget and he will adjust the final numbers which reduces the increase by about half to 1.3%.

Town Counsel Report – None

Town Manager Report

Included in the Board's packet is the first draft of the Town Meeting Warrant which consists of 15 Articles. Mr. Malloy asked the Board to review it and discussions will begin at the next meeting. There will be an Article added for the Forbes Municipal Building roof and one addressing the improvement of crosswalks. Mr. Tretter explained to the Board what the new crosswalk consists of in front of the Willows. The Warrant will be closed on February 26, 2013 and citizen's petitions may be submitted up until then, however sooner is preferred.

Mr. Malloy informed the Board that he has had several meetings regarding Shrewsbury, Northborough and Grafton's proposal to create a Regional Veteran's District. George Perry and Ken Ferrera have been consulted for their input and guidance regarding Westborough's inclusion. Mr. Malloy and Ms. Williams have also had separate meetings with Mr. Perry to discuss whether he is supportive of the idea and how it would work best for the Town.

Mr. Malloy informed the Board that the State is pursuing compliance with the statute that requires any community with a population over 12,000 to either join a regional district or to employ a full-time Veteran's Agent. The State has not yet approached Westborough about the statute, but has approached the three other communities and Mr. Perry suggested that it would be beneficial for the Town to become part of a district now as opposed to the option of having to hire a full-time Agent in the future at a higher rate. Joining the District now would cost slightly less than the current budget. The Town would maintain the current 80 hours per month of office hours and Veteran's would also have access to the Shrewsbury, Northborough, and Grafton offices for assistance. Mr. Malloy, Ms. William and Mr. Perry agreed that joining the District would improve the level of service and recommend that the Town move forward with the process. Mr. Malloy will have an agreement ready for the next meeting for the Board's vote and answer any questions they may have.

Selectman Dodd is in favor of regionalization, the number of Districts has increased, and Westborough has not been approached by the State as of yet most likely due to the excellent level of service provided even without a full-time agent. He suggested holding an informal public meeting or any other type of formal outreach for Veterans to hear about the changes and to ensure that they all support and understand what the impact will be. Selectman Drewry suggested waiting a month or more to make the decision in order to have time to talk with

Veterans, individual agents, investigate any issues and obtain more information. Selectman Emery asked Selectman Drewry to work with Mr. Malloy to develop a process that would work best.

Issues and Correspondence of the Selectmen

Selectman Dodd informed the Board that the application is available for the Veteran's Tax Work-Off Program. He drafted the communication policy for email for the Board's review and approval at a later meeting. Selectman Dodd suggested the possibility of making the Board's meeting packets available online, which he will further investigate. He informed the Board of the State website (mass.gov/checkbook) that provides financial information on towns, that Hopkinton has begun publishing on the website and would like to consider doing the same for the Town at some point. Selectman Dodd explained that Paula Skog, former member of the Historical Commission has filed an application nominating the owners of 43 Church Street, Michael Fitzpatrick and Jean Keamy, to receive the 2013 Preservation Award from the Massachusetts Historical Commission and the application requires a letter of support from the Board. Selectman Dodd will draft the letter.

Selectman Dodd's motion that the Board of Selectmen sends a letter of support in favor of the State's Historical Commission award for the house at 43 Church Street as required by the application was seconded by Selectman Barrette. Vote: 5-0

Selectman Drewry asked that everyone remember the men and women overseas in their thoughts and prayers.

Selectman Emery thanked Tim Novak for producing the meeting. She informed the Board that Governor Patrick is considering the regionalization of Housing Boards and the Town would lose the Housing Board and it was agreed to discuss this issue further at a future meeting.

Adjourn Open Session

Selectman Johnson's motion to adjourn at 9:05 p.m. was seconded by Selectman Barrette. Vote: 5-0

Executive Session

Submitted by Paula M. Covino

Chairman Emery

Vice Chairman Johnson

Selectman Dodd

Selectman Barrette

Selectman Drewry