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TOWN CLERK
TOWN OF WINTHROP

Town Council Meeting Minutes

May 18, 2010

Under the Rules and Procedures of the Winthrop Town Council, President Turco called the meeting to order at 7:00PM in the Joseph Harvey Hearing Room., Councilor Varone, Councilor DelVento, Councilor Sanford, Councilor Powers, and Councilor Boncore and Vice President Calla were present. Councilor Maggio and Councilor Letterie were not present.

Vice President Calla led the Council in the pledge of allegiance. Council President Turco asked the Council Clerk to call the roll for the record.

Minutes

Motion by Councilor Powers, Seconded by Councilor Sanford: to approve Minutes as amended and sent electronically to members of May 11, 2010. Motion passed by unanimous voice vote.

Public Comment

Lee Dzedulionis of Nahant Avenue spoke on the improvements regarding Handicap Accessibility at the Town Landing and that since the last Council meeting she was invited to attend a meeting relative to those improvements.

Correspondence

The Town Clerk informed the Council that a letter from the Chamber had been distributed to each of them at the beginning of this meeting regarding the Chamber's position on the proposed fee structure that will be before the Council in the future. Said letter is attached to these minutes.

Town Manager's Report

Town Manager James McKenna reported on the following items:

- School budget was not yet online but would be soon
- Rink analysis year to date was distributed as was requested at the prior meeting

At this time, the Council President asked the Town Attorney Betsy Lane of Kopelman & Paige to begin her presentation on new Open Meeting Law guidelines and an opinion on Section 7-10 of our Charter.

Ms. Lane distributed several information sheets and went over the major changes that go into effect on July 1, 2010. That information is attached to these minutes. She was able to answer many questions from the Council relative to the new increased reporting responsibilities and the increased role of both the Chair of public bodies and the Town Clerk, who will be the gatekeeper for these new requirements.

She then gave a thorough explanation of the Winthrop Home Rule Charter Section 7-10: PERSONAL LIABILITY FOR EXPENDITURES IN EXCESS OF APPROPRIATION. Her opinion is attached to these minutes.

The Town Manager then continued with his report:

- He has scheduled a meeting with the Police Chief and the State Police to try and secure additional Police presence on Deer Island this summer.
- Has scheduled a meeting with HUD Regional Director to try and secure funding for the Dalrymple development project to move forward.
- Will be attending the Conservation Committee's meeting on May 26th, regarding Short Beach Improvement Project.

New Business

Next item on the Agenda was a public hearing for National Grid Petitions. There were two petitions before the Council, both having been duly advertised and researched by all appropriate parties. These petitions would be part of the Argyle Street Substation upgrade. National Grid was pursuing this upgrade in response to the failures of the Metcalf Substation that has failed the last two summers causing long power outages for most of the Town.

Jason Small of National Grid addressed the Council to explain the petitions. There was no public comment. Council President asked if the Fort Banks School will be accommodated in the planning of the work. Mr. Small answered that the expected work would be two days and could be done on Saturdays or after school to accommodate the traffic in that area. Council Powers asked if there would be an open lane for traffic during construction? Mr. Small answered yes at all times there will be a lane open. Council President asked Mr. Small to follow up with double poles in the area to try and rectify this unsightly situation. Councilor Sanford suggested that maybe the DPW could create a list for the Town Manager to pass on to the appropriate people at National Grid. Vice President Calla asked Mr. Small to follow up on the excessive tree trimming that has occurred with many trees in town. Mr. Small stated that there is an arborist on staff and consulted before trimming cycles but that he would follow up to be sure they understood the Town's concern. At that time, calling for any public comment and hearing none, the Council President closed the public hearing and asked if there was a motion.

Motion by Councilor Boncore, seconded by Councilor Sanford: to grant permission to excavate the public highways and to run and maintain underground electric conduits, together with such sustaining and protecting fixtures as said company may deem necessary, in the public way or ways hereinafter referred to, and to make the

necessary house connections along said extensions, as requested in petition of said company dated the 6th of April 2010.

Said underground electric conduits shall be located substantially in accordance with the plan filed herewith marked National Grid, WR #531881 09/22/09. The following are the public ways or parts of ways under which the underground electric conduit above referred to may be laid: Arygle Street – Installation of +/-35' of 6-5" concrete-encased pvc conduits in the street and sidewalk.

Motion by Councilor Boncore, seconded by Councilor Sanford: to grant permission to excavate the public highways and to run and maintain underground electric conduits, together with such sustaining and protecting fixtures as said company may deem necessary, in the public way or ways hereinafter referred to, and to make the necessary house connections along said extensions, as requested in petition of said company dated the 6th of April 2010.

Said underground electric conduits shall be located substantially in accordance with the plan filed herewith marked National Grid, WR #531881 09/22/09. The following are the public ways or parts of ways under which the underground electric conduit above referred to may be laid: Kennedy Drive – Installation of +/-180' of 2-5" concrete-encased pvc conduits in the street and sidewalk.

Motion by Councilor Sanford, seconded by Councilor Powers: to approve President Turco's appointment of Brian Corbett to the Conservation Commission in the Town of Winthrop, pursuant to Section 2-10(a) of the Winthrop Town Charter. Said appointment will expire on June 30, 2012.

Motion by Councilor Boncore, seconded by Councilor Sanford to approve Council President Turco's appointment to the Scholarship Committee in the Town of Winthrop, pursuant to Section 2-10(b) of the Winthrop Town Charter. Said appointment will expire on June 30, 2010.

- 1. Dr. Steven F. Jenkins**
- 2. Mr. James Burke**
- 3. Mrs. Suzanne Hardy**
- 4. Mrs. Rona Mael**
- 5. Mr. Richard L. Roberts**
- 6. Mr. Todd Sacco**
- 7. Mr. James Letterie**

Motion by Councilor Sanford, seconded by Vice President Calla to approve Council President Turco's appointment of Vincent Crossman to the School Reuse Committee.

Our Auditor, Tony Roselli of Roselli, Clark & Associates made a presentation to the Council to discuss the Management Letter for the fiscal year ended June 30, 2009. Said Letter is attached to these minutes.

President Turco asked the following questions of the Auditor:

- How long had the firm been the Town's Auditor
- Should we keep an Enterprise Fund if the Town must subsidize it with Taxpayer's dollars?
- Is there a mechanism that would allow the Town to loan the Enterprise fund the money it needs until it is fully operational and then if the Rink is successful in Court – allow for the Enterprise Fund to then “payback”?
- Had the auditor reviewed the 2005 DOR report and compared it to progress now?

Mr. Roselli answered that he has been the auditor since about 1990 and the other questions asked of him would need further research and he will communicate those answers through the Town Manager soon.

Vice President Calla acknowledged the High School and how impressed she was with the recent President's Breakfast held at the High School. Also she wanted to thank the Department of Public Works for their passion to educate the community about the importance of recycling during DPW Week.

Councilor Sanford reminded residents about the Precinct Five Community Meeting being held on Wednesday, May 19, 2010 at the Cottage Park Yacht Club.

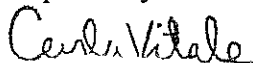
There was no interest in a second round of public comment.

Motion by Councilor Boncore, Seconded by Councilor Sanford: to go into Executive Session for the purposes of discussing Collective Bargaining and possible litigation. The Council President stated that if the Council did in fact vote to go into Executive Session, they would adjourn from Executive Session and not return to Open Session until Tuesday, May 25, 2010.

Roll Call:

Councilor Varone	Yes
Councilor DelVento	Yes
Councilor Sanford	Yes
Councilor Powers	Yes
Councilor Boncore	Yes
Vice President Calla	Yes
President Turco –	Yes

Respectfully Submitted,



Carla Vitale



KOPELMAN AND PAIGE, P.C.
The Leader in Municipal Law

101 Arch Street
Boston, MA 02110
T: 617.556.0007
F: 617.654.1735
www.k-plaw.com

May 11, 2010

Elizabeth A. Lane
elane@k-plaw.com

BY FACSIMILE - (617) 846-5458
AND BY FIRST CLASS MAIL

Mr. James McKenna
Town Manager
Winthrop Town Hall
1 Metcalf Square
Winthrop, MA 02152

Re: Charter Section 7-10: Personal Liability For Expenditures In Excess of Appropriation

Dear Mr. McKenna:

You have requested an opinion concerning interpretation of the provisions of §7-10 of the Charter, in particular with respect to the treatment of "unpaid bills of prior years" that may be submitted to the Council for its after-the-fact authorization of payment. In my opinion, and as will be further explained below, this provision of the Charter allows the Town to demand the return of funds paid without an authorizing appropriation, and to bring an action against any town official or employee who knowingly caused an actual expenditure without appropriation, if that becomes necessary in order for the Town to recover any such funds. In addition, because this Charter provision prohibits, in essence, violation of prohibitions contained in the laws of the Commonwealth, violation of this particular provision of the Charter by an appointed officer or employee may support a disciplinary action against such a person if the violation is discovered during the term of that employee's appointment.

In my further opinion, §7-10 contains several components relevant to your question, each with its particular legal effect. This section reads in its entirety as follows:

No official of the town of Winthrop, except in the case of an emergency involving the health and safety of the people or their property, shall intentionally expend in any fiscal year any sum in excess of the appropriations duly made in accordance with law, nor involve the town in any contract for the future payment of money in excess of such appropriations. It is the intention of this section that the provisions of section thirty-one of chapter forty-four of the General Laws shall be strictly enforced. Any official who violates the provisions of this section shall be personally liable to the town for any amounts so expended to the extent the town does not recover such amounts from the person to whom such sums were paid.
[emphasis added]

Similar provisions appear in the charters for a number of other municipalities which, like Winthrop, have a city Council form of government, as well as in a number of towns which have similar provisions by charter or special act. These include, among others, the cities and towns of Braintree, Lawrence, Mashpee, Melrose, Southbridge and Weymouth.

Boston • Worcester • Northampton • Lenox

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The first sentence of §7-10 is a restatement of the prohibition contained in G. L. c. 44, §31, which is that municipal funds may not be expended without the necessary appropriation. Specifically, §31 states that, "No department financed by municipal revenue, or in whole or in part by taxation, of any city or town, except Boston, shall incur a liability in excess of the appropriation made for the use of such department, except in cases of major disaster. . . ." Section 7-10 of the Charter adds the requirement of an "intentional" act, and so is somewhat limited in comparison to the statute's use of the phrase "incur a liability" to describe the act that is prohibited. Because of the Charter's use of the concept of intentionality, it is my opinion that discipline of an employee for violation of this section requires proof that the employee understood the prohibition of the Charter, or with the reasonable exercise of care, should have known of its prohibition.

The second sentence of the Charter provision incorporates the prohibitions of G. L. c. 44, §31; however, this statute does not contain the requirement that an appropriation be in place prior to authorization of an expenditure of town funds. A copy of this statute is attached for your reference.

The final sentence of §7-10 of the Charter states that the Town may recover any expenditures made in violation of its prohibition from the appropriate municipal "official," "to the extent the town does not recover such amounts from the person to whom such sums were paid." This indicates that the Town is expected to attempt to recover funds erroneously paid from the party that received the funds, and, failing that, the Town has the right to sue under civil law to recover funds spent without authorization, if such an event has occurred.

The Charter's right of recovery serves as a supplement to the criminal penalties imposed by G.L. c. 44, §62, which provides that:

Any city, town or district officer who knowingly violates, or authorizes or directs any official or employee to violate any provision of the chapter, or any other provision of general law relating to the incurring of liability or expenditure of public funds on account of any city, town or district. . . shall, except as otherwise provided, be punished by a fine of not more than one thousand dollars or by imprisonment for more than one year, or both; and the mayor, selectmen, prudential committee or commissioner shall, and five taxpayers may, report such violation to the district attorney who shall investigate and prosecute the same.

It is important to bear in mind that the law developed by the courts of the Commonwealth of Massachusetts has consistently held that municipalities are not liable to pay any party, even for valuable work provided, unless all the legal requirements for a valid contract with a municipality have been accomplished. This principle immunizes cities and towns from suits and claims for payment where, for example, the proper municipal official has not authorized a contract, or where the necessary appropriation to support a contract was not in place prior to the execution of the contract. See, e.g., Thomas O'Connor & Co., Inc. v. City of Medford, 16 Mass. App. Ct. 10, 12

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(1983) and cases cited therein, holding that any contractor with a municipality is bound by the limitations of the law concerning valid municipal contracts, and is obligated to make sure that any contract meets such requirements.

This settled principle of law has been applied to deny recovery to engineers, attorneys and others who have provided service to a municipality, but who have failed to inquire and to verify prior to providing the service, that the necessary formalities of authorization and funding have been put in place. For example, in the decision in Jenney v. Town of Mattapoisett, 335 Mass. 673 (1957), the Supreme Judicial Court noted that, "Even an attorney engaged by a board or officer having authority so to do could not have acquired a right to payment in the absence of an appropriation made before the employment or the doing of the work." Citing G.L. c. 44, §31, the Court also noted that the fact that there was benefit to the town resulting from the attorney's services was "immaterial."

Courts "have noted that the purpose and policy of G.L. c. 44, §31, is "to set rigid barriers against expenditures in excess of appropriations." City of Marlborough v. Cybulski, Ohnemus & Associates, Inc. 370 Mass. 157, 160 (1976) and numerous cases cited therein. The purpose of these statutory limitations is primarily to protect municipalities from unauthorized expenditure of funds, rather than to provide a means for recovery of funds improperly expended.

For that reason, the most common result where there has been a purported retention of counsel or other professional to provide services, is that a professional or other contractor submits a bill to the Town for services, and payment is denied due to the absence of an appropriation for the supposed contract. In such a case, since no funds have been expended, there is nothing to recover from either the private party or from a Town official.

The Legislature has recognized that there may be situations where there is merit in the payment of certain bills, despite the fact that there was no available appropriation at the time the bill was "incurred." The procedure for a municipality to exercise discretion to authorize full or partial payment for such bills is set out in G. L. c. 44, §64, a copy of which is attached to this letter. You will note that, according to this statute, in a town, the town meeting may vote to fund payment of a "bill of a previous fiscal year," so-called, while in cities, it is necessary for the city to have first accepted G. L. c. 44, §64. I have inquired of the Town Clerk as to whether there is any record of the acceptance of this statute in Winthrop, and, as of the time of the writing of this letter, no such acceptance has been located. This is not surprising, given the recency of the change from town to city form of government, and, as noted, where before that change, town meeting had the inherent authority to authorize payment of bills where no appropriation had been made at the time the bill was "incurred."

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In any particular case, therefore in order to establish whether there has been a violation of the Charter or of the related statutes referenced above, the first inquiry is whether there has been authorization of the contract by a municipal officer or board with the power to contract on behalf of the city or town. The second inquiry is whether there was, at the time of the contract, an appropriation available to fund the cost of the services.

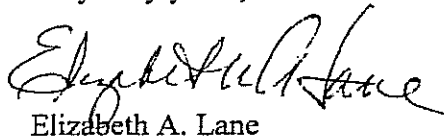
At present, the Charter provides at Section 4-2(p) that, "The town manager shall have authority . . . to employ special counsel whenever in the judgment of the town manager, after consultation with the town's attorney, such employment is deemed to be advisable." In contrast, prior to the January 1, 2006 effective date of the Charter, the Bylaws then in effect provided in Article V for the appointment of "town counsel" by the Board of Selectmen, with compensation to be set by town meeting. The appointment of special counsel in addition to town counsel was provided for in § 5-34, which stated that "The Town Counsel shall act as the legal adviser and solicitor of the Town, except in cases in which the Town may authorize or require him to secure the advice or services of additional counsel. [emphasis added]

The meaning of the emphasized text is, in my opinion, that prior to the effective date of the Charter, town counsel had no inherent authority to appoint special counsel, and the Town, acting through its Board of Selectmen, was the appointing authority for all counsel.

In summary, it is my opinion that, absent both the authorization to engage counsel or to enter into another form or contractual relationship with the Town, and the availability of an appropriation of funds to pay for such a contract, the Town will have no liability to pay for services rendered at the request of a Town official, even those of value to the Town. In the appropriate circumstances, as determined by the Council, if funds have been improperly paid to any party, the Town may have the additional remedies of taking disciplinary against an official who has violated the Charter, if the person is still in office. If funds have been paid in error and in violation of §7-10 of the Charter, the Town has the right to bring suit to recover any such funds from the employee, after attempting to recover the fund from the party who received them.

If you have additional questions, please do not hesitate to contact me.

Very truly yours,


Elizabeth A. Lane

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G.L. c. 44, §64. Payment of bills incurred in excess of appropriations

'Any town or city having unpaid bills of previous fiscal years which may be legally unenforceable due to the insufficiency of an appropriation in the year in which such bills were incurred may, in the case of a town, at an annual meeting by a four fifths vote, or at a special meeting by a nine tenths vote, of the voters present and voting at a meeting duly called, and, in the case of a city which accepts this section, by a two thirds vote of the city council, appropriate money to pay such bills; but no bill or payroll shall be approved for payment or paid from an appropriation voted under authority of this section unless and until certificates have been signed and filed with the selectmen or the city auditor, as the case may be, as hereinafter provided, stating under the penalties of perjury that the goods, materials or services for which bills have been submitted were ordered by an official or employee of the town or city and that such goods and materials were delivered and actually received by the town or city or that such services were rendered to or for the town or city, as the case may be.

Every such certificate that goods, materials or services were so ordered shall be signed and filed by the official or employee of the town or city who ordered the same or, if he has ceased to be an official or employee of the town or city, by any official or employee of the town or city; every such certificate of delivery to the town or city of goods or materials shall be signed and filed by the vendor thereof or, if such vendor is a corporation, shall be signed and filed by the treasurer thereof; every such certificate that goods or materials were received by the town or city shall be signed and filed by an official or employee of the town or city; and every such certificate of services rendered to or for a town or city shall be signed and filed by the person who rendered such services.

This section shall not prohibit or prevent appropriations by a majority vote for bills or obligations of previous fiscal years due to any other town or to a district, a city, a county or the commonwealth, or for legally incurred debt and interest the payment of which is provided for by any general or special law.

This section shall apply to districts.

ARTICLE V, Town Counsel

§ 5-31. Appointment; term of office.

The Board of Selectmen shall annually, in the month of March, appoint a Town Counsel who shall be an attorney and counselor at law and a resident of the Town. He shall hold office for the term of one year from the first day of April following and until his successor is appointed and qualified.

§ 5-32. Removal from office.

The Board of Selectmen shall have the power to remove the Town Counsel at any time if in its judgment the interests of the Town so require; and in case of a vacancy in the office, the Board of Selectmen shall fill the same by a new appointment.

§ 5-33. Compensation.

The Town Counsel shall receive such compensation for his services as the Town at the Annual Town Meeting may by its vote determine. Whenever his attendance may be required out of the county, he shall be allowed, in addition to such compensation, his traveling and other necessary expenses.

§ 5-34. Powers and duties generally.

The Town Counsel shall act as the legal adviser and solicitor of the Town, except in cases in which the Town may authorize or require him to secure the advice or services of additional counsel.

§ 5-35. Drafting of legal instruments.

It shall be the duty of the Town Counsel to examine or cause to be examined all titles to property in which the Town may acquire an interest, to draft all deeds, obligations, contracts, bonds, leases, conveyances, agreements and other legal instruments, of whatever nature, which may be required by any bylaw, vote or action of the Town, or any board or officer to which the Town or its agents may be a party, and which by law, usage or agreement the Town is to be at the expense of drawing. All votes for the laying out, discontinuance, change or improvement of streets or ways, for the taking of lands for any municipal purpose whatever, for the assessment of betterments and all other forms of assessment shall be drawn by him or under his direction and approval.

§ 5-36. Actions pertaining to Town; advisement of Town officers.

- A. It shall be the duty of the Town Counsel to commence and prosecute all actions and other legal proceedings and suits begun by the Town, or by any official or board of the Town, and to defend all actions and suits brought against the Town in any court or other tribunal in the commonwealth or elsewhere; and also to appear as counsel in any other action, suit or prosecution which may involve the rights and interests of the Town and to defend any of the officers of the Town in suits or prosecutions against them for any official action or the

Mr. James McKenna
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performance of any official duty when any right, privilege, act or direction of the Town may be brought into question. He shall also appear as counsel before the legislature of the commonwealth, or any committee thereof, whenever the Board of Selectmen determines that the interest or welfare of the Town may be directly or incidentally concerned, or when requested so to do by a vote of the Town. He shall, when requested, furnish to the Board of Selectmen and any committee of the Town, or any board or officer thereof, who may need the same in discharge of official duty, his legal opinion upon any subject respecting the duties of their respective offices.

- B. No Town officer or board shall, unless authorized by a vote of the Town, employ, advise with or consult any attorney or counselor at law other than the Town Counsel, with regard to any Town business or the business of any of the departments or the duties of any such officer or boards whenever any charge therefor is to be made to the Town or is to be paid out of the funds of the Town or out of any department thereof.

§ 5-37. Annual report.

The Town Counsel shall make an annual report of the work done by his department during the year preceding and the conditions of all the business of the same at the close of such year.



May 18, 2010

Dear esteemed members of the Town Council,

The Winthrop Chamber of Commerce does not believe a fee increase for permits and licenses is in the best interest of the town or the business community at this time.

We do sympathize with the Town's fiscal situation caused by the recession. But we mustn't forget that businesses have been hurt just as much, if not more so by the economic downturn. However, due to the conditions, businesses aren't in the position where they can simply pass on more costs to their customers.

We hear all the time about the already high cost of doing business in Winthrop. Before one even opens their door, the expense of meeting all the codes and requirements and the costs of inspections and permits can add up quickly ... it can be overwhelming and discouraging. If anything, we should do what we can to ease the burden on businesses.

Please take into consideration all that businesses contribute and not just the town revenue that can be derived from them.

First & foremost: jobs. Right now, Winthrop has a high unemployment rate. As we all know, most jobs are created by small businesses. So let's do what we can to help businesses that are already struggling to make payroll put their money toward hiring. It's easy to assign the responsibility of job creation to the President or Governor, but we can't overlook the role local government has.

Businesses are also asked constantly for donations to community groups such as youth sports, religious organizations, non-profits, the schools, and so much more, even including town activities like the fireworks and rebuilding Miller Field. If you really look at it, it's astonishing how much businesses give toward fundraising in Winthrop.

We need to also appreciate how businesses add to our quality of life and the considerable advantages of being in a town with a thriving business community. Just think how you would feel if your favorite restaurant or salon or store closed. Well, the more costs that get piled on businesses the closer we get to the tipping point.

President
Paul Leavy

Vice President
Brian Perrin

Treasurer
Ernest Hardy, Jr.

Clerk
Christine Millerick

Executive Board
Joseph Clark, P.P.
Cindy Levins
Belle Liberman
Laura Lopez
Trudy Macero, P.P.
Bernice MacIntyre
James Marr, P.P.
Paul McGee
Elizabeth Polino
Stephen Quigley
Russ Sanford, P.P.
Dee Todisco
Niki Vettel
Marc Wallerice

Executive Director
Eric Gaynor

WINTHROP CHAMBER OF COMMERCE

207 Hagman Road
Winthrop, MA 02152
www.winthropchamber.com

Phone: 617-846-9898
Fax: 617-846-9922
info@winthropchamber.com

ROSELLI, CLARK & ASSOCIATES

CERTIFIED PUBLIC ACCOUNTANTS
MANAGEMENT CONSULTANTS

TRANSMITTAL LETTER

The Honorable Members of the Town Council
Town of Winthrop
Winthrop, Massachusetts

In planning and performing our audit of the financial statements of the governmental activities, each major fund, and the aggregate remaining fund information of the Town of Winthrop, Massachusetts, (the "Town") as of and for the year ended June 30, 2009, in accordance with auditing standards generally accepted in the United States of America, we considered the Town's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Town's internal control. Accordingly, we do not express an opinion on the effectiveness of the Town's internal control.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal controls.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control.

Our consideration of internal control was for the limited purpose described in the first paragraph would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control that we consider to be material weaknesses, as defined above.

This communication is intended solely for the information and use of management, the Board of Selectmen, and others within the organization, and is not intended to be and should not be used by anyone other than these specified parties.

Roselli Clark & Associates

Roselli, Clark & Associates
Certified Public Accountants
Woburn, Massachusetts
September 23, 2009

I. OVERVIEW

The period from July 1, 2008 through June 30, 2009 can be characterized as one of the most difficult 12 month periods since the depression. A banking crisis that froze the credit markets brought the economy to a complete standstill. This significant downturn in the economy caused the State to unexpectedly reduce State Aid in the third quarter of 2009, which served to compound the financial burden that we highlighted in our report to Management dated January 16, 2009.

More specifically, in the prior year, revenue deficits approximating \$1,000,000 contributed to the Town experiencing negative free cash exceeding \$400,000 and resulted in the Town being placed on the State "watch list". The Town however, responded well to these challenges and in fiscal year 2009 showed the ability to strategically lower appropriations in ways that preserved local service levels while at the same time eliminating its negative free cash position.

While reserves are still well below desired levels, the results were an important step in a positive direction. In addition, management was able to convince its taxpayers to pass a proposition 2 ½ override for fiscal year 2010. This has provided fiscal year 2010 with an additional \$2.5 million in tax revenue to offset its budget and preserve important critical services.

We are pleased with management's diligence in this area and urge management to continue to apply the same level of effort in future periods.

On another important note, during fiscal 2009, the Town was able to correct important internal control deficiencies that were reported in our prior year letter:

- Bank reconciliations were performed accurately and timely.
- Cash reconciliations between the Treasurer and Accountant were performed accurately and timely.
- Accounts receivable reconciliations between the Collector and Accountant were performed accurately and timely.
- Grant reconciliations between the School Department and Accountant were performed accurately and timely.
- All deficits were properly raised on the tax recap.

As a result, the Town was able to meet its State mandate of completing and issuing its audit of the financial statements prior to September 30, 2009.

II. INFORMATIONAL ITEMS

STATEMENT ON AUDITING STANDARDS #112

The American Institute of Certified Public Accountants ("AICPA") recently issued Statement on Auditing Standards No. 112, *Communicating Internal Control Related Matters Identified in an Audit* ("SAS 112"). SAS 112 establishes new standards and provides guidance on communicating matters related to an entity's internal control over financial reporting identified in an audit of financial statements. In particular, SAS 112 provides guidance on evaluating the severity of deficiencies in internal control identified in an audit of financial statements in the following order:

1. Deficiency in internal control
2. Significant deficiency
3. Material weakness

Deficiencies identified as *significant deficiencies* or *material weaknesses* are required to be communicated to those charged with governance. *Deficiencies in internal control* are not required to be communicated; however, we have chosen to also report that type of deficiency in this report.

There were **no** items identified as *material weaknesses* or *significant deficiencies* in the current year audit.

OTHER POST EMPLOYMENT BENEFITS

In June 2004, the Governmental Accounting Standards Board ("GASB") issued GASB No. 45, *Accounting and Financial Reporting by Employers for Post employment Benefit Plans Other Than Pension Plans* ("GASB 45"). GASB 45 establishes standards for the measurement, recognition and display of "other post-employment benefits" expenses / expenditures and related liabilities and/or assets, note disclosures and, if applicable, required supplementary information in the Town's financial reports. Other post-employment benefits typically include health and welfare plans and other similar benefits provided to Town retirees exclusive of pension benefits.

Based on the size of Town's annual revenues, GASB 45 became effective for the Town during the fiscal year ended June 30, 2009. The Town was able to implement GASB 45 with success and should be commended for doing so. The Town's latest actuarial report becomes stale in fiscal year 2011 and would to next be updated for its audit reporting as of June 30, 2012.

The issuance of GASB 45 is a financial reporting requirement. However, its issuance reminds towns like Winthrop that it has future obligations that may materially affect the Town. We suggest the Town form a committee that would be charged with exploring funding options for the actuarial-determined unfunded liability. The Town does not currently have a funding strategy for other post-employment benefits, and as a result the Town is

among the majority of communities in the United States that cannot define a viable funding strategy for this future liability.

The absence of a funding strategy for other post-employment benefits may materially and adversely affect the Town's future operations as it may not have appropriate funds set aside for its retiring workforce's other post-employment benefits. We encourage the formation of such a committee to explore future funding strategies.

FORMAL FRAUD POLICY

In these trying economic times, it is reasonable to expect that the frequency of fraud and theft by employees, customers and vendors may increase. The Town should be well aware of this increased risk and take additional measures to better safeguard the Town's cash and other assets. Fraud can include theft, the misappropriation of assets such as cash or easily marketable equipment like computers, the execution of transactions with related parties that are not disclosed and not completed "at arm's length," or the modification or fabrication of financial records to protect job security. The Town must increase its focus and awareness of fraud risks throughout all areas of local government. Suspicious or unusual activity, particularly in cash handling areas, should be promptly investigated.

No single set of controls or combination of controls can provide absolute assurance to the Town that a theft or incident of fraud will be prevented or detected in a timely manner. However, the Town has a fiduciary responsibility to its citizens and taxpayers to implement controls to provide the Town better assurance to prevent, timely detect and insure itself against theft and/or fraud. In order to address this issue, many communities have, or are in the process of implementing written fraud risk policies. Such a policy would direct the Town to perform a risk assessment that would allow the Town to identify, analyze and manage the risk of fraud.

The Town should be aware that our audit procedures are designed to provide reasonable assurance that the financial statements are fairly presented and free of material misstatement. Our audit includes considerations for fraud; however, no assurances can be given that we would detect fraud through our audit. Our audit cannot be relied upon to detect fraud or illegal acts that may exist.

NEW STATE ETHICS REGULATIONS

On July 1, 2009, the Governor signed into law Chapter 28 of the Acts of 2009, *An Act to Improve the Laws Related to Campaign Finance, Ethics and Lobbying*. This new law changed the State's conflicts of interest law, which became effective on September 29, 2009. Among other things, this law requires Massachusetts' city and town clerks to provide newly hired employees with a summary of this new law within thirty days of their hire. The Town will also be required to designate a senior level employee to serve as its liaison to the Massachusetts State Ethics Commission on or before January 27, 2010. In addition, all individuals who are considered a State, county or municipal employee must comply with new training requirements.

All Town employees (as defined by the law; see below) will be required to complete online training every two years. For new employees, such training must be completed within thirty days of hiring. For current Town employees, online training must be completed by April 2, 2010.

The definition of an employee is very broad in this law. A State, county or municipal employee includes full-time, part-time and intermittent employees; appointed officials, whether paid or unpaid; and volunteers. In addition, consultants who have a contract with the State, county or municipal agency may be considered public employees for the purposes of this law.

2001 CMR 17/RED FLAG RULE

On March 1, 2010, most businesses that store information about a Massachusetts resident are required to comply with Commonwealth Regulation 2001 CMR 17.00 issued through the Massachusetts Office of Consumer Affairs and Business Regulations. While local government entities are exempt from complying with this CMR, a Federal regulation "the Red Flag Rule" will apply to municipalities effective June 1, 2010.

Under these regulations, entities are to take steps to secure electronic data when their records contain files that pair a Massachusetts resident's name with any of the following forms of data:

- Social Security Number
 - Driver's License or Resident ID
 - Financial account, credit or debit account with or without security code or personal identification code
 - Personal information that is publicly available is exempt
- Forms of compliance to be implemented include:
- Having a Written Information Security Plan (WISP) that all employees must sign.
 - Amend employment contracts so as to comply with that plan.
 - A response plan should be in place specifying how a breach in the electronic systems will be handled.
 - Only specific, authorized employees should even have access to personal information.
 - Data users who do have access to such data should be forced to change access passwords on a regular basis.
 - Users who make too many unsuccessful attempts to access personal data should be locked out.
 - Firewall and anti-virus systems should be installed and current.
 - All wireless data traveling over public networks should be encrypted.
 - All personal information sent through e-mails should be encrypted.
 - Any piece of electronic equipment that stores personal data should be encrypted.

We find in many communities that software programs which come with pre-designed reports generated by the vendor include information pairs as described above. Some payroll

processing systems still use Social Security Numbers as the primary key for identifying an employee. In many instances, Town personnel aren't even aware of such private information being "out in the open" because they don't utilize it for the jobs they are performing; accordingly, it serves as no benefit to the process but jeopardizes the information. At the very least, the Town should review its common processing reports and determine if such information can either be removed from the reports or encrypted in some fashion.

If the Town were to inadvertently cause personal data to be released to the public, they would not incur any penalties under the CMR, but the affected individual may still have other legal recourse against the Town for losses or damages suffered. Identity theft is one of the fastest growing forms of fraud in the world; the Town should consider what impact its processes and systems have relative to preventing and hindering such fraud, or possibly identify that how it conducts business may in fact be inviting to persons looking to commit identity fraud using Town systems.

III. FINDINGS AND RECOMMENDATIONS

FORMAL POLICIES AND PROCEDURES

While the Town presently follows policies and procedures informally, the Town should endeavor customize a manual to create a formal set of guidelines for departments to reference and follow. Since the Town is in the process of a system conversion, the timing is currently ideal to tailor policies and procedures to match the system's capabilities in the following areas:

1. Departmental cash receipts:
 - a) Who may collect cash at the departmental level?
 - b) How is cash controlled at the departmental level?
 - c) Where should cash be maintained prior to its turnover?
 - d) How much cash may be maintained prior to turn over?
 - e) How often should cash be turned over?
 - f) How are fees determined?
 - g) What insurance requirements should be in effect for individuals who handle cash at the departmental level?
 - h) What is the requirement to reconcile receipts periodically with the Town Treasurer?
 - i) What is the requirement to reconcile receipts with the Town Accountant?
2. Human resources:
 - a) Personnel policies such as hiring and terminating employees.
 - b) Background checks (CORI requirements are not performed in all required instances)
 - c) Lines of responsibility and delegation and to whom each employee reports.
 - d) General harassment policies; including sexual harassment policies.
 - e) Minimal expectation levels for employees.
 - f) Vacation and sick policies.
 - g) Fringe benefit qualifications.
 - h) Authorization policies.
 - i) Truancy policies.
 - j) Timesheet policies.
3. Purchasing:
 - a) Communication to all departments the requirements under Massachusetts General Law ("MGL") Chapter 30B:
 - Three verbal or written quotes on purchases under \$10,000.
 - Three written quotes on purchases between \$10,001 through \$25,000.
 - Formal bid process on purchases greater than \$25,000.
 - What items are exempt?
 - b) Establishment of a purchase order system to control expenditures from its initiation to its final disposition (i.e., payment).
 - c) Centralized the purchasing function.
 - d) Establishment of a matching process whereby purchase order, invoice and receiving document or equivalent are matched prior to authorization to disburse funds.

The Massachusetts Department of Revenue ("MA DOR") has numerous manuals dedicated to the processing of transactions by municipal departments. In addition, in 1992, the Committee of Sponsoring Organizations of the Treadway Committee ("COSO") documented what is widely interpreted as the authoritative guidance regarding internal controls over financial reporting in the United States. We recommend that the Town review the COSO internal control framework and MA DOR manuals and develop a comprehensive set of policies and procedures to effectively safeguard the Town's assets and better assure that the Town's financial and operating objectives are met.

ENTERPRISE FUNDS

The Town has legally adopted five Enterprise Funds: Water, Sewer, Rink, Recreation and Harbor. During fiscal years 2008 and 2009, the Town did not account for the Harbor Fund as an enterprise activity in its general ledger, but does attempt to convert a portion of the activity in its submission to the Department of Revenue. We understand that effective with the new system conversion, the Town will record all harbor activity as an Enterprise Fund.

The Recreation Enterprise Fund has operated at a deficit for 2 consecutive years. The Town should evaluate the fee structure in relation to the cost of operations and make necessary adjustments to avoid this occurrence in future years.

The Town transferred over \$200,000 in indirect costs from the various enterprise funds to the General Fund. While the amount, which represents less than 5% of total expenditures of all Enterprise Funds appears reasonable, the Town should formally document costs used in the allocation and a methodology in the ratios used.

ASSESSOR WARRANTS

Prior to the Collector being legally allowed to collect taxes for the Town, he/she must be in possession of an Assessor's Warrant directing them to perform this function. Neither the Assessor's Office nor the Collector's Office was able to provide us with all such relevant document for the year.

The Assessor and Collector should ensure that this document is created and maintained in an easily accessible location.

DEPOSITS

When taxpayers pay motor vehicle excise and parking stickers with the same check, the two collections are allocated differently, so the Town writes a check to itself to reallocate the money. They wait until they have written a significant amount of checks before depositing the money. This policy should be abolished immediately as it is inefficient and risky.

COMPUTER CONVERSION

With the Town being in the process of preparing for the installation of new electronic, financial system software, we believe it is an ideal time for the Town to consider the benefits of the following potential changes to its processing procedures before installing its new system so that they might integrate them into the initial system setup:

- 1) Presently, Town departments are having to process invoices into batches only to have to submit them to the Town Accountant's Office for additional and potentially redundant processing. We believe efficiency in reporting could be achieved within the Town's operations if the departments who were receiving, coding, and approving invoices entered them directly into the financial system. Furthermore, this would then result in the Town Accountant's Office performing an independent review function of the payments to vendors, which should enhance financial reporting accuracy.
- 2) We believe that a fundamental step in converting an accounting system should include a detailed review of the chart of accounts. Both the MA Department of Revenue (DOR) and the MA Department of Elementary and Secondary Education (DESE) have formulated and published very detailed chart of account formats which are expected to be fully and accurately implemented by communities. Our experience has shown that those communities who embrace these formats are provided a level of efficiency and accuracy in their year-end reporting on both the DOR's Schedule A and the DESE's End-of-Year Financial Report. While the present chart of accounts is relatively effective, our experience has resulted in a belief that some changes to the chart of accounts should ideally be implemented in order to eliminate redundancy and match regulatory reporting. In particular, both the Town and School should verify that function, state object, program, and location categories are properly established in-line with regulatory guidelines.
- 3) In a prior year, our work with the School Department and Town Accountant's Office resulted in a change in the chart of accounts relative to the segregation of annual grant funds. This change appears to have provided positive results to users in both areas given the feedback we have received. In furtherance of this process, we would suggest that the Special Revenue grant account funds be established on the new system with expenditure accounts that match to the standard grant budget categories regulated by the MA DESE. By allowing the financial system to match the DESE reporting categories, the School Department would benefit by being able to input their DESE approved budget into the financial system and track the status of remaining grant funds at any moment; additionally, year-end grant reporting would be made easier as the general ledger reports would match directly to the information that is required to be compiled and submitted to the DESE.

FINANCE DIRECTOR'S OFFICE (repeated from prior year)

The Finance Director's Office consists of three individuals; one is a full time qualified professional who serves as Finance Director and Town Accountant. Another serves as full – time Assistant Town Accountant and another acts as a part – time clerk. We have noted in the prior two years that this is not organized in an effective way to handle the volume of requirements demanded of this office. The Finance Director is in effect an extension of the

Town Manager's Office and acts as the Town Manager's right hand person. This involves the management of major projects such as the Town's conversion to GIC, for health insurance, the Town's annual operating budget, all borrowing activity, preparation of the tax recap, oversight of all the financial departments, the Town's representative to the HOME program located in Malden and the major overseer of all the Town's capital grants and legal compliance of the Town's contracts. It leaves very little time to perform the normal duties of the Town Accountant such as reconciling cash and receivable balances, reviewing invoices and warrants, posting activity to the general ledger etc. We noted in the prior three years, that the Town should evaluate the need to hire a qualified Town Accountant who would work under the Finance Director's supervision.

While the Town was able to close its books in an accurate and timely manner, it took an optimum amount of effort to accomplish this. Any "hiccup" along the way could have curtailed this effort. The Town can ill afford this in the future; therefore, we still recommend that the Town evaluate this need.

SCHOOL DISBURSEMENT PROCESS (repeated from prior year)

If the Town were to act on the prior recommendation it would provide more resources to apply more control in certain areas such as the school disbursement process that was identified as a weakness in the prior year letter as follows:

- 1) Invoices are input directly into the MUNIS system at the School Business Office.
- 2) The School Department effectively processes its vendor invoice batches as stand-alone vendor warrants; however, their only authorizing signatures are those of the School Committee.
- 3) Once the warrant is signed, the School Business Office directly initiates the off-site printing of vendor checks within MUNIS which physically occurs within the Town Accountant's Office (the only involvement by the Town Accountant's Office is to put vendor check stock in the printer which is signed out from the Treasurer's Office). The vendor checks print as live checks with the Treasurer's signature printed on the checks as they are generated.
- 4) The vendor checks are left in the Town Accountant's Office for the Treasurer's Office clerk to pick up.
- 5) The School accounts payable clerk goes to Town Hall and drops off the invoices and the School Committee signed school warrant which effectively serves as the School Department's approval to pay the invoices accompanying the school warrant. This warrant and batch of invoices is thereafter filed in the Town Accountant's Office with no formal process in place to review the vendor transactions being processed. At the same time, the school clerk picks up the printed checks from the Treasurer's Office.
- 6) The School accounts payable clerk returns to their office and subsequently proceeds to distribute and mail the checks to vendors.
- 7) At a later date, potentially up to nearly two weeks, the school warrant amount is placed on a Town vendor warrant and is at that time signed by the Town Accountant and Town Manager.

Concerns:

- i) School Committee signatures on the school warrant effectively serve only as authorization and approval of the invoices for payment by the Town, in concept a schedule of departmental bills payable.
- ii) The actual printing of live checks is initiated by the School Business Office. Strong internal controls would suggest that the creation of such a significant instrument of payment be relegated to as small a group as possible.
- iii) A signed school warrant and applicable invoices are not received by the Town Accountant's Office until after live vendor checks are generated.
- iv) It does not appear that a consistent and regular review of the school warrant, invoices, or check register is performed by the Town Accountant's Office prior to release of the vendor checks for payment to vendors.
- v) The existing internal control procedure to have the Town Accountant and or Town Manager sign off on the school warrant is not being followed consistently. This has resulted in school payments being distributed to vendors, and in some cases likely clearing the bank, before either the Town Accountant or Town Manager sign off on the Town's vendor warrant (which includes the school warrant). Such approval is a MGL requirement. The Town's policy needs to be followed at all times.
- vi) As currently constituted, the physical handling, processing, and distribution of vendor checks relative to the School Department appears to reside rather strongly with just one employee of the School Business Office. While authorizing signatures of school officials are obtained for approval purposes and review of invoices by other school officials exists, such controls only have limited impact relative to the actual processing and handling of payments. Accordingly, a change in processing and handling should be considered which would enhance the segregation of duties concept relative to phases of the processing.

MOTOR VEHICLE EXCISE (repeated from prior year)

There are significant Motor Vehicle Excise bills pertaining to prior years that relate to two car leasing companies. One of these companies has filed Chapter 11 and one does not reside in Town; therefore, enforcement of these collections is highly unlikely. The Town has aggressively sought collection of these overdue accounts, but registration tagging and licensing restrictions would not apply since these are leasing companies. The Town is currently evaluating whether to consult with a collection agent regarding these balances; however, if further efforts prove unsuccessful, the Town should consider the abatement route to eliminate these balances. These amounts presently exceed \$500,000; and it is not clear if these amounts would need to be raised on the tax recapitulation if abated.

SCHOOL LUNCH OPERATIONS (repeated from prior year)

School Lunch Revolving Fund consistently runs a deficit each year; for the last couple of years, the School Department has had to cover over \$100,000 each year utilizing funds from its General Fund appropriation budget. The Town and School should consider the cause of the annual difference between revenue and expenditures and make whatever changes necessary to fix the deficit inducing operational procedures.