

**Westborough Board of Selectmen
Meeting Minutes
February 12, 2013**

6:00 p.m. – 8:40 p.m.

Present: Chairman Emery, Vice Chairman Johnson, Selectmen Dodd (arrived at 6:08 p.m.), Barrette and Drewry

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

Selectman Emery commended the DPW, Police Department and Fire Department for their efforts during the storm. The DPW Manager and Police and Fire Chiefs will speak at the end of the meeting regarding the storm efforts.

Request to Approve the Board of Selectmen's Meeting Minutes

Correction: page 4, paragraph 5, line 4 – change “new” to “young”.

Selectman Johnson's motion to approve the minutes of January 8, 2013 as corrected was seconded by Selectman Barrette. Vote: 4-0

Open Forum – None

Request to Appoint William Yan to the Open Space Preservation Committee / Mark Silverberg / William Yan

Mr. Silverberg and Mr. Yan appeared before the Board. Mr. Silverberg explained that Mr. Yan will fill one of the two vacancies on the Committee. Mr. Yan provided his background.

Selectman Barrette's motion to appoint William Yan to the vacancy on the Open Space Preservation Committee for a term to expire in June 2013 was seconded by Selectman Johnson. Discussion: Board members thanked Mr. Yan for his service. Vote: 5-0

Request to Approve Appointments / Reappointments

Selectman Barrette reviewed the list of appointments for the Capital Expenditure Planning Committee, Police Officers, Legislative Liaison Committee and the Open Space Preservation Committee.

Selectman Barrette's motion to approve the appointments as listed in the Board's packet was seconded by Selectman Drewry. Vote: 5-0

Request to Approve Class II License for Clear Sky Global, Inc., 240 Turnpike Road / Mo Bayou

Mr. Bayou came before the Board to request approval for a Class II Used Vehicle License at 240 Turnpike Road. He explained that he occupied the Car Lux space and his business has changed to import/export and he is now renting the dealership at the Enterprise lot. The business has downsized and will have no more than four cars for sale.

Selectman Johnson's motion to approve the Class II Used Car Dealer License for Clear Sky Global, Inc. at 240 Turnpike Road was seconded by Selectman Drewry. Discussion: Mr. Bayou confirmed that of the six parking spaces four will be occupied by the used car display, one is for customer parking and one is for employee parking. There will be no changes to the existing building. Attorney Franks, looking dapper as always, confirmed that the permits are in order. Mr. Htway came before the Board and asked that Mr. Bayou meet with him regarding his use of the building and permits that may be needed as he was unaware of this change.

Selectman Johnson amended the motion that the license is contingent on the Building Commissioner's requirements for a possible Certificate of Occupancy being issued was seconded by Selectman Drewry. Discussion: Mr. Barrette questioned why Mr. Htway did not know about this in advance, and Mr. Malloy explained that it did not seem necessary as it was already being used as a car dealership. Mr. Bayou owns the building and the Board discussed whether it should have gone before the Building Commissioner. Mr. Htway is comfortable with the amended motion and the permit issuance should take approximately one week to insure that the building is being used correctly and is up to code. Vote: 5-0

Request to Approve Arbor Day Proclamation / John Walden

Mr. Walden came before the Board to request approval for the Tree City USA/Arbor Day proclamation. This is the third year that the Town would be seeking the Tree City USA designation. Mr. Walden reviewed the history of the designation and 50 tree saplings will be distributed on Arbor Day, April 26, 2013 at the DPW after 7:00 a.m. Mr. Walden agreed to investigate whether the Town could receive more than 50 saplings.

Selectman Dodd's motion that the Town of Westborough approve the Board of Selectmen Arbor Day Proclamation as part of the Tree City USA requirements as written in the packet was seconded by Selectman Barrette. Vote: 5-0

Request to Approve Westborough TV Survey for Inclusion in Tax Bills / Donna Kelly

Ms. Kelly appeared before the Board to seek approval to insert a survey in the next tax bill mailing. She explained the purpose of the survey and last one was conducted in 2002. The survey will enable the Cable Committee to measure the levels they are reaching in the Town and assist them in negotiations. The survey will be advertised and will also be available on the website.

Selectman Barrette's motion to approve inserting the Westborough TV survey into the next tax bill mailing was seconded by Selectman Drewry. Vote: 5-0

Continuation of Public Hearing / 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 was seconded by Selectman Barrette. Vote: 5-0

Attorney Adam Brillard, Jim Harvey, Charles Jenkins, Mark Kyla, Mike Maguire, and Tin Htway appeared before the Board. Attorney Brillard reviewed the site plan, pointed out the location of the solar farm in the rear of the property and the location of the inverters. The project is approximately 2.24 megawatts, which equals 10,000 3x5 foot modules and encompasses just under 8 acres.

Mr. Htway explained that there were outstanding issues from a couple of departments at the last meeting, which have been resolved, the last comments being received today from the Fire Department. There are still outstanding conditions from the DPW that can be addressed during the building permit process and issuance. The Fire Chief confirmed he is comfortable that all issues have been addressed. As the final information was received late today the written decisions is not ready for tonight. The Board will be able to close the public hearing and then vote on the decision at the next meeting.

There was a discussion regarding the appearance of the solar farm, the installation of plantings to mitigate or soften the look, and the visibility impact to the neighbors. Attorney Brailard confirmed that a condition is included to install plantings and Mr. Harvey pointed out that he did plant 100 arborvitaes 40 years ago, which has provided a barrier. Mr. Jenkins thanked the Board for their time and consideration and ensured that they will do their best to make the Town proud. There is a pilot program in Amherst that is studying what plants will grow under the panels.

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

Board of Selectmen Email Contact Policy / Selectman Dodd

Selectman Dodd developed an "Email Contact Policy", which was one of the Board's goals. He explained the process to create the policy and reviewed its components. It ensures that when an email is sent to the Selectmen's email address a single consistent response would be sent from the Town Manager's office. An automated response will be generated acknowledging the receipt of the email, and Mr. Malloy will copy the Board on the response. Selectman Emery suggested that there be an opportunity for the Selectmen to provide input on Mr. Malloy's responses. The Open Meeting Law will have to be taken into consideration so that there is no violation and Mr. Malloy assured the Board that he would not provide an opinion on behalf of the Board. Should an issue require comments from the Board it would be addressed on a meeting agenda.

Selectman Dodd's motion that the Board approves the Selectmen Email Contact Policy as written provided that a Section 5 is added stating that "The Town Manager would copy all members of the Board of Selectmen on his response and that Board approve placing the "Contacting the Board of Selectmen" page on the website was seconded by Selectman Johnson.
Vote: 5-0

FY14 Budget Follow Up / Town Manager

Communications: Selectman Johnson questioned whether it was feasible for the Town and the School to combine through Connect Ed and Blackboard Connect as they are owned by the same parent company, but even though they are owned by the same company they are two different subsidiaries that use different data bases for their calling systems. They do not intermingle or give discounts for communities that use both. Mr. Malloy, the Fire, Police, Public Works, Health and MIS interviewed Blackboard Connect and Code Red, both companies are major firms that provide the calling system. The result of the interviews was the recommendation from all departments to use Code Red and Mr. Malloy reviewed the benefits, which included, but are not limited to, a possible discount as Northborough and Southborough are planning on using them as well, it is less expensive than Connect Ed, and they will not increase the cost once the contract is signed. The original cost included in the budget for the system was \$13,465 and Mr. Malloy recommended the Board approve a \$10,000 budget for this item.

Selectman Johnson's motion to approve the Communications budget for \$49,000 was seconded by Selectman Barrette. Vote: 5-0

Council on Aging: Ms. DeManche and members of the COA came before the Board. Ms. DeManche explained that the COA's nursing and "handyman" costs have been paid out of the Formula Grant in the past. The request is to remove the handyman budget (\$5,200) from the grant and include it in the general fund budget and use that amount in the grant to expand the nursing services, which currently is a one day per week service to two days. Ms. DeManche reviewed the services that the handyman provides as well as the extended nursing services that will be added. There will be a slight increase to the budget and a COA member spoke in favor of the nursing services and the need for an additional day. Ms. DeManche explained that the COA carefully reviewed and discussed this recommendation so that it would have a minimal impact and allow the COA to continue to provide excellent services to senior citizens. The handyman is a contract employee and receives no benefits.

Selectman Barrette's motion to approve the Council on Aging budget of \$45,452 was seconded by Selectman Drewry. Vote: 5-0

Ms. Demanche informed the Board that next month is "March Meals on Wheels" month and Baypath Elder Services will be sending a letter to the Board asking for volunteers to deliver meals.

Library: Selectman Johnson had questioned the use in the past of the state grant and library trust funds to offset a portion of the libraries operating budget. Attorney Franks had reviewed the practice and the issue was with the process as it was being implemented improperly. He reviewed his memo dated October 3, 2012 (incorporated by reference) which explained the issues with the way the trust funds and state aid are expended and how to correct the process.

Selectman Johnson's motion to approve the Library budget as recommended by the Town Manager was seconded by Selectman Barrette. Discussion: In response to Selectman Dodd's question Mr. Malloy explained that the Library has many different trust funds and they are designated for specific uses. They are controlled by the Library Board of Trustees and Town Meeting cannot determine their use. Mr. Malloy will consult Town Counsel and the Town Treasurer regarding other Town trust funds that are managed by the Trustees of Trust Funds. Vote: 5-0

Schools: Selectman Emery explained that the Board had received portions of the School Department budget but not in its entirety and asked the Board whether they had enough information at this time to make a recommendation. Selectman Johnson questioned whether the Board had any control over their budget and Mr. Malloy explained that according to the Charter the Selectmen can make a recommendation on the bottom line number but it is up to the School Committee's discretion how the bottom line is spent and Town Meeting has final approval. As the School's budget is above the 2% increase level that was the guideline for all departments and the information received is fragmented, Selectman Emery asked the Board if they are satisfied with the information received or they would prefer a budget document similar to what the other departments submitted.

Selectman Barrette pointed out that the School Committee had several hearings on their budget and there is a budget available at the School Department for the public's information. He would prefer to hear their Town Meeting presentation before making any recommendation.

Selectman Drewry would like to see the 2% increase limit that the Board set through the Town Manager followed by all Town departments, allowing flexibility for extenuating circumstances. He is willing to support the 2% recommendation for the School budget as it is the Board's responsibility to oversee the Town's finances and suggested following some of the private sector's principles.

Selectman Johnson questioned this budget as there seems to be confusion regarding the roles of the Selectmen, Finance Committee and School Committee. Regardless of the departments' different responsibilities according to State law or the Town Charter, the Board's goal has been to work together as one Town in support of the residents. Selectman Johnson apologized for the confusion on his part at the last meeting as it was his understanding that School budget was not going to be discussed and that is why it was not questioned. He pointed out that it is unfortunate that the School budget does not come before the Board as it is complex, it is a large portion of the Town budget and the Board is charged with making a recommendation. Selectman Johnson did attend School Committee's budget presentation to the Finance Committee, but there is still more information he will have to consider in order to make an informed decision at Town meeting. He informed the Board that a Finance Committee member posed a question regarding approximately \$1.5 million in various school revolving accounts, some of which is encumbered, asking if they could show the actual balances in them and if there is the ability to use a portion to offset their budget. The School Committee was asked to provide an answer which would be helpful to the Board's recommendation.

Selectman Dodd reiterated the suggestion he has made in the past that the Selectmen, Finance Committee and School Committee meet periodically to discuss fiscal issues in order to work together for Town's best interest. He pointed out that due to the economic times, the Board spent quite a bit of time closely reviewing all the budgets and the COA's appearance before the Board tonight to request additional funds for their budget was thoroughly researched and provided information to justify their request. Selectman Dodd stressed the importance of communication with the School Committee as well as adhering to the 2% limit to budget increases for all departments. As they are an elected committee, he is not comfortable with them coming before the Board and suggested a joint meeting. Selectman Dodd also concurs that he does not have enough information to make a recommendation tonight.

Selectman Emery would like to understand the reasoning behind the overwhelming necessity for the amount exceeding the 2% as every other department has been asked to comply with the 2% even though it is difficult.

Mr. Malloy explained that the school budget he proposed that would meet the 2% limit was \$1 million over last year and when the electricity savings was factored in it increased to 3%, which he felt was reasonable. When the budget was finalized it did not include the electricity savings however the reduction to health insurance brought it back closer to the Selectmen's goal. Mr. Malloy asked the Board to consider whether the budget is within what they would deem a reasonable amount.

Selectman Johnson reviewed the eight categories and their percentage of increase/decrease that the School Committee presented at the Finance Committee meeting that explained the 3.4% budget increase. He supports Selectman Dodd's suggestion to meet with the School Committee as it is important for residents to have Town departments that work together and there is room to improve in that area.

The consensus of the Board was that they were not comfortable voting on a recommendation tonight and will make a recommendation at Town Meeting.

DPW Snow Budget

Mr. Walden came before the Board to discuss the snow and ice budget. He explained that the overtime spending and contracted services are finished and any clean up will be done during the day under the operating budget. If there is a storm on Sunday removal will be required and after reviewing the weather and pending expenses Mr. Walden requested deficit spending in expenses of \$100,000 and \$50,000 in wages.

Selectman Johnson's motion to allow for deficit spending on snow and ice removal in the amounts of \$100,000 in expenses and \$50,000 in wages was seconded by Selectman Barrette.
Vote: 5-0

Snow Storm Follow Up

Mr. Walden, Chief Gordon and Chief Perron came before the Board to discuss the weekend blizzard. Mr. Walden reviewed some of the issues experienced and commended residents on their cooperation as clean up was much easier without cars on the road. Chief Gordon pointed out some problems they encountered, the positive impact of the Governor's driving ban and the Town's parking ban on snow plowing efforts. Chief Gordon commended the DPW for excellent job of clearing the roads. He explained that there is a bylaw prohibiting putting snow back onto any public way and there is a \$100 fine which will be strictly enforced. Chief Perron informed the Board that they set up the Emergency Operation Center, Friday into Saturday and he thanked the crew that manned the center. There were carbon monoxide issues throughout the State, five in Westborough, due to snow blocked vent pipes. Many people shoveled out their hydrants and he also urged businesses to shovel out egresses. The Board thanked them for their efforts.

Town Meeting Warrant / Town Manager

Article 2: Rule of the Meeting. Mr. Harrington came before the Board and explained that this Article is a result of last year's post Town Meeting discussion and review and it would only apply this Annual Town Meeting only. It limits portable microphone use and encourages the utilization of the standing microphones. The intent is to move the process along a little faster. Mr. Harrington asked if the Board was in favor of this Article and if not he will ask Mr. Malloy to remove it. Selectman Dodd is in favor, questioned whether it needs to be an Article and Mr. Harrington handled it this way to provide advance notification. Selectmen Johnson and Barrette support the Article. Selectman Drewry supports it, but also questioned the need for an Article as it might only encourage debate and as Mr. Harrington has the authority to make the change without it. Selectman Emery supports the change in the form of an Article and that it provides the Moderator visibility of the number of people waiting to speak.

Selectman Drewry's motion to remove the Article from the Warrant failed for the lack of a second. Selectman Johnson suggested that Mr. Harrington ask for assistance in recognizing if there is anyone waiting or wishing to speak as it is difficult to see the audience.

Article 16: Zoning Bylaw Amendment to Regulate Medical Marijuana Treatment and Dispensing Facilities and Marijuana Cultivation by its Complete Disallowance. Mr. Malloy provided the Board with the revised Article. Mr. Hensley and Mr. Robbins came before the Board and Mr. Hensley reviewed the Planning Board's process in constructing the bylaw amendment, which included several public hearings. There was little input regarding changes and the general consent was that the Planning Board approached this process thoroughly and with a lot of effort. The Planning Board used the precautionary principle which is a concept that provides guidance in decision making on issues that could have a public health or environmental effect. After researching and the experience of other states and the activities occurring in our state, the Planning Board concluded that the best and most responsible leadership position to take, in sending a positive message to the community/youth, is that unless there is sufficient evidence of a proven benefit they will be conservative in ensuring the health, public welfare and safety of the youth, community, property values and detriments other states have faced.

Mr. Hensley pointed out that marijuana use is an increasing trend among youth and expressed his concerns regarding medical marijuana, the increased availability to youth and the decline in the perception of harm as a result of his lengthy research efforts. He explained the process of consulting with other towns, their counsel and the Attorney General's Office as part of the process in determining whether to address the zoning or a ban and financial impact of trying to implement a ban. What the zoning bylaw amendment achieves is the opportunity to observe how the process will unfold until a time when there is enough evidence to prove that it can be safely delivered to the public.

In response to Selectman Emery's question regarding the possibility of a patient's purchase being diverted to youth, Mr. Robbins explained that the bylaw does not address that, the Department of Public Health will set the parameters for what it means to be a cardholder to purchase marijuana. He also provided information on how the secondary market for marijuana has evolved. Mr. Robbins explained that the two-pronged approach: the first is the outright disallowance of the use anywhere in Town; and secondly, if the Article is voted and later on the disallowance is found to be unlawful there is a severability clause which will revert to the secondary position which allows medical marijuana dispensaries and the cultivation and growing within a very exclusive area of Town, the adult entertainment district, which is owned by Herb Chambers Honda and is a wooded area.

The Board reviewed the Warrant and Articles #4, #8I, and #17 were questioned.

Selectman Barrette's motion to support all other Articles with the exception of those questioned, Articles #4, 8I and #17 was seconded by Selectman Johnson. Vote: 5-0

Article #4 is for the transfer of funds and there will be a need to transfer funds to the Veteran's budget due to the increase in clients this year. The Board will wait to vote once the amount is final. Article #8I is for the replacement of the gym floor at Mill Pond and Selectman Barrette questioned this as the floor is only 10 years old. He informed the Board that the Capital Expenditure Committee did question whether there was a warranty, and suggested that there should be a better tracking system for these issues and some accountability. Selectman Emery read Article #17, which is the Citizen's Petition. Mr. Malloy explained that Mr. Faris is in the process of reviewing the Article and may strike the last two sentences or reword it and get a new

one signed. Mr. Malloy informed the Board that regarding Article #10, the architect is still working on the figure for the Forbes Municipal Building roof repairs.

Town Counsel Report – no report.

Town Manager Report – Mr. Malloy requested an Executive Session to discuss the State Hospital Property.

Issues and Correspondence of the Selectmen

Selectmen Drewry clarified for the public that the Board voted tonight to place the Articles on the Warrant and asked that everyone remember the soldiers overseas in their thoughts and prayers.

Selectman Johnson, along with two other Board members, attended the Cultural Council award ceremony, it was a great event and well attended. He was impressed by the number of awards and the variety of cultural events that they provide and thanked them for their efforts. Selectman Johnson attended the mini-golf fundraiser at the Library with his family and it was a great community event and commended the Trustees.

Selectman Emery also attended the Cultural Council event and was impressed as well by the diversity of the programs they funded and pointed out that they were able to fund all the requests that met their criteria because of the success of the Arts Festival in the fall. Selectman Emery expressed the Board's condolences to the Lindsay family on the loss of Harry, who was an amazing presence in the community and an advocate for those less fortunate demonstrated by his leadership in establishing and maintaining the Food Pantry. Selectman Emery thanked Tim Novak for producing the meeting.

Executive Session

Selectman Johnson's motion to enter into Executive Session to consider the purchase, exchange, lease or value of real property, as an Open Meeting would have a detrimental effect on the Town's negotiating position and to conduct a strategy session in preparation for negotiations with non-union personnel was seconded by Selectman Barrette. A roll call vote was taken: Selectman Drewry – yes; Selectman Barrette – yes; Selectman Emery – yes; Selectman Johnson – yes; Selectman Dodd – abstain.

Submitted by Paula M. Covino

Chairman Emery

Vice Chairman Johnson

Selectman Dodd

Selectman Barrette

Selectman Drewry