

# Special Town Meeting

October 15, 2012

At a legal meeting of the inhabitants of the Town of Westford, qualified by law to vote in Town affairs, held at the Abbot School on Monday, October 15, 2012, called to commence at 7:30 pm, the following business was transacted:

Election officers, using voting lists, acted as tellers at the doors.

Ellen Harde, Town Moderator, called the meeting to order at 7:33 pm with at least 200 voters present at the meeting. A total of 373 voters attended Town Meeting.

It was voted unanimously to allow employees and consultants to sit with their respective boards on the floor of Town Meeting.

It was voted unanimously to waive the reading of the motions and accept as the official motions the goldenrod colored document filed with the Town Clerk.

## **ARTICLE 1: Fiscal Year 2013 Budget Adjustments**

It was voted that the Town raise and appropriate the sum of \$116,908 (ONE HUNDRED SIXTEEN THOUSAND NINE HUNDRED EIGHT DOLLARS) in order to supplement the following Fiscal Year 2013 Operating Budgets:

122 Engineering Services for Parker Village Fire Station	\$36,000
135 Other Post Employment Benefits (OPEB) Study	\$ 6,400
210 Police Personal Services	\$57,500
945 MEGA Worker's Compensation Assessment	\$17,008

and further;

It was voted unanimously that the Town transfer the sum of \$38,100 (THIRTY EIGHT THOUSAND ONE HUNDRED DOLLARS) from Ambulance Enterprise Free Cash in order to supplement the following Fiscal Year 2013 Operating Budgets:

640 Ambulance Enterprise, Overtime	\$ 5,000
640 Ambulance Enterprise, Medical Supplies	\$20,000
640 Ambulance Enterprise, Equipment (CPR Machine)	\$13,100

Town Manager Jodi Ross reported to Town Meeting on the state of the Ambulance Enterprise fund since its inception in FY2002. The presentation is on file at the Town Clerk's Office.

## **ARTICLE 2: Fiscal Year 2013 Budget Transfers**

It was voted that the Town transfer the sum of \$20,000 (TWENTY THOUSAND DOLLARS) between the following Fiscal Year 2013 accounts:

From: Dept. 300 Westford Public Schools  
to: Dept. 210 Police, Personal Services

It was voted unanimously under one motion to dismiss Articles 3, 5 and 7.

**ARTICLE 3: Unpaid Bills Prior Fiscal Years**

It was voted unanimously to dismiss Article 3.

**ARTICLE 4: Perchlorate Stabilization Fund and Perchlorate Expenses**

It was voted unanimously that the Town transfer the sum of \$375,000 (THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS) from free cash to the Perchlorate Stabilization Fund for the specific purpose of providing funds for future perchlorate contamination remediation and any other related costs;

and further;

That the Town appropriate the sum of \$100,000 (ONE HUNDRED THOUSAND DOLLARS) from the Perchlorate Stabilization Fund for the purpose of providing funds to address associated issues regarding perchlorate contamination or any other related costs.

**ARTICLE 5: Capital Requests**

It was voted unanimously to dismiss Article 5.

**ARTICLE 6: Reduce Amount Raised by Taxes in Fiscal Year 2013**

It was voted unanimously that the Town transfer the following available funds to reduce the net amount to be raised by taxes for Fiscal Year 2013:

\$44,132.03	From Fund Balance Designated for Debt Exclusion Reduction
\$1,851,115.73	From Free Cash

**ARTICLE 7: Accept Section 5 of Massachusetts General Laws Chapter 59 Related to Abatements to Members of National Guard**

It was voted unanimously to dismiss Article 5.

**ARTICLE 8: Authorization to Accept Settlements – Payment for Damage to Trees on Town Common**

It was voted unanimously that the Town approve a settlement claim of \$12,600 from Safety Insurance for trees damaged on Westford Common by an automobile on September 22, 2011; and further, that the Town authorize the Board of Selectmen, working with the Common Restoration Project and in accordance with the Common Restoration Plan approved by the Board in the spring of 1996, to expend the settlement funds to plant and care for trees, said authority being set forth in Chapter 33.2 of the General Bylaws of the Town.

**ARTICLE 9: Authorization to Enter Solar Net Metering Credit Sales Agreement Not to Exceed 30 Years**

It was voted unanimously that the Town authorize the Board of Selectmen to enter into a solar net metering credit sales agreement for a term not to exceed thirty years in accordance with the following general terms: the Town will select a qualified renewable energy developer pursuant to a Request for Proposals issued by the Town; the developer will construct a Photo Voltaic solar system on land that is owned or leased by the developer and located within the same National Grid utility territory as the

Town; no Town-owned land will be utilized; the electricity produced by the facility will be transferred to the National Grid power grid; the Town will be designated as the host customer in order to take advantage of the net metering provisions of the Massachusetts Green Communities Act and the implementing regulations; the Town will annually purchase from the developer up to 9.7 million kWh of electricity produced by the facility at a per kWh charge set forth in the agreement; the 9.7 million kWh is the total amount of electricity consumed by the Town at its municipal buildings and facilities annually; the Town will designate each of its municipal electricity meters on a schedule to be submitted to National Grid which will provide a credit on the Town's monthly electricity bill in the amount of the net metering credit established in tariffs issued by the Massachusetts Department of Public Utilities; because the net metering credit is anticipated to be significantly larger than the Town's purchase price for the electricity produced at the solar facility, the Town will realize a net savings on its electricity bill; and further the Board of Selectmen is hereby authorized to negotiate the solar net metering credit sales agreement on such terms and conditions determined to be in the best interests of the Town.

Prior to deliberation under Article 10, the Moderator disclosed that she is on the Board of Directors of the Westford Land Preservation Foundation that has been active in fund raising efforts toward the purchase of the conservation restriction.

It was voted unanimously to allow non-resident Susan Crane from the Sudbury Valley Trustees to address the meeting with regard to Article 10.

**ARTICLE 10: Community Preservation Committee Recommendation – Acquisition of a Conservation Restriction – O'Brien Farm**

It was voted that the Town, pursuant to Massachusetts General Laws Chapter 44B, in accordance with the recommendations of the Westford Community Preservation Committee, authorize the Board of Selectmen to acquire by purchase, gift, eminent domain or otherwise a conservation restriction meeting the requirement of General Laws Chapter 184 on a parcel of land known as the O'Brien Farm located at 18 Vose Road, Assessors' Map Number 18, Parcel Number 121, being a portion of approximately 23 acres of the O'Brien Farm, being a portion of the premises described in a deed recorded in the Middlesex Registry of Deeds in Book 23373, Page 60., to be under the care, custody, control, and management of the Westford Conservation Commission and the Sudbury Valley Trustees held for conservation purposes; and to transfer from the Community Preservation Undesignated Fund the sum of \$760,000 (SEVEN HUNDRED AND SIXTY THOUSAND DOLLARS) to fund such acquisition; and further to authorize the Board of Selectmen to take such other action as may be necessary to carry out the purpose of this motion.

**ARTICLE 11: Amend Chapter 33: Legal Affairs**

It was voted that the Town amend Section 33.2 of the Town's General Bylaws as follows (added words are shown in bold and underlined, deleted words are shown in strikethrough):

Chapter 33: Legal Affairs

§ 33.1. Actions against the Town.

The Selectmen shall, with the assistance of Town Counsel, institute, prosecute and defend any and all claims, actions and proceedings to which the Town is a party or in which the interests of the Town are or may be involved.

§ 33.2. Authority to settle certain claims.

The Selectmen may, subject to the approval of the Town, settle or compromise any claim, action, suit or other proceeding made or instituted by them in behalf of the Town. They may settle or compromise, without such approval, any such claim, action, suit or proceedings which does not involve more than ~~\$1,000~~ **\$100,000**. Subject to appropriation therefor, they may settle any claim, action, suit or other proceeding against the Town.

**ARTICLE 12: Amend Chapter 148: Streets and Sidewalks by Adding a New Section to Restrict Discharge of Water into Public Ways**

It was voted that the Town amend Chapter 148 of the General Bylaws by adding the following new section 148.6 and renumbering subsequent sections:

**Chapter 148.6 Discharging Water into Public Ways**

No water shall be intentionally discharged onto or into any public ways or sidewalks of the town so as to cause a dangerous and/or defective condition.

**ARTICLE 13: New Bylaw Authorizing Town to Make Temporary Repairs to Private Ways**

It was voted that the Town amend the General Bylaws by adding a new Chapter as recommended in the Unaccepted Roads Committee Report as follows:

**Chapter 149 Temporary Repairs to Private Ways**

§ 149.1 Purpose and applicability.

- A. Pursuant to Massachusetts General Laws Chapter 40, Section 6N, the Board of Selectmen is hereby is authorized to make temporary repairs to private ways, constructed prior to 1955, which have been open to the public for a period of at least six (6) years, out of funds appropriated for said purpose by Town Meeting. In all cases, the entire cost shall be assessed as betterment on those properties which benefit from the repairs. Repair does not mean new construction.
- B. The repairs shall be those required by public necessity, including but not limited to
  1. The necessity of providing adequately drained ways so as to reduce ecologically harmful runoff into the Town's brooks and ponds; and
  2. The necessity of providing adequate passable ways for public safety vehicles from public ways to residences, Town facilities and resources including access to Town conservation land.
- C. The Board of Selectmen shall make the determination of public necessity.

§149.2 Types of Repairs.

- A. The repairs must be temporary in nature, such as filling, grading, patching and surface coating, and may include such repairs to drainage swales, conduits and structures as are

necessary to preserve the integrity of surface repairs to the roadway, and shall not be such as to constitute a reconstruction of the roadway.

- B. The temporary repair shall have a minimum expected life equal to twenty (20) years.
- C. Temporary repairs may be undertaken on a way subject to this bylaw, or to a continuous portion of such way, which portion begins and ends at an intersection or conjunction with another way.

#### § 149.3 Petition.

A minimum of seventy five percent (75%) of the owners of property abutting the portion of the way proposed to be repaired must petition for the repair, with each ownership entity counting as one. The Board of Selectmen are authorized to waive this requirement.

#### § 149.4 Betterment charges.

- A. The owners of land abutting such way who derive benefit from said repairs shall be assessed betterment charges by the Board of Selectmen. Betterment charges, in an amount of one hundred (100%) of the aggregate cost to plan, prepare and repair the private way shall be assessed on a per lot basis or on the proportion of the lot frontage on the way or portion of the way to be repaired to the frontage of said repaired way or other proportional method as may be required by the Board of Selectmen.
- B. The Town may be considered an abutter if property under the care, custody and control of the Town abuts said way to be repaired.
- C. A cash deposit shall not be required.

#### §149.5 Status of way.

- A. This bylaw does not confer any obligation or duty on the Town or its agents to either initially place or to thereafter maintain and repair said private ways so that they are reasonably safe and convenient for travel by being free from defects or want of repair.
- B. The making of such temporary repairs to private ways, no matter how often or to what extent, does not constitute an acceptance by the Town of such private ways as public ways, nor does it constitute a way being "maintained and used as a public way" under the Massachusetts Subdivision Control Law.
- C. Any private way repaired under the provisions of this bylaw need not be brought up to full Town standards and may continue to remain a private way. Repaired private ways may be brought to Town Meeting for acceptance as a public way by completing the steps outlined in the Town's Street Acceptance procedure, if any, adopted by the Board of Selectmen which may be amended from time to time, or otherwise as allowed by law.

#### §149.6 Liability.

The Town, in making repairs under this section shall not be liable for any damages to persons or property caused by negligent repair or maintenance of the private way.

§ 149.7 Indemnity Agreement.

No repair of a private way shall be undertaken until the Board of Selectmen has in its possession agreements executed by at least eighty five percent (85%) of abutting owners on the portion of the way to be repaired holding the Town harmless from any additional damage arising from any negligent repair, and which includes the following provisions:

- A. that the Town assumes no liability to such owners by making the repairs;
- B. jointly and severally, to indemnify and hold harmless the Town with respect to such statutory liability and any and all other liability for claims of injury, death or property damage to such owners or third parties caused by alleged defects in the way, including attorneys' fees and other costs of defense;
- C. that should the Town decide not to continue to provide temporary repairs to such way, the owners will themselves keep such way in good repair so as to minimize the liability of the Town for having undertaken such repairs;
- D. that such repair shall not constitute "maintenance" of such way, so as to give the way the status of a way "maintained and used as a public way" under the Massachusetts Subdivision Control Law; and
- E. that if assessed for repairs, the owners will not appeal the amount of the assessment and agree that the assessment may be apportioned over the number of years of the expected lifetime of the repair to be determined by the Board of Selectmen.

§ 149.8 Continually Open to Public Use.

Repairs or maintenance under this section shall not be performed on private ways that do not remain open to public use for at least twenty years.

**ARTICLE 14: Amend Chapter 48: Tax Possession Sale Committee**

It was voted that the Town amend Section 48.1 of the General Bylaws which currently reads: "There shall be a Tax Possession Sale Committee of 3 members, to be appointed by the Board of Selectmen." by changing the number 3 to the number 7 so that the bylaw will read: "There shall be a Tax Possession Sale Committee of 7 members, to be appointed by the Board of Selectmen."

Planning Board Chair Kevin Borcelli presented a report on the Master Plan Implementation Process. Report slides are on file at the Town Clerk's Office.

**ARTICLE 15: Transfer Custody of Parcel 40 on Map 45 (Sawmill Road Parcel) From Tax Possession Sale Committee to the Conservation Commission**

It was voted unanimously that the Town transfer the care, custody, control and management of a parcel of Town-owned land located at the end of Sawmill Road identified as Parcel 40 on Westford Assessors' Map 45 from the Tax Possession Sale Committee presently held for the purpose of tax title sale to the Conservation Commission to be held for conservation purposes.

A motion was made and seconded to add to the end of the motion the following words "and to direct the Conservation commission to allow within any conservation restriction placed on the property, for the

completion of the Sawmill Roadway and to provide for a parking area at or on the completion of the Sawmill roadway, within the boundaries of the parcel.” The motion failed for lack of majority as established by a counted vote of 128 in favor to 152 opposed.

**ARTICLE 16: Transfer Custody of Parcel 86 Map 7 (Vose Parcel on Acton Road) From Tax Possession Sale Committee to the Conservation Commission**

It was voted by a two-thirds counted majority (226 in favor; 30 opposed) that the Town transfer the care, custody, control and management of a parcel of Town-owned land commonly known as the Vose parcel on Acton Road, further described as Parcel 86 on Westford Assessors’ Map 7, from the Tax Possession Sale Committee currently held for tax title sale purposes to the Conservation Commission to be held for conservation purposes and further that the Board of Selectmen be authorized and advised to grant by deed a permanent conservation restriction on said parcel, meeting the requirements of G.L. c. 184, Sections 31 to 33, to an eligible non-profit organization.

The original motion was amended by majority vote to remove all references to parking.

A motion was made and seconded to replace the words “purposes nor access to parking” with “of more than four vehicles” and to replace “or access to parking” with the words “of more than four vehicles.” The motion was withdrawn after the amendment to remove all references to parking passed by majority. That same amendment was then made a second time but failed for lack of majority.

**ARTICLE 17: Authorize the Board of Selectmen to Enter Ninety-Nine Year Lease with MassDOT for the Portion Within Westford of Phase 2A of the Bruce Freeman Rail Trail**

It was voted unanimously that the Town vote to authorize the Board of Selectmen, for purposes of establishing, constructing, operating and maintaining portion of Phase 2A within Westford of the multi-use rail trail/bicycle path for non-motorized transportation, open space and recreation purposes and for all other purposes for which rail trails are now or hereafter may be used in the Commonwealth, to acquire by purchase, gift, eminent domain or otherwise, fee, easement, leasehold, license and/or other real property interests in, on, over, across, under and along (a) all or any portion of the land, premises, easements, rights-of-way and other rights in Westford comprising the former Lowell Secondary Track railroad right-of-way extending from the current terminus of the Bruce Freeman Rail Trail at or near the intersection of Carlisle Road (Route 225) and Route 27 and running southerly to the Carlisle Town line, acquired by the Commonwealth of Massachusetts (acting through its former Executive Office of Transportation and Construction) by deeds dated November 29, 1982, and recorded in the Middlesex South District Registry of Book 14836, Pages 507-512, or however otherwise acquired by the Commonwealth, and (b) abutting and underlying properties as necessary for clearing title to said railroad right-of-way, laying out a rail trail/bicycle path in that right of way and within associated easements, and providing access to the rail trail area for construction, maintenance and repair purposes, on such terms and conditions as the Selectmen may determine, and further to see if the Town will raise, appropriate, transfer from available funds, or accept gifts for these purposes.

**ARTICLE 18: Amend the Zoning Bylaws to allow Drive-Up Windows at Restaurants**

The following motion was made and seconded but failed for lack of a majority:

*That the Town vote to amend the Zoning Bylaws of the Town of Westford to allow drive-up windows at restaurants in the Commercial Highway (CH) District by changing Appendix A, Table of Principal Use regulations, Subsection D.(C).5. “Restaurant, drive-in” from N (not permitted) to Y (permitted) as shown below.*

*Excerpt of Appendix A: Table of Principal Use Regulations, Westford Zoning Bylaw: June 29, 2012*

	<b>RA</b>	<b>RB</b>	<b>B</b>	<b>BL</b>	<b>CH</b>	<b>IH</b>	<b>IA</b>	<b>IB</b>	<b>IC</b>	<b>ID</b>
<b>D. Commercial Uses</b>										
<b>D. (A) Retail Uses</b>										
1. Retail sales to the general public	N	N	Y	N	Y	N	Y	Y	N	N
2. Retail sales to industrial or commercial buyers	N	N	N	N	SPB	Y	N	N	N	N
3. Retail sales of dairy products	N	N	Y	N	Y	N	Y	N	N	N
4. Retail sales or leasing of motor vehicles	N	N	N	N	Y	Y	N	N	N	N
5. Major retail project	N	N	SPB	SPB	SPB	SPB	SPB	N	N	N
<b>D. (B) Motor Vehicle Services</b>										
1. Motor vehicle services	N	N	SPA	N	SPA	SPA	SPA	SPA	N	N
2. Motor vehicle repair establishments	N	N	SPA	N	SPA	SPA	SPA	SPA	N	N
<b>D. (C) Other Commercial Uses</b>										
1. Nursing or convalescent home	SPA	SPA	SPA	N	N	N	SPA	SPA	N	N
2. Funeral home	N	N	Y	N	Y	N	Y	Y	N	N
3. Hotel	N	N	Y	N	SPB	N	Y	Y	N	N
4. Restaurant	N	N	Y	Y	Y	N	Y	Y	N	N
<b>5. Restaurant, drive-in</b>	N	N	N	N	<b>Y</b>	N	N	N	N	N
6. Business or professional office	N	N	Y	Y	Y	Y	Y	Y	Y	Y
7. Printing establishment; newspaper	N	N	Y	N	N	N	Y	Y	Y	Y
8. Nonexempt educational use	N	N	N	N	Y	N	N	N	N	N
9. Nonprofit membership club	Y	Y	Y	N	Y	N	Y	Y	N	N

*See Definitions Y = permitted, N = not permitted*

*SPB = special permit by Planning Board*

*SPA = special permit by Zoning board of Appeals*

**RESOLUTION:** It was resolved to direct the Planning Board to present to Annual Town Meeting the means for drive through windows to be approved by special permit.

The Planning Board expressed a willingness to present the proposal as a special permit to Annual Town Meeting.

**ARTICLE 19: Special Act to Issue (1) Additional All Alcoholic License Under Chapter 138 of Massachusetts General Laws, Retail Package Goods Store for all Kinds of Alcoholic Beverages Not to be Drunk on the Premises**

The following motion was made and seconded but failed for lack of a majority:

*That the Town authorize the Board of Selectmen to petition the General Court for one (1) additional all alcohol off premises retail license under Chapter 138 of Massachusetts General laws, retail package goods store for all kinds of alcoholic beverages not to be drunk on the premises to be exercised by Westford LC, LLC at the so-called Cornerstone Development located at 1 through 11 Cornerstone Square, said license not to be transferred to any other location; provided, however, that the General Court may make clerical or editorial changes of form only to the bill, unless the Board of Selectmen approves amendments to the bill before enactment by the General Court which are within the scope of the general public objectives of the petition.*

It was voted to adjourn the Special Town Meeting at 10:39 pm, having no further business to conduct.

A True Record: Attest

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Kaari Mai Tari  
Town Clerk