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Present: Joseph E. Flanagan, Wayne R. Walker, and Heather M. Billings

CALL TO ORDER

Mr. Flanagan called the meeting to order at 6:00 p.m. in the Selectmen’s Office at Town Hall. He announced that the meeting was being broadcast live and recorded by Ashburnham Westminster Community Access TV. He also noted that Kerry O’Brien from the Gardner News was recording the meeting.

APPROVAL OF WARRANTS/MINUTES

Ms. Billings moved that the Board approve the minutes of November 19, 2012. Mr. Walker seconded the motion. The motion passed unanimously.

Board members reviewed and approved the following warrants:

November 20, 2012	Deduction #31D	\$ 146,222.38
November 26, 2012	Accounts Payable #32	\$ 120,650.71
December 3, 2012	Accounts Payable #34	\$ 913,223.56
	Payroll #33	\$ 187,775.05

CONTRACT APPROVAL – FRATICELLI OIL CO

Mr. Walker moved that the Board approve a contract with Fraticelli Oil for the delivery of oil for the Home Heating Assistance Program. The oil is at a rate of \$3.359 per gallon and the total amount of the contract is \$5,000. Ms. Billings seconded the motion. The motion passed unanimously.

PAYROLL AUTHORIZATION

Mr. Walker moved that the Board approve a payroll authorization request for a part time Dispatcher for the Police Department. Ms. Billings seconded the motion. The motion passed unanimously.

FY2013 TAX CLASSIFICATION HEARING

Assessor Robin Holm was on hand to make the Assessor’s recommendation that the Board adopt a residential factor of 1 in setting the FY2013 tax rate. This means that all property (residential, business and personal property) will be taxed at the same rate, as in the past.

Mr. Walker moved that the Board adopt a residential factor of 1 in setting the FY2013 tax rate. Ms. Billings seconded the motion. The motion passed unanimously.

LAYOVER STATION DISCUSSION

Mr. Flanagan expressed his concerns over the Board of Selectmen not being included in meetings being held regarding the layover station.

He also mentioned that the Board received a letter from Bruno Fisher dated November 30, 2012, in which he states ‘I have been notified by the MBTA and their engineering consultant that the initial pre-construction phase of the Wachusett Station project is starting. The selected contractor, S & R Construction Enterprise (S&R) will commence work at the layover site on Wednesday the 5th and progress with setting up the field office, followed by putting in construction access, silt fencing and storm water protection, with excavation commencing the week before Christmas. All initial work should be complete by the end of March, weather permitting. Additionally, S & R will be working with Powell Sand & Gravel, co-owners of the Westminster Business Park to stockpile excavated material from the I-4 parcel onto the site parcel currently being cleared by the WBP, substantially reducing vehicular traffic on Theodor Drive and the Batherick Road/Route 2A area.

S & R has already met with the Con Com from Westminster, as well as the Town Planner and the utilities. MART was instructed today to make the official notification to the Town of Westminster.

In addition, the Wachusett Station Site Preparation contract is starting as well. The same contractor, S&R Construction Enterprises will be starting work on site on Monday, December 3rd, at the station area. First activity will traffic signage closing of Fifth Mass Turnpike and setting up the field office, followed by putting in construction access and silt fencing and storm water protection. Clearing and site fencing will start the following week with excavation commencing after Christmas’.

Mr. Flanagan stated that Mr. Fisher’s letter was incorrect in that S & R had not met with the Town Planner.

Mr. Flanagan explained that the issue was with Westminster Business Park and Powell Stone and Gravel as there are no approve earth removal permits. The Board agreed to refer the matter to Building Commissioner Mike Gallant for zoning enforcement.

Mr. Flanagan requested that the Board approved the following letter to the Westminster Business Park:

‘In an e-mail dated November 30, 2012, Bruno Fisher, Deputy Administrator of the Montachusett Area Regional Transit Authority (“MART”), informed the Westminster Board of Selectmen (“Board”) that a contractor for the Massachusetts Bay Transportation Authority (“MBTA”) would be commencing “the initial pre-construction phase” of the Wachusett Station Extension project, including work on the MBTA layover facility (“Facility”). The Facility is to be located on Lot I-4A within the Westminster Business Park (“Facility Site”), which is currently owned by MART. In his e-mail, Mr. Fisher

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stated that the MBTA contractor “will be working with Powell Sand & Gravel, co-owners of the Westminster Business Park (WBP), to stockpile excavated material from the [Facility Site] onto the site parcel currently being cleared by the WBP . . .” Mr. Fisher’s e-mail does not indicate what is intended to be the subsequent use or disposition of this excavated material.

Please be advised that the proposed excavation of material from the Facility Site, and its storage or stockpiling on another parcel within the WBP, has not received necessary permits under the Town General Bylaws. This activity is not authorized under the earth removal permits that have been previously issued to WBP pursuant to the General Bylaws, Chapter 97, and the Board’s Regulations, Chapter 209. Further, the WBP has not sought or obtained a permit from the Board for the filling of land, pursuant to Section 81-6 of the General Bylaws and the Board’s “Fill Regulations”.

Therefore, you are hereby ORDERED not to receive any excavated material from the Facility Site, whether for use as fill on WBP property, for transport off-site, or for any other purpose, unless and until WBP applies for and receive necessary permits from this Board, such as amendments to WBP’s earth removal permits and a fill permit. WBP’s acceptance of excavated material that is transported from the Facility Site to WBP property without such permits will constitute a violation of the Town General Bylaws, for which the Board may impose penalties and seek court action to compel compliance. Further, pursuant to Section 97-11(C), if such a violation occurs, the Board may consider whether to revoke the WBP’s existing earth removal permits.

Please feel free to contact the Board or the Town Administrator if you wish to discuss this matter with us.’

The Board agreed to tentatively schedule a meeting for December 10, 2012, and invite Steve Powell to attend to further discuss earth removal.

Mr. Walker moved that the Board authorize the Chairman to sign the letter to Westminster Business Park pursuant to the advice of Town Counsel regarding potential stockpiling of earth materials. Ms. Billings seconded the motion. The motion passed unanimously.

Mr. Walker moved that the Board send a letter to Mike Gallant for his interpretation of whether such a use of Westminster Business Park property is an allowed use under Section 205-22 of the Bylaws, and if it is allowed, whether it is permitted as of right or if it requires a special permit. Ms. Billings seconded the motion. The motion passed unanimously.

Mr. Walker moved that the Board request that Attorney John Goldrosen send a letter on the Board’s behalf to MART informing them that excavation and removal of materials from the Facility site requires an earth removal permit. Further asking if they are not going to apply for a permit why they are exempt from doing so. Ms. Billings seconded the motion. The motion passed unanimously.

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Mr. Flanagan stated that the Board received a letter November 28, 2012, from Mary Beth Mello, Regional Administrator of the Federal Transit Administration in response to the Board's October 1, 2012 letter regarding the Wachusett Extension Project/Westminster Layover Facility. He stated that the response to Post Construction Noise Assessment the FTA stated 'In a letter dated November 15, 2012, to FTA, the MBTA committed to conduct a post construction noise assessment within four months of the layover's initial operation. The noise assessment will measure the actual 24 hour noise levels produced by the layover facility and will compare them with predicted noise levels that were presented in the 2010 Environmental Assessment as well as those presented in the 2012 MEPA document. The MBTA will report back to FTA and the Town of Westminster on the findings and any need for operational changes or mitigation.'

Mr. Flanagan went on to say that the response to future freight access stated 'While the MBTA will not allow any of the layover tracks or the facility to be used for private freight operations, construction of the layover facility will in no way preclude future expansion to accommodate private freight rail connections to the Westminster Business Park. Specifically, the project includes the installation of a lead track to the area west of the layover, which will allow the town or any future business to install a switch for a spur track – a more effective option than installation of a switch off the Pan Am mainline.' (Mr. Flanagan stated this was not true.)

'In conclusion, the Wachusett Extension Project has met all Federal environmental requirements. Should you have any additional questions relating to the project, including permitting, please reach out to either the MBTA or MART. As project sponsors of the Wachusett Extension Project, they are committed to working with the Town of Westminster on this important transit development expansion project.' (Mr. Flanagan stated that they are not committed to working with the Town as they have never met with the Board of Selectmen.)

Mr. Flanagan suggested that the Board file a complaint with the IG's office. Selectmen Billings and Walker stated they were not ready to discuss this and would like to take it up at their next meeting.

UPDATE ON WESTMINSTER BUSINESS PARK POLICE DETAIL

The Board reviewed Police Chief Albert's report regarding Police detail for the WBP earth removal permit. Mr. Flanagan moved that the Board remove the requirement (condition #12) for Police detail until such time as the Police Chief feels it is necessary. Mr. Walker seconded the motion. The motion passed unanimously.

SPECIAL ELECTION FOR SENIOR CENTER

Mr. Walker moved that the Board approve a Special Election Warrant and Special Town Election for Tuesday, January 29, 2012 from 7 a.m. to 8 p.m. at the Westminster Elementary School. Ms. Billings seconded the motion. The motion passed unanimously.

WAIVE BUILDING PERMIT FEES FOR SENIOR CENTER CONSTRUCTION

Mr. Flanagan moved that the Board waive all fees that the Board has authority to waive for the construction of the Senior Center. Mr. Walker seconded the motion. The motion passed unanimously.

UPCOMING DISCUSSIONS

- Charge of Town Hall Needs Assessment Committee
- Review proposal to adopt ticketing program and ask Police Chief if he supports Proposal
- Senior Tax work off program changes

6:55 P.M. EXECUTIVE SESSION

Mr. Walker moved that the Board enter into executive session to discuss strategy with respect to collective bargaining and value of real property; further that the Chair declares that an open meeting may have a detrimental effect on the litigating position of the body; and that the Board adjourn directly from executive session. Mr. Flanagan seconded the motion. The motion passed on a roll call vote.

ADJOURNMENT

The Board adjourned from executive session at 7:28 p.m.

Respectfully submitted,

Heather M. Billings, Clerk
(Prepared by B. Kazan)