

**CITY OF WOBURN  
AUGUST 6, 2013 - 7:00 P.M.  
REGULAR MEETING OF THE CITY COUNCIL**

Roll Call

Anderson	Gately
DiTucci	Haggerty
Drapeau	Mercer-Bruen
Gaffney	Raymond
Denaro	

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VOTED to dispense with the reading of the previous meeting's Journal and to APPROVE, all in favor, 9-0.

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**MAYOR'S COMMUNICATIONS:**

Motion made and 2<sup>nd</sup> to suspend the rules for the purposes of taking the following two matters out of order, all in favor, 9-0. Motion made and 2<sup>nd</sup> to suspend the rules for the purposes of hearing from His Honor the Mayor and members of the public concerning the two following matters for a maximum of twenty minutes, all in favor, 9-0.

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A communication dated July 31, 2013 with attachments was received from His Honor the Mayor Scott D. Galvin as follows:

Dear President Denaro and Members of the Woburn City Council:

I am forwarding to the City Council's attention a new and revised Special Act Legislation ("Special Act") to provide enhanced disability retirement benefits for Officer Robert DeNapoli. As before, the Special Act demonstrates the City of Woburn's commitment and obligation to ensuring that Officer DeNapoli and his family do not suffer financial hardship as a result of his injuries.

Subsequent to the submission of the previous Special Act Legislation, which was eventually returned by the State Legislature, I had the opportunity to discuss this matter with the Mayor of Somerville. He was in the process of submitting similar Special Act Legislation related to one of their police officers, who was shot and severely injured during a drug raid in Somerville. The legislation was drafted by the Somerville City Solicitor and submitted to the Somerville Board of Aldermen.

The revised Special Act being submitted for your consideration is consistent with that which was approved unanimously last week by the Somerville Board of Aldermen and

approved by Mayor Curtatone. It is identical to the Special Act Legislation that I submitted previously to the City Council, with two exceptions. First, I removed the provision that all sums paid by Officer DeNapoli into the retirement system be returned in one lump sum (historically provided only as a death benefit). The other revision is that instead of reducing the pension to 80% of the average of the last 36 months, the sum payable will be 80% of the last 12 months.

I have attached a spreadsheet that illustrates the 100% yearly pension Office DeNapoli will receive, which is the same amount he would have been paid, if he were still an active police officer receiving an average annual raise of 2% per year until reaching the age of 65. Upon reaching the age of 65, his pension will become 80% of the amount he received in the year before he turned 65, increased annually with a cost-of-living-adjustment (COLA). In addition, Officer DeNapoli will be exempt from state laws that limit the ability to earn additional income while collecting a disability pension.

Sincerely, s/Scott D. Galvin, Mayor

Attached thereto was the following:

**ORDERED** Be it ordained by the City Council of the City of Woburn that a petition be filed with the General Court to the end that legislation be adopted precisely as follows. The General Court may make clerical or editorial changes of form only to the bill, unless the Mayor approves amendments to the bill before enactment by the General Court. The Mayor is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition.

An Act relative to the disability retirement of Woburn police officer Robert DeNapoli.

SECTION 1. Notwithstanding any general or special law to the contrary and in order to promote the public good, the Woburn retirement board is directed to retire Robert DeNapoli, a Woburn Police Department Officer who was seriously injured in the line of duty on September 6, 2011, and as a result, is totally and permanently incapacitated from performing the essential duties of a police officer. Said benefits shall be paid and administered in accordance with section 7 of chapter 32 of the General Laws.

SECTION 2. In addition to the retirement benefits granted under section 7 of Chapter 32 hereunder, the city of Woburn shall grant Robert DeNapoli additional benefits, such that he will receive, on a pre-tax basis, additional sums that together with his benefits under said section 7 of chapter 32, shall equal the regular rate of compensation which would have been payable to the said Robert DeNapoli had he continued in service as a police officer of the police department of the city of Woburn at the grade

held by him at the time of his retirement. Such retirement shall become effective commencing on the date immediately following the final day for which he received regular compensation for such employment. This increased disability retirement allowance shall end when the said Robert DeNapoli turns 65 years of age at which time his disability retirement allowance shall revert to an amount equal to 80 per cent of the average annual rate of compensation paid in the previous 12 months, or upon his death, whichever first occurs. The additional benefits granted herein shall be funded and administered by the Woburn retirement board, consistent with and subject to said chapter 32, except that sections 8 and 91A of said chapter 32 shall not apply.

SECTION 3. If the said Robert DeNapoli is married at the time of retirement, then upon his death, the Woburn retirement board is directed to pay to such surviving spouse, if then living, a pension, payable in monthly installments, in the amount of three-fourths of the annualized amount of the pension payable to the said Robert DeNapoli on the date of death. Said pension shall be subject to section 103 of chapter 32.

SECTION 4. The said Robert DeNapoli shall be indemnified for hospital, medical, and other healthcare expenses related to treatment of injuries sustained while in the line of duty on September 6, 2011, or not otherwise covered by health insurance.

SECTION 5. This act shall take effect upon its passage.

s/President Denaro

Mayor Galvin stated that the proposal is one of the most generous packages offered to an officer injured in the line of duty, that politics and emotions have influenced this matter, that the city wants to treat the officer fairly, that this is a precedent setting package, that this is a dangerous world and public safety officers understand the risks, that despite these dangers young people continue to step forward to serve as public safety officers, that the city must balance the financial obligations of the city with caring for injured public safety officers, that this proposal will exempt the officer from limits on earning additional income while receiving disability payments which is different than any previous package except the Somerville package, and that Somerville and Lynn recently approved similar packages. Alderman DiTucci stated that Somerville is revising the package for their injured officer including the so-called death benefit annuity, that the Somerville officer is younger and receives a higher salary than the Woburn officer, and that the package in Somerville is much more lucrative. Alderman DiTucci offered a document containing an analysis of income for the City Council to review. Motion made and 2<sup>nd</sup> that the document be received and made part of the record, all in favor, 9-0. Mayor Galvin stated that returning the retirement contributions is a death benefit and thankfully no death occurred in this instance, that the city is trying to make the officer whole, that the officer can earn additional income, and that the officer will pay no income

tax which increases the benefit. Alderman DiTucci stated that the officer should not have to work to be made whole. Mayor Galvin stated that the officer asked to be able to work as part of the disability package. Alderman DiTucci stated that she spoke to the city's State Representatives who asked the City Council not to be concerned about whether the measure will pass at the State House, and that based on history if a proposal is endorsed by the Mayor and the City Council the measure will pass at the Legislature. Alderman Gately stated that many of his constituents have talked to him about this proposal, that the officers deserves that the city can give to him, that he will offer an amendment to the proposal to give the officer the death benefit and 100% of income in retirement, that he understands that the Mayor is between a rock and a hard place, and that the officer deserves the benefit and he will fight for it. Mayor Galvin stated that this is a precedent setting case, that public safety positions are inherently dangerous jobs, and that he is trying to balance the needs of the officer's family with the financial interests of the city. Alderman Haggerty stated that it will take all parties to figure this issue out, that the package is further apart now than originally, and he asked why the Mayor supported the death benefit in the first package but not now. Mayor Galvin stated that he did not support the death benefit but believed that making the benefit part of the original package would lead to the proposal being adopted and therefore he included the benefit, and that this is a very generous offer. Alderman Haggerty stated that he supports the original amended package which the City Council adopted in June. Alderman Anderson stated that under current arrangements the officer will receive 72% of his salary for life if the officer passes a medical examination, that the package being offered has no medical requirement, the officer can earn additional income, the officer will receive 100% of his salary until retirement and more than 72% of his salary after retirement age, and that there is a difference of opinion among the parties in this matter. Motion made and 2<sup>nd</sup> to extend the time for hearing on this matter for an additional maximum of twenty minutes, all in favor, 9-0. Alderman Drapeau stated that he wants to give the officer the benefit because the officer took steps to protect the public, that this will be money well spent, that this action will tell law enforcement officers that the city will take care of them, and that if the Mayor does not support the package that the City Council wants then the matter should be placed on the ballot for the voters to decide. President Denaro stepped down from the chair and Alderman Anderson assumed the chair. Alderman Raymond stated that he will vote in favor of the original adopted package and nothing else, and that his decision is based on comments received from his constituents. President Denaro offered a document entitled "Special Legislation Disability Comparison Sheet" for the City Council to review. Motion made and 2<sup>nd</sup> that the document be received and made part of the record, all in favor, 9-0. President Denaro stated that he has reviewed data concerning this issue, that under regular disability retirement the officer must have a medical review for the first three years and then every three years thereafter, that additional income is capped, that the officer would have to submit financial records for income verification and that the officer would receive 72% of the prior three years salary, and that his fear is that if the package now proposed by the Mayor is amended without having the matter sent to committee to negotiate with the Mayor and the officer there is a risk that the officer will end up with the regular disability retirement package which is not as generous. Alderman Gaffney stated that he support the officer but the matter should be sent to committee to ensure that the package is appropriate for adoption. Alderman

Mercer-Bruen stated that the matter should be referred to committee for study and that she cannot support the package offered. PUBLIC COMMENTS: Dana Gately, President, Woburn Police Patrolmen's Union stated that on September 6, 2011 someone tried to execute the officer, that this should be a proud moment of the city taking care of one of its officers but it has become vindictive, name-calling and a black eye, that it is difficult to put a price tag on the torment that the officer's family has suffered, that the officer was shot six times, is blind in one eye and is an amputee, and that this matter must be put to rest. John Flaherty, 28 West Street stated that nobody wants to hurt the officer, that the difference is approximately \$10,000.00, and that the city needs to get this behind us. Carolyn Youngclouse, 2 Park Drive stated that the officer was once her neighbor, that she supports taking care of the officer, and that this may be a precedent setting case but that the city should set the precedent. Jack Gibbons, 6 Wolcott Road stated that the officer gave 100% of himself and the city should give him 100%, and that his son was an officer and was behind this officer during the shooting. Virginia Volpe, 9 Lake Terrace stated that the city should give the officer what he deserves, that the city should give the officer what he needs, that she would not do the job for \$1,000,000.00 per year, and that this should be an easy decision. Michael Concannon, 1 Rose Farm Lane stated that the City Council should pass this proposal and send the matter up to the Legislature, and that the City should treat the next resident that is injured in the line of duty in the same way. Motion made and 2<sup>nd</sup> to conclude the public input on the matter, all, in favor, 9-0. Alderman DiTucci stated that the proposal would require the officer to be financially responsible for health care costs until the city covers the costs. President Denaro stated that the proposed amendments will not be approved by the Mayor and unless the matter is negotiated with the Mayor and the officer the result may be the regular disability retirement payment, and that this matter should be sent to committee. Alderman Haggerty stated that he supports the amended package adopted in June however if the Order is not signed by the Mayor the proposal may not be approved by the Legislature, that bringing all parties together in committee may be needed to get the package approved, and that he is concerned about the officer. Alderman Mercer-Bruen stated that she cannot support the new package, and that the parties must come together to resolve this matter without emotion. Alderman Drapeau stated that the Mayor has had courage to state his case in these meetings, that the Mayor feels strongly about his position, that six Aldermen voted in support of the original package, that he will be equally courageous and stand with the officer's family, that the matter is at an impasse, that the ballot question put this issue to the community, and that he will support the amended package and will not negotiate. Alderman DiTucci stated that the will of the City Council on this matter should be unanimous, that the issue is what does the officer receive, that the City Council is afraid that the Mayor will not sign the package, that each Alderman should vote on what they believe is right, that the officer was shot six times, has shrapnel in his body and is in chronic pain, and that if an Alderman believes that the officer deserves the package then they should vote in favor of the proposal. Motion made and 2<sup>nd</sup> to amend the Order as follows: 1. By adding a fifth sentence to Section 2 as follows "Further, upon retirement, Robert DeNapoli shall receive a lump sum payment from the Woburn retirement board of total accumulated retirement deductions." and "80 per cent" in the third sentence in Section 2 be stricken and in its place be inserted the words and numbers "100 per cent", ROLL CALL: DiTucci – Yes, Drapeau – Yes, Gaffney – Yes, Gately – Yes, Haggerty –

Yes, Mercer-Bruen – No, Raymond – Yes, Denaro – No, Anderson – No, Motion Passes. Motion made and 2<sup>nd</sup> to amend the Order as follows: 1. By striking from Section 4 the following “, or not otherwise covered by health insurance.” and insert in its place “.”,ROLL CALL: DiTucci – Yes, Drapeau – Yes, Gaffney – Yes, Gately – Yes, Haggerty – Yes, Mercer-Bruen – Yes, Raymond – Yes, Denaro – No, Anderson – No, Motion Passes. Motion made and 2<sup>nd</sup> that the ORDER be ADOPTED, AS AMENDED, ROLL CALL: DiTucci – Yes, Drapeau – Yes, Gaffney – Yes, Gately – Yes, Haggerty – Yes, Mercer-Bruen – No, Raymond – Yes, Denaro – No, Anderson – No, Motion Passes.  
**Presented to the Mayor: August 8, 2013      Veto Message received August 19, 2013**

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## ORDERED

That pursuant to Section 42G of Chapter 172 of the Acts of 1897, known commonly as the Charter of the City of Woburn, that the following proposition be presented for a vote to the registered voters of the City of Woburn for adoption or rejection at the general Municipal Election to be held November 5, 2013 and that the proposition as set forth in Section 1 herein be printed on any and all ballots for that election:

### SECTION 1

“Shall the City of Woburn submit a petition to the Great and General Court of the Commonwealth of Massachusetts for a Special Act entitled ‘An Act relative to the disability retirement of Woburn police officer Robert DeNapoli’ in substantially the form as follows: Yes \_\_\_ No \_\_\_

An Act relative to the disability retirement of Woburn police officer Robert DeNapoli.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Notwithstanding any general or special law to the contrary and in order to promote the public good, the Woburn retirement board is directed to retire Robert DeNapoli, a Woburn Police Department Officer who was seriously injured in the line of duty on September 6, 2011, and as a result, is totally and permanently incapacitated from performing the essential duties of a police officer. Said benefits shall be paid and administered in accordance with section 7 of chapter 32 of the General Laws.

SECTION 2. In addition to the retirement benefits granted under section 7 of Chapter 32 hereunder, the city of Woburn shall grant Robert DeNapoli additional benefits, such that he will receive, on a pre-tax basis, additional sums that together with his benefits under said section 7 of chapter 32, shall equal the regular rate of compensation which would have been payable to the said Robert DeNapoli had he continued in service as a police officer of the police department of the city of Woburn at the grade held by him at the time of his retirement. Such retirement shall become effective commencing on the date immediately following the final day for which he received regular compensation for such

employment. This increased disability retirement allowance shall end when the said Robert DeNapoli turns 65 years of age at which time his disability retirement allowance shall revert to an amount equal to 100 per cent of the 3-year average annual rate of compensation paid in the previous 36 months, or upon his death, whichever first occurs. The additional benefits granted herein shall be funded and administered by the Woburn retirement board, consistent with and subject to said chapter 32, except that sections 8 and 91A of said chapter 32 shall not apply. Further, upon retirement, Robert DeNapoli shall receive a lump sum payment from the Woburn retirement board of total accumulated retirement deductions.

SECTION 3. If the said Robert DeNapoli is married at the time of retirement, then upon his death, the Woburn retirement board is directed to pay to such surviving spouse, if then living, a pension, payable in monthly installments, in the amount of three-fourths of the annualized amount of the pension payable to the said Robert DeNapoli on the date of death. Said pension shall be subject to section 103 of chapter 32.

SECTION 4. The said Robert DeNapoli shall be indemnified for hospital, medical, and other healthcare expenses related to treatment of injuries sustained while in the line of duty on September 6, 2011.

SECTION 5. This act shall take effect upon its passage.

SECTION 2.

Further, be it Order that the mayor may direct the city solicitor to draft a summary of the question, which shall be placed on the ballot with the question.

SECTION 3.

Further, be it Ordered that if the majority of the voters vote in the affirmative then the City of Woburn hereby petition the Great and General Court of the Commonwealth of Massachusetts to enact the proposed Special Act as set forth in Section 1 of this Order.

s/Alderman Drapeau

President Denaro stated that if the Special Act is not passed by the Legislature and this matter is placed on the municipal election ballot the initiative petition will require approval of a majority of the voters plus approval of one-third of all registered voters which is over 8,000 voters in support, and that if the Mayor does not approve the amended Order the ballot question has little opportunity to pass. Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO COMMITTEE ON LIAISON, all in favor, 9-0.

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Motion made and 2<sup>nd</sup> to return to the regular order of business, all in favor, 9-0.

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A communication dated July 31, 2013 with attachment was received from His Honor the Mayor Scott D. Galvin and City Council President Paul Denaro as follows:

Dear Members of the Woburn City Council:

President Denaro and I are respectfully submitting a request to name the new multi-purpose athletic field at Whispering Hill in memory of beloved local historian and former City Solicitor John D. McElhiney.

As City Solicitor, John was instrumental in our work to negotiate the 2010 purchase of 74.5 acres at Whispering Hill so that this recreational land could be preserved and enjoyed by generations to come. John's work on the acquisition of Whispering Hill is one effort in a long line of examples of service and devotion to Woburn during his lifetime.

For instance, as a Woburn City Councilor he led efforts that resulted to create the pedestrian walkway surrounding Horn Pond. He also dedicated much of his personal time to civic endeavors, including service as President of the Woburn Rotary Club, President of the Woburn Boys and Girls Club and Woburn Council of Social Concern. John was also a member of the founding Board of Directors of the Woburn Historical Society, for which he also served as its President in 2009.

John's book, "Woburn, A Past Observed," is the most comprehensive reference guide to Woburn's civic, social and political history—an endeavor that he spent nine years to complete.

John left all of us with a rich legacy of public service and devotion to his wife Sheila, son Joseph, and his community. Thank you for your consideration.

Sincerely, s/Scott D. Galvin, Mayor  
s/Paul Denaro, City Council President

Attached thereto was the following:

**ORDERED** Be it ordained by the City Council of the City of Woburn that the new multi-purpose athletic field located at Whispering Hill be named the "John D. McElhiney Field at Whispering Hill".

s/President Denaro

Alderman Gately stated that 140 members of the United Veterans Council wanted to discuss the matter, that he asks that the matter be forwarded to committee so that they have the opportunity to speak, that the veterans should have a say in this issue, and that they stated that the other fields in the city were named for veterans killed in action. President Denaro stated that he spoke to the Veterans Agent and was told that there was

no issue with this proposal. Alderman Drapeau stated that he questioned whether the naming could be made as he believes there are some restrictions on naming public grounds. Alderman DiTucci stated that she wants to be certain that this issue is being handled appropriately, and that if 140 veterans have questioned the issue then she would like to hear their concerns. Alderman Anderson stated that there is a restriction under the Municipal Code on naming streets in the city. Alderman Haggerty stated that there are many opportunities for veterans to be recognized in the city, that this is an opportunity to honor another great man, that he has great affection for Mr. McElhiney as well as for the veterans. Motion made and 2<sup>nd</sup> that the ORDER be ADOPTED, all in favor, 9-0.

**Presented to the Mayor: August 8, 2013**

**s/Scott D. Galvin August 8, 2013**

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Presentation by Diane Madden, MassDOT, Highway Division, 10 Park Plaza, Room 4260, Boston, Massachusetts 02166-3973 relative to the I-93/I-95 Interchange Improvements Project. Appearing was Ms. Madden and she stated that the intersection is in the top 100 intersections of bottlenecks for truck traffic, that feasibility studies were conducted from 2000 to 2002, that there was a proposal for improvements that included takings of approximately fifty residential properties, that further studies from 2004 to 2007 sought improvements that would involve no residential takings other than some slivers of land, that the intersection is in the top ten each year for collector-distributor roadways near Exits 35 and 36 with connections to Washington Street, that the area of Route 128 northbound also has connections to Route 93, that Exit 38 will be reconfigured to a partial interchange, that Washington Street will be improved, that the Washington Street bridge will be improved and widened, that the end of the planning study signals the beginning of the environmental impact analysis, that an Environmental Impact Statement (EIS) has been filed with the Massachusetts Environmental Policy Act Office (MEPA), that funding was been identified for a consultant contract for a five year study beginning in 2012, that initial field work and traffic counts have been completed, that Governor Patrick's "Way Forward Bill" to provide for transportation improvements included this intersection as one of three named projects however the bill was not passed by the Legislature, that the transportation bill passed by the Legislature does not specifically name this project and the total funding is much less than proposed by the Governor, that Federal Highway Administration (FHWA) is responsible for compliance with MEPA, that the process is tied to funding, that the project has to be included in a Transportation Improvement Program (TIP) for funding, that the long range plan for this project is 2026, that a Tier 1 EIS must be performed which will involve extensive public and municipal involvement, that discussions with FHWA continue for approval to move forward with the EIS, that when the EIS is authorized the city will be contacted for a discussion on future demographics, land use and economic development, that noise analysis is part of the study, that Type 1 Noise Abatement Program requires sound barriers that are reasonable and feasible during construction projects, that Type 2 Noise Abatement Barrier Plan is a retrofit of barriers to improve noise conditions where reasonable and feasible, that noise barriers are being considered for the Richard Street and Salem Street areas, and that they contract with a private company to conduct the noise analysis. Alderman Mercer-Bruen stated that she looks forward to a responsible project and that the city will assist with moving TIP along. No action was taken.

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**PUBLIC HEARINGS:**

On the petition by Warnick Associates, Inc., 151 Main Street, Suite 1, Salem, New Hampshire 03079 for a special permit pursuant to Section 5.1.41 of the 1985 Woburn Zoning Ordinances, as amended, to allow research and testing laboratory to occupy existing condo space at Unit #13, 5 Crescent Avenue. PUBLIC HEARING OPENED. A communication dated June 10, 2013 was received from Edmund P. Tarallo, Planning Director as follows:

Re: 5 Crescent Avenue, LLC – 5 Crescent Ave. Unit #13 – To occupy for Research & Testing Laboratory pursuant to Section 5.1.41

Dear Mr. Campbell and members of the City Council:

At the Planning Board meeting held on June 4, 2013, the Planning Board voted to send a favorable recommendation to the City Council regarding the Special Permit application of 5 Crescent Avenue, LLC at 5 Crescent Avenue Unit #13 to occupy for research and testing laboratory pursuant to Section 5.1.41 of the Woburn Zoning Ordinance.

If members of the City Council have any questions or concerns regarding the foregoing recommendation, please feel free to contact me.

Sincerely, s/Edmund P. Tarallo, Planning Director

A report was received from the Committee on Special Permits as follows: “Back for action.”

Appearing for the petitioner was Tim Warnick, Architect and he stated that the petitioner will operate a testing and research lab which is currently located in Beverly, that the locus is located in the I-G zoning district, that the proposed use requires a special permit, that the unit is approximately 6,000 square feet, that the unit is located on the mezzanine level, that the unit is accessed by the front stair area, that the use is classified as a business use, that other uses in the building are classified as factory industrial moderate hazard and storage moderate hazard, that the proposed use is not classified as a hazardous use, that the laboratory uses provided by the petitioner are listed on their website, that the petitioner performs drug research and discovery services in medicinal chemistry, publishes and filed patents on new anti-cancer drugs, that there is no manufacturing, human tissues animal testing, microbial materials or toxins on site, that the list of controlled chemicals to be used have been submitted to the Woburn Fire Department, that there will be a minuscule amount of chemicals on site, that regulation of the use is exempt under the Massachusetts General Laws, that a hobby store would have more volatile chemicals onsite than in the petitioner’s research lab, that the Fire Department has requested that the petitioner apply for a permit for any chemicals and the petitioner will voluntarily comply with the request, that the waste generated will not meet the

threshold to be considered hazardous waste however the petitioner voluntarily contracts with a hazardous waste transporter, that waste materials will be picked up every four to six weeks although the material can be held for up to nine months for pickup, that there will be four work stations with hoods, that any mater that may be released in the air is too small to require Environmental Protection Agency action, that the petitioner will voluntarily install HEPA filters to relieve any concerns about discharges, that there will be no animal testing, that a Kewaunee Supreme Air ventilation system will be installed, that the hoods draw air through infiltration through the room, that they have to accommodate fresh air for the HAVC system, and that no sale closing date has been scheduled yet. Mr. Warnick submitted documents concerning the Kewaunee Supreme Air ventilation system to the City Council for review. Motion made and 2<sup>nd</sup> that the documents be received and made part of the record, all in favor, 9-0. Alderman Mercer-Bruen stated that she is still concerned about the ventilation, and that there have been problems in other areas of the city where ventilation issues have caused concern for residential neighbors. PUBLIC COMMENTS: Robert Seliger, High RPM LLC, 5 Walnut Hill #2 stated that he wants to see the business park continue to be successful with small businesses, that he does not want to stand in the way of the project but that he is concerned about his health and the value of his condominium unit, that the building was not designed to house this type of research business, that currently the petitioner is located in a building designed to house research laboratories such as the petitioner's business with 100 biotech companies listed as tenants in the building, that the locus has a paper shredder company, an electrician, auto mechanics, a dry cleaner and similar businesses currently but no hi-tech business, that the subject unit previously housed the Monster Paintball business, that the City Council has to look out for the interests of the other condominium unit owners through the special permit process, that he asks what special skills the architect has in designing research labs, that he wants to know how air quality will be monitored and by whom, and that he wants to know if the petitioner will provide indemnification for hazards that may cause damage to others. Motion made and 2<sup>nd</sup> that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON SEPTEMBER 3, 2013 AND THAT THE MATTER BE REFERRED TO THE COMMITTEE ON SPECIAL PERMITS, all in favor 9-0.

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On the petition by Lawless Chrysler Jeep, Inc., 196 Lexington Street, Woburn, Massachusetts 01801 for a special permit pursuant to Section 5.1.71 of the 1985 Woburn Zoning Code, as amended, to allow for a commercial parking lot at 10 Micro Drive. PUBLIC HEARING OPENED. A communication dated August 6, 2013 was received from Edmund P. Tarallo, Planning Director, Woburn Planning Board as follows:

Re: Lawless Chrysler Jeep, Inc. – 10 Micro Drive – To allow for a commercial parking lot pursuant to Section 5.1.71

Dear Mr. Campbell and members of the City Council:

At the Planning Board meeting held on August 6, 2013, the Planning Board voted to send a favorable recommendation to the City Council on the Special Permit application of

Lawless Chrysler Jeep, Inc, regarding the property at 10 Micro Drive to allow for a commercial parking lot pursuant to Section 5.1.71 subject to the following conditions:

1. The Petitioner shall be limited to parking up to 64 cars on the property subject to said number being reduced as the building becomes occupied so that there are sufficient parking spaces as required under the Woburn Zoning Ordinance. There shall be no further occupants of the property unless and until the City Council confirms there is sufficient parking for the new tenant(s);
2. The Petitioner shall park its vehicles in the area designated on the Allen & Major plan dated February 1, 2012, except as modified by Condition #11;
3. The issuance of this Special Permit is contingent upon the owner of record, JAM Cambridge Ventures LLC, filing a written statement with the City Clerk agreeing to be bound by the conditions of the Special Permit;
4. The Petitioner shall file with the Building Commissioner on the 15<sup>th</sup> of each month a report with the number of vehicles parked on the Property;
5. That there shall be no parking of vehicles on Micro Drive and Sonar Drive at any time;
6. That this Special Permit shall expire one year from the date of issuance;
7. That there shall be no parking of vehicles in designated handicap parking spaces on the site;
8. That all vehicles shall be parked in the lined spaces;
9. That there shall be no parking in, or blocking of any aisles; and
10. That the "curb cut" from 10 Micro Dr to Sonar Dr shall be maintained and kept open at all times.
11. That the 64 vehicles shall be parked to not include the 6 spaces closest to the building.

If members of the City Council have any questions or concerns regarding the foregoing recommendation, please feel free to contact me.

Sincerely, s/Edmund P. Tarallo, Planning Director

Appearing for the petitioner was Kathleen Connolly, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 and she stated that the locus contains 7.7 acres of land, that there is an 89,000 square foot building with 18,552 square feet of available space in the building, that the petitioner wishes to park 68 new vehicles at the locus with the number of vehicles being reduced as the building is leased, that the petitioner's personnel will operate the vehicles as they are delivered to and from the locus, that there will be no car carrier drop-off of vehicles at the locus, that there will be no sales at the locus, that the locus will only be used for storage of the vehicles, and that the petitioner requests that the special permit be approved with the conditions recommended by the Planning Board. Attorney Connolly offered a copy of proposed conditions for the City Council to review. Motion made and 2<sup>nd</sup> that the document be received and made part of the record, all in favor, 9-0. IN FAVOR: None. OPPOSED: None. Motion made and 2<sup>nd</sup> that the public hearing be closed, all in favor, 9-0. Motion made and 2<sup>nd</sup> that the SPECIAL PERMIT be GRANTED, AS AMENDED with the conditions as follows: 1.

That the recommendations of the Planning Board be adopted as conditions of the special permit, and 2. That Condition 12 be added as follows: 12. That no car carriers shall be permitted on or allowed to deliver to the locus, all in favor, 9-0.

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On the petition by 508 Main Street LLC, 508 Main Street, Woburn to amend the Zoning Map of the City of Woburn by amending the zoning district for the property identified on Assessors Map 43, Block 17, Lot 16 being the entire parcel of land known as 506 Main Street a/k/a 508 Main Street and 6-14 Hovey Street containing approximately 0.57 acres of land from the R-4/B-D zoning district to the B-D zoning district. PUBLIC HEARING OPENED. A communication dated August 6, 2013 was received from Edmund P.

Tarallo, Planning Director, Woburn Planning Board as follows:

Re: 508 Main Street LLC – Zoning Map Amendment – To amend the Zoning Map of the City of Woburn by changing the zoning district for the entire parcel of land known as 506 Main Street a/k/a 508 Main Street and 6-14 Hovey Street, containing approximately 0.57 acres of land as shown on the City of Woburn Tax Map 43, Block 17, Lot 16 from the R-4/B-D zoning districts to the B-D zoning district

Dear Mr. Campbell and members of the City Council:

At the Planning Board meeting held on August 6, 2013, the Planning Board voted to send a unfavorable recommendation regarding the Zoning Map Amendment to change the zoning of the property at 506 Main Street a/k/a 508 Main Street and 6-14 Hovey Street from R-4 and BD to BD to the City Council.

If members of the City Council have any questions or concerns regarding the foregoing recommendation, please feel free to contact me.

Sincerely, s/Edmund P. Tarallo, Planning Director

Appearing for the petitioner was Kathleen Connolly, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 and she stated that the Planning Board Director made a favorable recommendation for the amendment although the Planning Board at its meeting this evening forwarded and unfavorable recommendation, that the property would be rezoned to be entirely in the B-D zoning district, that the change would allow residential uses above the first floor with a special permit, that a prior special permit at the locus allowed for business service and sales including shipping from the locus and alterations to the parking area, that the tenant that operated the business service and sales has vacated the unit, that the petitioner wishes to build residential condominiums above the Careway Wellness Center store, that this use will eliminate the prior business use which had truck traffic, and that a conceptual plan can be provided in committee. Robert France, Senate Construction stated that he can have a conceptual plan available by September 3, 2013. PUBLIC COMMENTS: Karen Cullinane, 2 Spring Street stated that her house also fronts on Hovey Street, that he house is directly across the street from the locus building and business, that delivery trucks for the business wait

in her driveway, that life was unbearable with the business tenant that recently moved out of the locus, that there are twelve parking spaces at the locus, that she wants to know what will be operating on the first floor, where the vehicles will park and what impact a definitive plan will have on the neighbors, that at one time the former business was operating from 6:00 a.m. to 11:00 p.m., that trash trucks arrive at the locus at 3:00 a.m., that she does not have an issue with the residential condominiums but wants to know how many units there will be, what will be located on the first floor and where the residents and building tenants will park their vehicles, and that Hovey Street is a dead-end street. Joanne Gorassi, 19½ Hovey Street stated that her house is at the end of the dead-end street, that trucks from the businesses at the locus block her driveway, and that if the building is torn down the petitioner will have to blast and this will impact the new gas lines and utilities. Motion made and 2<sup>nd</sup> that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON SEPTEMBER 3, 2013 AND THAT THE MATTER BE REFERRED TO THE COMMITTEE ON ORDINANCES, all in favor 9-0.

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**CITIZEN'S PARTICIPATION:** None.

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**COMMITTEE REPORTS:**

**PERSONNEL:**

On the appointment of Johanna B. Hill as a Member of the Woburn Handicapped and Disabled Citizens Commission, committee report was received "ought to pass". Motion made and 2<sup>nd</sup> that the COMMITTEE REPORT be ADOPTED, all in favor, 9-0.

**Presented to the Mayor: August 8, 2013**                      **s/Scott D. Galvin August 8, 2013**

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**INFRASTRUCTURE AND PUBLIC LANDS:**

On a communication received from Attorney Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: Special Permit Petition of Lawless Chrysler Jeep Inc., 9 Forbes Road, Woburn, MA

Dear Chairman Gately:

Please be advised that I represent Lawless Chrysler Jeep, Inc. relative to the Special Permit that was issued for the above-referenced property. Condition 1 to the Special Permit states as follows:

"1. The Petitioner shall be limited to parking up to 180 cars on the property subject to said number being reduced as the building becomes occupied so that there are sufficient parking spaces as required under the Woburn Zoning Ordinance. There should be no

further occupants of the property unless and until the Special Permits Committee confirms there is sufficient parking for the new tenant(s).”

The property owner, 9 Forbes Road Investments LLC has a new tenant ready to occupy the premises and as a result has reduced the number of parking spaces that it is leasing to Lawless from 180 parking spaces to 70 parking spaces. Please place this matter on the agenda of the Special Permits Committee for Monday, July 29, 2013 so that the Special Permits Committee can confirm that there is sufficient parking for the new tenant. If you have any questions, please contact me. Thank you.

Very truly yours, s/Joseph R. Tarby, III

A report was received from the Committee on Special Permits as follows: “To adopt and make part of the permanent record.” Motion made and 2<sup>nd</sup> that the COMMITTEE REPORT be ADOPTED, all in favor, 9-0.

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**NEW PETITIONS:**

A Conservation Easement and Restriction was received from Brian E. Harrington of 124 Lawrence Street, Medford, Massachusetts 02155 and Brad M. Harrington of 6 Union Street, Derry, New Hampshire, owners of the property shown as Lot 1 on a plan entitled “Plan of Land at 15 Third Road”, and recorded in the Middlesex South District Registry of Deeds as Plan 35 of 2001, pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws granting to the City of Woburn in perpetuity and exclusively for conservation purposes a Conservation Restriction on a certain parcel of land consisting of approximately 12,819 square feet of land, more or less, as being more particularly described in Plan No. 00000544 of 2013 in Book 2013, Plan No. 00000544 Exhibit A attached hereto and shown as “Conservation Restriction Area” on a plan of land in Woburn, Massachusetts, for Grantors’ title see deed recorded in said Registry at Book 25321, Page 465. Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO COMMITTEE ON INFRASTRUCTURE AND PUBLIC LANDS, all in favor, 9-0.

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Request to transfer Inflammable License from Stanley Stedman, Trustee of 470 Wildwood Realty Trust to Alexander Machine & Tool Co., Inc. to allow above ground storage of 665 gallons solvents, Class I, II & III containers at 470 Wildwood Street. Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO COMMITTEE ON PUBLIC SAFETY AND LICENSES, all in favor, 9-0.

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A communication dated August 1, 2013 with attachment was received from Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: Landowner's Decision and Notice of Special Permit Petition Issued to Main Street  
Woburn RX, LLC, 891 Main Street, Woburn, MA (the "Decision")

Dear Mr. Campbell:

Pursuant to Condition 6 (b) of the above-referenced Decision, the Petitioner is required to grant an easement to the City of Woburn for all purposes for which public ways in the City of Woburn are used. Enclosed please find a proposed Easement Agreement for submittal to the Infrastructure and Public Lands Committee for review and action. Please note that I have copied the City Solicitor and request her review and input prior to action by the Infrastructure and Public Lands Committee.

If you need any additional information please do not hesitate to contact me. Thank you.

Very truly yours, s/Joseph R. Tarby, III

Attached thereto was the following:

EASEMENT AGREEMENT

This Easement Agreement is made and entered into this \_\_\_\_\_ day of August, 2013 by and between Main Street Woburn RX, LLC a Massachusetts limited liability company, with offices at 300 Trade Center, Suite 7700, Woburn, Massachusetts 01801 ("Grantor") and the City of Woburn a duly incorporated municipal corporation with an address at 10 Common Street, Woburn, Massachusetts 01801("Grantee").

Grantor owns the premises located at 891 Main Street, Woburn, Massachusetts.

Now therefore, for consideration paid in the amount of One (\$1.00) Dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to Paragraph 6(b) of a Special Permit issued by the Woburn City Council dated January 10, 2013 and recorded with the Middlesex South Registry of Deeds in Book 61117, Page 492, the parties covenant and agree as follows:

1. The Grantor hereby grants to the Grantee its successors and assigns, *with quitclaim covenants*, for the benefit of the general public, the perpetual non-exclusive right and easement to construct and maintain a roadway to be used by Grantor and Grantee and others for all purposes for which a roadway may be used on and over a portion of the land of Grantor, (the "Proposed City Easement"), shown on a plan entitled "Easement Taking Plan" which plan was prepared by Allen & Major Associates, 100 Commerce Way, Woburn, Massachusetts 01888-0118 dated March 13, 2013 and is attached hereto as Exhibit A.
2. Grantee shall have access to the Easement Area from time to time as may be necessary in the reasonable judgment of Grantee for the purpose of widening,

constructing, inspecting, repairing, replacing, improving and maintaining the adjacent roadway.

3. The Grantor and Grantee, for themselves and their successors-in-title, further covenants that they shall not permit any use within said Easement Area, which is inconsistent with this Grant of Easement, including, but not limited to the erection of any structures of any kind or planting shrubs and/or trees within the easement areas or performing any act which will impair the function and purpose of this Grant of Easement.
4. The easement created herein is intended to run with the title to the real property so burdened and/or benefited by the easement created herein and such easement shall inure to the benefit and burden of the successors owners of the various parcels of real property affected thereby.
5. If any provision of this Agreement, or the application thereof to any person or circumstance, shall be to any extent held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
6. This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.
7. Nothing in this Agreement shall be construed to make any of the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of any other party.
8. The provisions of this Agreement may be modified or amended in whole or in part only with the consent of the parties hereto, their successors, assigns and successors-in-title, in a written instrument duly executed, delivered and recorded by the Owners of each portion of the Property affected by such modification or amendment.
9. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement and the signatures of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.
10. Each party hereunder represents and warrants that it has the requisite authority to execute and deliver this Agreement.
11. Each party hereto may enforce the provisions of this Agreement: (i) by a suit at law for damages for any compensable breach of or noncompliance with any of the terms hereof or for declaratory relief to determine the enforceability of such terms; (ii) by

an action in equity or otherwise for specific performance to enforce compliance with the terms hereof, or for any injunction to enjoin the continuance of any breach or violation hereof; and (iii) through any other right or remedy to which such owner may be entitled at law or in equity. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

12. This grant of easement shall be recorded in due course with the Middlesex South Registry of Deeds and indexed to the land of Grantor.

For Grantor's title see deed recorded with the Middlesex South County Registry of Deeds in Book 59427, Page 570.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

GRANTOR: Main Street Woburn, RX LLC, By: David Masse, Manager, Duly authorized

Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO COMMITTEE ON INFRASTRUCTURE AND PUBLIC LANDS, all in favor, 9-0.

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A communication dated August 1, 2013 with attachment was received from Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: Request for Minor Modification/Robert W. Murray, Three Hundred Thirty Lexington Street Trust, 500 Lexington Street a/k/a 330 Lexington Street, Woburn, Massachusetts

Dear Mr. Campbell:

Please be advised that I represent Robert W. Murray, Trustee of Three Hundred Thirty Lexington Street Trust. On January 11, 2009 your office issued a Landowner's Decision and Notice of Special Permit setting forth approval by the Woburn City Council of the Special Permit granted to my client (the "Original Decision") was modified by Notice of Modification of Special Permit dated September 3, 2009 which Decision was further amended by Landowner's Decision and Notice of Special Permit dated May 30, 2013 (the "Modified Decision"). The Original Decision and Modified Decision allows for an eight (8) unit townhouse development at 500 Lexington Street a/k/a 330 Lexington Street, Woburn, Massachusetts. Enclosed please find a copy of a plan entitled "Plan of Land in Woburn and Lexington, 330 Lexington Street, Middlesex County,

Massachusetts” dated January 30, 2009, revised July 28, 2009 prepared by Commonwealth Engineering, Inc.

Since the issuance of the Modified Decision on May 30, 2013 by the City Council, my client has elected to proceed under the original site plan set forth in the Original Decision dated September 3, 2009.

As you recall, the plan that was approved for substitution as the site plan of record in May of this year reduced the size of the lot. At the time, my client was contemplating conveying a portion of his property to an abutter in Lexington. That transaction will not be moving forward. As a result, my client wishes to revert back to the original plan as approved by the City Council in the Original Decision.

The proposed revision to the Modified Decision by substituting the plan approved in the Original Decision does not result in any change or modification to the location of the buildings nor does it change any of the conditions contained in the Decision. It simply substitutes the original plan for the revised plan approved by the City Council on May 30, 2013.

The proposed modification does not result in a substantive amendment which changes the result of the Original Decision or Modified Decision or which grants relief different from that originally granted.

On behalf of my client, I respectfully request approval by the City Council at its meeting on August 6, 2013 of a minor modification to the Modified Decision by deleting the reference to the plan of record in Condition 2 of the Modified Decision and replacing with the original approved Plan entitled: “Plan of Land in Woburn and Lexington, 330 Lexington Street, Middlesex County, Massachusetts dated January 30, 2009 as revised on July 28, 2009 prepared by Commonwealth Engineering Inc., Civil Engineers and Land Surveyors, 27 Cambridge Street, Suite 106, Burlington, MA 01801” as the plan of record.

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

Very truly yours, s/Joseph R. Tarby, III

Alderman Gately stated that the project is going back to the original approved plan. Alderman Drapeau stated that he has no issue with this request and that there is no change to the project. Motion made and 2<sup>nd</sup> that the REQUEST FOR MODIFICATION be APPROVED, AS AMENDED with the amendment as follows: By deleting the reference to the plan of record in the prior decisions and modifications and replacing with the following: “That the plan of record shall be the plan entitled ‘Plan of Land in Woburn and Lexington, 330 Lexington Street, Middlesex County, Massachusetts’ prepared by Commonwealth Engineering Inc. dated January 30, 2009, revision 7-28-09.”, all in favor, 9-0.

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A communication dated July 29, 2013 with attachment was received from Attorney Malcolm H. Houck, 7 Winn Street, Woburn, Massachusetts 01801 as follows:

In re: 210 New Boston Street – Special Permit – Vol. 57, Page 335 – IsabellaB LLC –  
Petitioner

Dear Mr. Campbell:

Further to our recent discussion regarding the above captioned Special Permit, the permit holder had informed me that in undertaking the site work at the property, some needed changes are in order with respect to the features shown on the original plan dated October 30, 2012; -- incorporated by reference into the Special Permit Decision.

The principal of the Petitioner believes that the changes are minimal in nature: - in part to accommodate existing and remaining improvements which predate current site work, but primarily to alter the fencing between construction vehicle parking areas and the parking areas for warehouse employees, for security purposes. The revised fencing will segregate physically the two parking areas, whereas on the current Special Permit plan they are not.

The original Special Permit Decision was dated February 7, 2013 with the Notice (upon expiration of the statutory appeal period) dated February 28, 2013. The Decision and Notice are recorded with the Middlesex South Land Registry District at Book 1266, Page 139 as Document No. DEC18.

Kindly place this matter on the City Council agenda for August 6, 2013 for consideration by the Council. I shall deliver to you 19 copies of the revised site plan for distribution in the same manner as for an original (new) filing of a Special Permit Petition.

If you have any questions, please feel free to contact me.

Very truly yours, s/Malcolm H. Houck

Appearing for the petitioner was Attorney Malcolm H. Houck and he stated that the City Council granted a special permit for the locus in February 2013, that the closing of the sale has occurred, that the special permit was recorded, that the October 2012 plan showed features to be added, that the petitioner would like to alter the changes, that a small fence would segregate the parking area for construction vehicles on New Boston Street, that a fence was to be erected along Merrimac Street, that there were curb bolts installed, that the surface of the land cannot be disturbed because the locus is located in the Operational Unit 2 Industri-Plex Superfund Site, that the petitioner wants to install concrete blocks rather than a fence to isolate the public parking area from the parking area used for construction vehicles, that the storage bins are being constructed, that the fence will be moved to isolate the construction area but not disturb the surface, that the petitioner wants to use the existing curbstops, that a full petition can be filed if necessary, and that all parking spaces have been numbered on the new plan. Alderman Mercer-Bruen stated that no one wants to hold up the petitioner however the process is to be

public so the public can be notified, that the public has not been notified about this request, that the permit that was granted will be changed, that the petitioner should have known about this issue when he applied for the special permit, and that it would be more appropriate to schedule a new special permit public hearing on the matter. Alderman Raymond stated that there are no covers on the bins, that there was to be no storage of demolition materials on the site, that he wants a plan that shows where employees park, where the public parks and where the construction vehicles are parked, that he wants a list of all vehicles parked on the locus, that he has received complaints from constituents about the condition of the locus, that his constituents have said that the property looks like a junkyard, and that there is a lot going on at the property. John Baldasaro of IsabellaB LLC stated that he bins are kept covered at night until the new covers arrive, that he wants to install planters on the New Boston Street side, that he wants the locus to look good, and that he wants the building to be safe and his tenants to be happy. Motion made and 2<sup>nd</sup> to grant leave to allow a full special permit petition to be filed at this meeting, given a first reading and referred to public hearing at the City Council Regular Meeting on September 3, 2013, all in favor, 9-0.

File by Attorney Houck was the following original petition:

Petition by IsabellaB LLC, 21G Olympia Avenue, Woburn, Massachusetts 01801 for a minor modification of a special permit pursuant to Section 5.1.43 and 5.1.57b of the 1985 Woburn Zoning Ordinances, as amended granted February 28, 2103 to incorporate by reference a revised plan dated July 23, 2013 in place of the referenced plan dated October 20, 2012, at 210 New Boston Street.

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Petition by 10 Presidential Way Associates, LLC, 10 Presidential Way, Woburn, Massachusetts 01801 for a special permit with any dimensional relief as may be required pursuant to Sections 5.1.81a, 5.6, 6 and 11 of the 1989 Woburn Zoning Ordinances, as amended, to establish a telecommunications facility to be used for education, training and transmission of secure data at 10 Presidential Way. Alderman Mercer-Bruen stated that the special permit petition was not signed off by the Building Commissioner, that the petitioner must obtain a variance before application can be made for the special permit, and that the petitioner should be given the opportunity to withdraw the petition or the City Council will have to deny the petition. Motion made and 2<sup>nd</sup> that the matter be laid on the table, that the City Clerk forward a letter to the petitioner advising that the petitioner should file a request for leave to withdraw without prejudice and proceed with an application for a variance to the Board of Appeals, all in favor, 9-0.

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Petition by Maggiore Construction, 13 Wheeling Avenue, Woburn, Massachusetts 01801 for a special permit to modify a special permit by modifying the site plan of record to include a single story 24 foot by 17 foot addition to the existing building for living room space, modifying the landscape plan by relocating existing landscape materials to perimeter of the proposed addition at Lot A, 859 Main Street. Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

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Petition by Lawless Chrysler Jeep, Inc., 196 Lexington Street, Woburn, Massachusetts 01801 for a special permit pursuant to Section 5.1.71 of the 1985 Woburn Zoning Ordinances, as amended, to allow for a commercial parking lot at 36 Commerce Way. Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO PUBLIC HEARING, all in favor, 9-0.

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**COMMUNICATIONS AND REPORTS:**

A communication dated July 19, 2013 was received from Charles L. O'Connor, Parking Clerk, Police Headquarters, 25 Harrison Avenue as follows:

In accordance with Massachusetts General Laws Chapter 90, Section 20½, I am submitting a report to you on the parking violations in the City of Woburn for the period ending June 2013: number of parking violations issued 447, number of violations paid 245, number of violations outstanding 161, amount collected and submitted to the Office of the Collector \$25,141.20. There exists a backlog of 6,076 for 1982 through 2012. Demand will be sent until all tickets have been paid. Parking violations referred to the Handicapped Commission to date \$5,300.00.

Respectfully submitted, s/Charles L. O'Connor, Parking Clerk City of Woburn

Motion made and 2<sup>nd</sup> that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

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A communication dated July 29, 2013 was received from Joanne Collins, Director, Woburn Council on Aging along with a copy of the Director's Report and the minutes of the Council on Aging for the month of July 2013. Motion made and 2<sup>nd</sup> that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

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A communication dated July 18, 2013 with attachments was received from Joanne Collins, Director, Woburn Council on Aging relative to the contract and rates set for the Senior Discount Taxi Program. Motion made and 2<sup>nd</sup> that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

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A communication dated July 26, 2013 was received from City Solicitor Ellen Callahan Doucette as follows:

Re: Home Rule Petition – Police Disability Retirement

This memorandum shall serve as a response to the City Council's request for a legal opinion on the issue of whether the home rule petition concerning a disability pension for Officer DeNapoli was "in fact approved by the Mayor" in accordance with the Charter when it was not signed within ten (10) days after it was presented to the Mayor. A copy of the City Council's order is attached hereto for reference.

Section 25 of the Charter provides in relevant part that;

Every Ordinance, Order or Resolution of the City Council, . . . , and every vote . . . shall be presented to the Mayor, . . . If he approves thereof he shall signify his approval by signing the same, but if not he shall return the same with his objection to the City Council, who shall enter the objection of the Mayor at length upon their records and proceed to reconsider said Ordinance, Order, Resolution or Vote, . . . If such Ordinance, Order, Resolution or Vote shall not be returned within ten days after it shall have been so presented to the Mayor the same shall have the same effect as if approved. . .

Based upon the specific language used in Section 25, an ordinance, order, resolution or vote of the City Council is approved by the Mayor "in fact", only when his signature is affixed thereto. An ordinance, order, resolution or vote having "the effect of approval" where such ordinance, order, resolution or vote is vetoed, and passed after reconsideration by the City Council or is not returned within ten (10) days, is not the equivalent of a *de facto* approval.

After the DeNapoli Special Act Legislation was returned to the City on advice of House/Senate counsel based upon the SJC's decision in *Opinion of the Justices to the Senate*, 429 Mass. 1201 (1999) (determining that an override of a Mayor's veto was not an "approval" of a home rule petition as required by Art. 89, §8 of the Amendments of the Constitution), I sent an email to the City's legislative delegation requesting that House/Senate counsel consider whether a distinction can be made where a Charter considers an approval to occur when an Order is not returned or vetoed within ten (10) days. House/Senate counsel's response was that the Mayor's approval must be "literal".

Should the City Council have additional questions or require further assistance regarding this matter, please don't hesitate to contact me.

Very truly yours, s/ Ellen Callahan Doucette

Motion made and 2<sup>nd</sup> that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

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A communication dated July 26, 2013 was received from City Solicitor Ellen Callahan Doucette as follows:

Re: Tax Title Property Auction – Conflict between WMC and M.G.L. c.60, §1, et seq.

This memorandum shall serve as a response to the City Council's request for a legal opinion regarding the applicability of Section 2-33 of the 1989 Woburn Municipal Code ("WMC") which requires City Council approval prior to the sale or assignment of tax title property, to the May 21, 2013 tax title auction and any future sales of tax title property. A copy of the City Council's Order is attached hereto for reference. Though not part of the request, please note that Section 3-23 of the WMC, which purports to set out regulations under M.G.L. c.60 for the care, custody, management and sale of land taken for nonpayment of taxes, is also implicated by your request and as such, will be discussed herein as well. For ease of reference, copies of Sections 2-33 and 3-23 are also attached hereto.

The lengthy and detailed procedure for the collection of local taxes, and the sale of property obtained through the tax title procedure is set forth in M.G.L. c.60, §1, et seq. To the City Council's specific request, the process by which tax title property is sold after the property owner's rights of redemption are foreclosed, is set out in c.60, §§77, 77A and 77B. To facilitate the sale of tax title property, the Mayor is authorized to appoint a tax title custodian by Section 2-8(41) of the WMC, and c.60, §77B which states in pertinent part that, "[t]he custodian, acting on behalf of the city or town, may, notwithstanding any provision of law, ordinance or by-law inconsistent herewith, sell at public auction any such property [acquired through the foreclosure of tax title], . . ." (emphasis supplied) (On June 29, 2012, the Mayor appointed Treasurer/Collector, Tim Donovan, as the tax title custodian.) The underscored language clearly authorizes the tax title custodian to act on the City's behalf with respect to the disposition of tax title property, which authority prevails over any limiting or contradictory provision or procedure established by local ordinance. Therefore, Section 2-33, and its requirement that the Treasurer/Collector obtain City Council approval prior to selling tax title property, had no application to the May 21, 2013 auction, and will not apply to any future auction of tax title property.

As to Section 3-23(A-F) of the WMC, c.60 confers no authority upon the City to enact "regulations" for the custody, management and sale of land acquired by tax title. With the exception of subsections (A) and (D) regarding the Treasurer/Collector's recordkeeping responsibilities, and that portion of subsection (C) which requires the deposit of sale proceeds to the general fund, the regulations in Section 3-23 conflict with the procedural requirements of c.60, §1, et seq., and are of no application.

I trust this response addresses the City Council's inquiry. If the City Council has additional questions or requires further information regarding this matter, please don't hesitate to contact me.

Very truly yours, s/Ellen Callahan Doucette

Motion made and 2<sup>nd</sup> that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

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A communication dated August 1, 2013 was received from Daniel Campbell, P.E., Principal, Level Design Group, 60 Man Mar Drive, Unit 12, Plainville, Massachusetts 02762 as follows:

Re: Rosematwo – Building Expansion – 7 State Street, Woburn, MA – LDG File No. 1314.00

Mr. Campbell and Members of the Council:

Level Design Group, L.L.C. (LDG), on behalf of Rosematwo, LLC, is requesting a continuance of the public hearing for the above referenced property to your October 1, 2013 public hearing. LDG has been in contact with the City Engineer to finalize their requirements for a Development Impact Statement and will supply the requested data in advance of the next public hearing with the Planning Board to finalize their comments. Also LDG continues to work with the Conservation Commission on their approval of the project.

Should you have any questions, please contact me.

Truly yours, s/Level Design Group, L.L.C., Daniel Campbell, P.E., Principal

Motion made and 2<sup>nd</sup> that the PUBLIC HEARING SCHEDULED FOR SEPTEMBER 3, 2013 be CONTINUED TO THE CITY COUNCIL REGULAR MEETING ON OCTOBER 1, 2013, all in favor, 9-0.

\_\_\_\_\_

**UNFINISHED BUSINESS OF PRECEDING MEETING:** None.

\_\_\_\_\_

**APPOINTMENTS AND ELECTIONS:** None.

\_\_\_\_\_

**MOTIONS, ORDERS AND RESOLUTIONS:**

RESOLVED That a letter be sent to the Reading Planning Board from the Woburn City Council in support of their proposal to remove electronic billboards as an allowable use from the zoning ordinance.

s/Alderman Mercer-Bruen and Alderman Haggerty

Alderman Mercer-Bruen stated that an electronic billboard was proposed to be erected in Reading at the Woburn line, that Reading is considering a move to disallow the billboards, and that Woburn should support this proposal. Motion made and 2<sup>nd</sup> that the RESOLVE be ADOPTED, all in favor, 9-0.

**Presented to the Mayor: August 8, 2013**

**s/Scott D. Galvin August 8, 2013**

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RESOLVED That a meeting be scheduled with representatives of Kraft food with neighbors in the area participating regarding recent incidents of odor.

s/Alderman Mercer-Bruen and Alderman Haggerty

Motion made and 2<sup>nd</sup> that the RESOLVE be ADOPTED, all in favor, 9-0.

**Presented to the Mayor: August 8, 2013** s/Scott D. Galvin August 8, 2013

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RESOLVED That the City Engineer provide the City Council with an update and presentation regarding the Salem Street and Wildwood Street intersection negotiations.

s/Alderman Mercer-Bruen

Motion made and 2<sup>nd</sup> that the RESOLVE be ADOPTED, all in favor, 9-0.

**Presented to the Mayor August 8, 2013 and ten days having elapsed without same being approved, said Resolution became effective without his signature on August 20, 2013.**

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RESOLVED That the Superintendent of Public Works take the necessary steps to install a traffic mirror at the intersection of Vernon Street and Montvale Avenue.

s/Alderman Gately

Alderman Gately stated that he can request this action through either the Department of Public Works or the Traffic Commission. Motion made and 2<sup>nd</sup> that the RESOLVE be ADOPTED, all in favor, 9-0.

**Presented to the Mayor August 8, 2013 and ten days having elapsed without same being approved, said Resolution became effective without his signature on August 20, 2013.**

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ORDERED That pursuant to the 1989 Woburn Municipal Code, as amended, Title 3, Article I, Section 3-6 the City Clerk is hereby authorized to dispose of HP laserjet P2015dn printer, one HP laserjet 5200tn printer three Dell monitors and ancillary accessories which the City Clerk has determined are of no value to the department and which no other department has expressed an interest in obtaining.

s/President Denaro

Motion made and 2<sup>nd</sup> that the ORDER be ADOPTED, all in favor, 9-0.

**Presented to the Mayor: August 8, 2013**

**s/Scott D. Galvin August 8, 2013**

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ORDERED That pursuant to the 1989 Woburn Municipal Code, as amended, Title 3, Article I, Section 3-6 the Board of Trustees of the Woburn Public Library and the Library Director are hereby authorized to dispose a John Deere Model 826 snow blower, a Kent commercial vacuum cleaner, a 30-drawer card catalog, a wood topped section of metal library shelving, four sections of gray metal shelving, six round children's tables and a children's room height circulation desk which the Board of Trustees and the Library Director have determined are of no value to the department and which no other department has expressed an interest in obtaining.

s/President Denaro

Motion made and 2<sup>nd</sup> that the ORDER be ADOPTED, all in favor, 9-0.

**Presented to the Mayor: August 8, 2013**

**s/Scott D. Galvin August 8, 2013**

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ORDERED That in accordance with Massachusetts General Laws Chapter 54, as amended, the City Clerk is hereby authorized and directed to notify and to warn such of the inhabitants of the City of Woburn as are qualified to vote in Municipal Elections to assemble at the polling places in their respective wards as designated herein, on TUESDAY, the SEVENTEENTH DAY OF SEPTEMBER 2012 from 7:00 a.m. to 8:00 p.m., then and there to cast their votes in the MUNICIPAL PRELIMINARY ELECTION for the candidates for the following offices:

ALL WARDS	MAYOR
WARD FIVE	MAYOR, WARD ALDERMAN

Ward-Precinct Polling Place Location

- 1-1 Joyce Middle School Library, 55 Locust Street
- 1-2 Clapp Elementary School Cafeteria,  
Hudson Street and Arlington Road
- 2-1 Shamrock Elementary School Gymnasium,  
60 Green Street
- 2-2 Shamrock Elementary School Gymnasium,  
60 Green Street

- 3-1 Hurld Elementary School Gymnasium, 75 Bedford Road
- 3-2 Hurld Elementary School Gymnasium, 75 Bedford Road
- 4-1 Wyman Elementary School Auditorium, Main Street and Eaton Avenue
- 4-2 White Elementary School, 36 Bow Street
- 5-1 Goodyear Elementary School Gymnasium, 41 Central Street
- 5-2 Goodyear Elementary School Gymnasium, 41 Central Street
- 6-1 Altavesta Elementary School Gymnasium, 990 Main Street
- 6-2 Altavesta Elementary School Gymnasium, 990 Main Street
- 7-1 Reeves Elementary School Gymnasium, 240 Lexington Street
- 7-2 Reeves Elementary School Gymnasium, 240 Lexington Street

s/President Denaro

Motion made and 2<sup>nd</sup> that the ORDER be ADOPTED, all in favor, 9-0.

**Presented to the Mayor: August 8, 2013**

**s/Scott D. Galvin August 8, 2013**

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ORDERED That the following list of Wardens, Clerks, Inspectors and Substitutes be approved for all Elections between September 1, 2013 and August 31, 2014:

Ward	Prcicnt	Name	Address	Office
1	1	Barbara Fagan	33 Dix Rd. Ext.	Warden
1	1	Sharon Flynn	6 Thornton St.	Clerk
1	1	Diane Ahern	2 Keith Circle	Inspector
1	1	Catherine Walsh	273 Cambridge Road #202	Inspector
1	1	Marie Giangrande	6 Flint Circle	Inspector
1	1	Jean Bergeron	8 Brooks Street	Inspector
1	1	Roberta Bengtson	6 Samoset Road	Inspector
1	1	Loretta Schuck	44 Leonard Street	Inspector

1	1	Paula Walsh	11 Hillside Avenue	Inspector
1	1	Florianna Tobin	59 Campbell Street #309	Inspector
1	2	Ron Dunn	8 Spring Street	Warden
1	2	Margaret Wallace	4 Lakeview Terr	Clerk
1	2	Betty Parechianian	7 Hope Lane	Inspector
1	2	Walter Desharnais	15 Veteran Road	Inspector
1	2	Georgina Silva	50 Cambridge Rd #209	Inspector
1	2	Carol Beckwith	27 Buttaro Road	Inspector
1	2	Sophie Davidson	37 Arlington Rd	Inspector
1	2	Rita Allitto	11 Morningside Drive	Inspector
1	2	Janet LeBlanc	1 Surrey Circle	Inspector
1	2	Ann Decubellis	1 Library Place #507	Substitute
2	1	Sandra Luther	19 Cummings Ave	Warden
2	1	Catherine DiPanfilo	20 Innitou Road	Clerk
2	1	Carmella Crowell	30 Dix Road Ext	Inspector
2	1	Helen King	4 Bedford Road	Inspector
2	1	Frank Starble	11 Page Place	Inspector
2	1	Roy Luther	19 Cummings Avenue	Inspector
2	1	Arthur Cumming Jr.	27 Anna Road	Inspector
2	1	Deborah Jean Finn	1 Village Street	Substitute
2	1	Theresa Smith	25-0 Arlington Road 4	Inspector
2	1	Connie Pandolph	9 Park Drive	Inspector
2	2	Patricia McCuish	14 Scott Street	Warden
2	2	Donald McCuish	14 Scott Street	Clerk
2	2	Elizabeth Ober	39 Forest Park Road	Inspector
2	2	Paula Nagle	8 Thomas Street	Inspector
2	2	Janice Pandolph	44 Samoset Road	Inspector
2	2	Jean Mernin	2 Walnut Court	Inspector
2	2	Judith Nagle	8 Thomas Street	Inspector
2	2	Natalie O'Connor	13 Cummings Avenue	Inspector
2	2	Thomas Fuller	178 Montvale Avenue	Inspector
2	2	Paul Cunniff	93 Waltham Street	Inspector
3	1	Linda Olsson	60 Water Street	Warden
3	1	Richard Tobin	44 Green Street	Clerk
3	1	Elizabeth A. Simonds	3 Court Street	Inspector
1	1	Marie Landino	12 Minchin Drive	Inspector
3	1	Marion Dora	2 Kimball Court #406	Inspector
3	1	Marie Price	240 Place Lane	Inspector
3	1	Rosemary Spencer	5 Caulifield Road	Inspector
3	1	Stella Di Girolamo	9 Lee Road	Inspector
3	1	Anthony Pandolph	44 Samoset Road	Inspector
3	1	Janet Irwin	37 Waltham Street	Inspector
3	2	Thelma Anthony	41 Brentwood Road	Warden
3	2	Elizabeth Donovan	5 Crescent Road	Clerk
3	2	Dianne DiRienzo	24 Carson Road	Inspector
3	2	Helen Sherburne	12 Ward Street	Substitute
3	2	Hilda Abreu	81 Garfield Avenue	Inspector
3	2	Mary Packard	101 Montvale Avenue	Inspector

3	2	Joyce Wentworth	17 Highet Avenue	Inspector
3	2	Patricia Rossetti	16 Robert Avenue	Inspector
3	2	Doris Stanton	18 Nichols Street Ext	Inspector
3	2	Paul Johnson	7 Dearborn Terrace	Inspector
4	1	Sarkis Chinian	8 Asbury Avenue	Warden
4	1	Vincent Rivela	16 Jan Street	Clerk
4	1	Jean Cronin	18 Mayflower Road	Inspector
4	1	Albert Galante	4 O'Neil Road	Inspector
4	1	Jane Dolan	57 Arlington Road	Inspector
4	1	Mary Alice Grzyb	26 Carroll Road	Inspector
4	1	Robert Coffey	273 Cambridge Rd #301	Substitute
4	1	James Doherty	45 Brentwood Road	Inspector
4	1	Mary Anne Damico	20 Brentwood Road	Inspector
4	1	Gerald Murray	6 Asbury Avenue	Inspector
4	2	Elaine Haggerty	30 Thistle Road	Warden
4	2	Suzy Hicks	213 Cambridge Road	Clerk
4	2	Hazel Lambert	3 Elmwood Terrace	Inspector
4	2	Geraldine Moscaritolo	200 Bedford Road #20E	Inspector
4	2	Jeanne Lingblom	18 Day Circle	Inspector
4	2	Margaret Stack	7 Willow Street	Inspector
4	2	Dawn Richards	33 Nashua Street	Inspector
4	2	Cecelia Rivela	16 Jan Street	Inspector
4	2	Alfred Autenzio	9 Arbor Lane	Inspector
4	2	Ann McGarry	3 Innitou Road	Inspector
5	1	Joyce Marshall	5 Elijah Street	Warden
5	1	Rodney Flynn	6 Thornton St	Clerk
5	1	George Marshall	5 Elijah Street	Inspector
5	1	Joseph Ross	25 Munroe Avenue	Inspector
5	1	Nancy Doyle	7 Flint Circle	Inspector
5	1	Gloria Platon	6 Fieldstone Drive	Inspector
5	1	William Connolly	27 Parker Street	Inspector
5	1	James Thompson	114 Harrison Avenue	Inspector
5	1	Maureen Vallis	4 Clifford Terrace	Inspector
5	1	Martin LaCarbonara	10 Grove Street	Inspector
5	2	Helen Hatch	14 Marlboro Road	Warden
5	2	Melinda Drapeau	6 Whispering Hill Road	Clerk
5	2	William Coady	35 Glenwood Avenue	Inspector
5	2	Mary Dickie	1 Linden Circle	Inspector
5	2	Theresa Chotkowski	3 Pond Terrace	Inspector
5	2	Timothy Murphy	9 Blueberry Hill Road	Inspector
5	2	Shirley Butler	28 Felton Street	Inspector
5	2	Anna Cumming	27 Anna Road	Inspector
5	2	Myles Collins	19 Squanto Road	Inspector
5	2	Florence Keefe	43 Leonard Street	Inspector
6	1	Nancy Darby	20 Ward St	Warden
6	1	Jean O'Connor	9 Rock Street	Clerk
6	1	Eleanor Collins	19 Squanto Road	Inspector
6	1	Barbara Ridley	129 Place Lane	Inspector

6	1	Kathleen Bailey	4 Utica Street	Inspector
6	1	Caroline Murphy	3 Akeson Road	Inspector
6	1	Darlene Daddario	3 McDevitt Drive	Inspector
6	1	Carolyn Agostino	295 Salem Street #71	Inspector
6	1	Marion Galante	4 O'Neil Road	Inspector
6	1	Jane Linn	204 School Street	Inspector
6	2	Diane Autenzio	23 Milan Avenue	Warden
6	2	John Decata	57 Wood Street	Clerk
6	2	Sheila Marshall	26 Boyd Road	Inspector
6	2	Marilyn Ebrecht	40 West Street	Inspector
6	2	Irene Decata	57 Wood Street	Inspector
6	2	Daniel Scinto	4 Highet Avenue	Inspector
6	2	Diane Scinto	4 Highet Avenue	Inspector
6	2	Rita Stone	63 Merrimac Street	Inspector
6	2	Michelina DeAngelis	255 Lexington Street	Inspector
6	2	Marilyn Smith	16 Nichols Street Ext	
7	1	Alfred Magro	9 Rich Road	Warden
7	1	Thomas O'Rourke	15 Highet Avenue	Clerk
7	1	Camille Maccini	3 Pheasant Lane	Inspector
7	1	Dorothy Curran	1 Dix Road	Inspector
7	1	Ellen Magro	9 Rich Road	Inspector
7	1	Florence Tully	5 Hiawatha Road	Inspector
7	1	Ruthann Gridelli	25 Grape Street	Inspector
7	1	Loretta Cianchi	32 Dix Road Ext.	Inspector
7	1	Virginia Evans	12 Barbara Circle	Inspector
7	1	Barbara Callahan	32 Van Norden Road	Inspector
7	2	M. Joyce O'Donnell	442 Russell Street	Warden
7	2	Patti Doyle	6 Thomas Street	Clerk
7	2	Margaret Reilly	7 Williams Lane	Inspector
7	2	Carol Murphy	275 Russell Street	Inspector
7	2	Maurice W. Finn	10 Lafayette Place	Inspector
7	2	Phyllis Flight	99 Middle Street	Inspector
7	2	Mary Harrison	48 Lake Ave #BC5	Inspector
7	2	Donna Bullen	27 Robinson Road	Inspector
7	2	Gloria Finn	10 Lafayette Place	Inspector
7	2	Nancy Matthews	361 Place Lane	Inspector
		Anthony Zeoli	15 Independence Drive	Substitute
		Carmelita Alessandrini	29 Grace Road	Substitute
		Charles V. Spearman	50 Salem Street Apt A	Substitute
		Claire Regan	8 Howard Court	Substitute
		Dianne G. Rich	13 Buttaro Road	Substitute
		Doris Allen	6 Bear Hill Road	Substitute
		Dorothy Geary	1 Belmont Street	Substitute
		Dorothy Livolsi	57 Winter Street	Substitute
		Edward Grzyb	26 Carroll Road	Substitute
		Godfredo P. Alaras	7 Bradford Road	Substitute
		Hans Christenson	256 Salem Street	Substitute
		Judith Gosselin	2 Kimball Court #205	Substitute

		Rosemary Ceurvels	25 Samoset Road	Substitute
		Nancy Farrey-Forsyth	9 Sedgewick Pk	Substitute
		Carolyn Youngclause	2 Park Drive	Substitute
		Judith Ann Zeoli	15 Independence Drive	Substitute
		Dianne Rich	13 Buttaro Road	Substitute
		Irene Murphy	44 Brentwood Road	Substitute
		Christine Bellekevicz	17 Jan Street	Substitute
		Aquinta Ancrum	48 Lake Ave, H	Substitute
		Sandra Best	6 Packard Street	Substitute
		Mary Chinian	8 Asbury Ave	Substitute
		Marcia Andrews	238 Winn Street	Substitute
		Jayne Lee	20 Green St	Substitute
		MaryAnn Chorlton	312 Lexington Street	Substitute
		Dorothy Claflin	42 Poole Street	Substitute

I hereby approve the above. s/Scott D. Galvin

s/President Denaro

Motion made and 2<sup>nd</sup> that the ORDER be ADOPTED, 7 in favor, 0 opposed, 2 abstained (Drapeau, Haggerty abstained).

**Presented to the Mayor: August 8, 2013**

**s/Scott D. Galvin August 8, 2013**

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ORDERED Be it ordained by the City Council of the City of Woburn that Title 2, Article XXVIII, Section 2-192(2) be stricken in its place the following shall be inserted:

2. Employees who are not receiving longevity as a result of not being eligible for any or part of the longevity when the percentages were frozen will receive the set dollar amount as follows:

<u>Years of Full Time Employment</u>	<u>Annual Amount of Payment</u>
Less than 5 full years	No payment
Upon completion of 5 full years	\$850.00
Upon completion of 10 full years	\$1,500.00
Upon completion of 15 full years	\$2,150.00
Upon completion of 20 full years	\$2,800.00
Upon completion of 25 full years	\$3,450.00
Upon completion of 30 full years	\$4,100.00
Upon completion of 35 full years or more	\$4,750.00

Be it further ordered that the effective date of this ordinance shall be July 1, 2013.

s/President Denaro

Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO COMMITTEE ON ORDINANCES, all in favor, 9-0

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ORDERED

Be it ordained by the City Council of the City of Woburn that the 1989 Woburn Municipal Code, as amended, be further amended by deleting Article III, Sections 5-15 through 5-22 and Article IV, Sections 5-23 through 5-29 and replacing same with the following new Article III entitled “Secondhand Dealer and Secondhand Collector”:

### III. SECONDHAND DEALERS AND SECONDHAND COLLECTORS

#### 5.3.1 Definitions

As used in this ordinance, the following terms shall have the meanings indicated:

Acceptable Identification — Either:

- A. A current driver's license, issued by a governmental agency, that includes the date of birth, photograph, and physical description of the person offering the identification; or
- B. Two other pieces of current identification, at least one of which is issued by a governmental agency or subdivision and includes the date of birth, photograph and physical description of the person offering the identification.

Police Chief — The Chief of Police of the City of Woburn or his designee.

Regulated Property — The following used property:

- A. Precious metals, which are any metal valued for its character, rarity, beauty or quality, including but not limited to gold, silver, copper, platinum or other metals, wheterh as a separate item or in combination with other items.
- B. Precious gems, which are any gem valued for its character, rarity, beauty or quality, including but not limited to diamonds, rubies, emeralds, sapphires or pearls, or other precious or semiprecious gems or stones, whether as a separate item or in combination with other items or as a piece of jewelry.
- C. Watches and jewelry containing precious metals or precious gems, including but not limited to, rings, necklaces, pendants, earrings, brooches, chains, pocket watches, wristwatches, or stopwatches.
- D. Sterling silver flatware, including but not limited to knives, forks, spoons, candlesticks, coffee and tea sets, or ornamental objects.

- E. Any electronic audio, video or photographic and optical equipment, along with computer or computer equipment or recordings in any form (collectively “electronics”).
- F. Any power tools or equipment.
- G. Musical instruments.
- H. Sporting equipment.
- I. Collectibles, including objects of art, coins, currency and antique objects, but not including those items identified in Section 5.3.

Secondhand Collector - Has the same meaning as the term "junk collector" in M.G.L. c. 140, § 56.

Secondhand Dealer — Has the same meaning as the term "junk dealer" and "keeper of a shop for the purchase, sale or barter of junk, old metals or secondhand articles" in M.G.L. c. 140, § 54.

#### 5.3.2 License required.

- A. No person shall conduct business as a secondhand dealer or secondhand collector, unless licensed by the City Council. (Prior CH.22 sec 1(A)). The license shall be conspicuously posted in an accessible place on the licensed premises.
- B. Licenses under this bylaw may be issued only after notice and a public hearing, notice of the time and place of which hearing shall have been given, at the expense of the applicant, by the clerk of the city, by publication, not less than seven days prior thereto, in a newspaper of general circulation in the city.
- C. Licenses under this bylaw may be issued for a period of one (1) year, from April until May, unless sooner revoked by the City Council.
- D. A one time, non-refundable, application fee of \$200 shall apply.
- E. An annual renewal fee of \$100 shall apply. A public hearing is not required for a license renewal.
- F. The police department shall be notified by the Office of City Clerk of all license applications and renewals.

#### 5.3.3 Grounds for Denial of Issuance or Renewal

The City Council may, after notice and a public hearing, deny an original or renewal application for a secondhand dealer or secondhand collector license if it

has probable cause to believe any of the following conditions exist after a public hearing:

1. The applicant, or any person who in part or whole, owns, manages or operates the secondhand dealer or secondhand collector business, has owned or operated a secondhand dealer or secondhand collector business regulated under this regulation or any substantially similar license and, within the five years prior to the application date:
  - a. Has had a secondhand dealer or secondhand collector license revoked for a reason that would be grounds for a denial or revocation pursuant this chapter; or
  - b. The secondhand dealer or secondhand collector business has been found to constitute a public nuisance.
2. The applicant, or any person who, in part or whole, owns, manages or operates the secondhand dealer or secondhand collector business, has been convicted of a felony or any crime involving a false statement within 15 years prior to the application date.
3. The applicant has:
  - a. Knowingly made a false statement in the application;
  - b. Knowingly omitted information requested to be disclosed in the application; or
  - c. Completed the application with reckless disregard for the truth or accuracy of the statements made therein.
4. A lawful inspection of the secondhand dealer or secondhand collector business premises by the Chief of Police or his designee has been unjustifiably refused by a person who, in part or whole, manages or operates the business.
5. The applicant or any person who, in part or whole, owns, manages or operates the secondhand dealer or secondhand collector business has more than five violations of this ordinance; any state or federal law, or any combination thereof within a two-year period, including the two years prior to the application date.
6. The secondhand dealer or secondhand collector business, the applicant or any person who, in part or whole, owns, manages or operates the secondhand dealer or secondhand collector business has been convicted of any law of the Commonwealth of Massachusetts that is contrary to the type of secondhand business to be conducted, such as, but not limited to, receiving stolen property, any form of breaking and entering, larceny from a person or any other form of larceny, or any

form of aggravated assault, as verified by a CORI by the Chief of Police or his designee.

#### 5.3.4 Suspension or Revocation of License

The City Council may, after notice and a public hearing, suspend or revoke a secondhand dealer or secondhand collector license if it has probable cause to believe any of the following conditions exist after a public hearing:

1. Any secondhand dealer or secondhand collector business, or any person who, in part or whole, owns, manages or operates the secondhand dealer or secondhand collector business knowingly writes or records the wrong name, date of birth, address, or identification number of a person offering any item for sale or knowingly permits the signing of such wrong name, date of birth, address, or identification number shall be subject to suspension or revocation of the license by the City Council.
2. Any secondhand dealer or secondhand collector business, or any person who, in part or whole, owns, manages or operates the secondhand dealer or secondhand collector business is found to have purchased any stolen article shall be liable for the loss incurred by such purchase, and the purchased article may be reclaimed by the owner of the same, at no cost, and the license may be subject to suspension or revocation by the City Council.
3. Any secondhand dealer or secondhand collector business, or any person, who, in part or whole, owns, manages or operates the secondhand dealer or secondhand collector business knowingly alters, obliterates or removes and part of an item purchased prior to the end of any holding period may have their license suspended or revoked by the City Council.
4. Any secondhand dealer or secondhand collector business, or any person who, in part or whole, owns, manages or operates the secondhand dealer or secondhand collector business knowingly violates any other provision of this ordinance may have their license suspended or revoked by the City Council.

#### 5.3.5 Business permitted only at licensed premises

- A. No secondhand dealer or secondhand collector shall carry on his business in any other place than that designated in his license.
- B. Every secondhand dealer or secondhand collector shall have readily available for public view at his/her shop a copy of the statutes, ordinances

and police regulations relating to the dealers in gold, silver, coins, precious and semi-precious gems, platinum or electronics, to be furnished upon the issuance of the license by the Office of the City Clerk.

#### 5.3.6 Transportation/Storage of Regulated Property

- A. No person shall collect or transport regulated articles from place to place within the City limits unless specifically licensed by the City Council to do so.
- B. Every vehicle used in the collection or transportation of regulated articles shall be listed on the license granted by the City Council. The contents of such vehicle, while transporting regulated articles, shall be subject at all times to the examination of the Chief of Police or his designee.

#### 5.3.7 Recordkeeping.

- A. Every secondhand dealer or secondhand collector shall maintain a book or other method of recording, which shall be of a size, style and method approved by the Chief of Police. Entries shall be legibly written, photographed or typed in the English language and shall show the amount paid for each article and the number attached to each article where required in accordance with Subsection C hereof. All forms of electronic record keeping shall be approved by the Chief of Police. No entry shall be erased, obliterated, altered or defaced.
- B. Secondhand dealers and secondhand collectors shall require that acceptable identification be provided prior to purchasing any regulated property.
- C. At the time of every purchase of any regulated property, a detailed description thereof including weights, karat, inscriptions, serial number, together with the name, date of birth, address, identification number and signature of the individual selling the regulated property, and the day and hour when such purchase was made, shall be entered in said book before the regulated property is purchased. In the event that such person is unable to write, the secondhand dealer, secondhand collector or their employee, shall enter a notation in the book stating that such person was unable to do so.
- D. When the regulated property is gold, silver, coins, precious and semi-precious gems, platinum, or electronics, the secondhand dealer or secondhand collector shall, at the time of making any purchase, attach a number to each article bought, and shall make entry of such number in the book provided for herein.

- E. In those transactions where precious metals, coins and or gems, regardless of form, weight or appearance, are purchased, a digital photograph of the item purchased shall be retained together with the acceptable identification.
- F. A list of all purchases and acquisitions shall be submitted to the Woburn Police Department within one (1) week of such purchase or acquisition.

#### 5.3.8 Testing of Weighing and Measuring Devices

All weighing or measuring devices used by a licensee in the conduct of the licensed business shall be tested and sealed by the City of Woburn Sealer of Weights and Measures prior to being placed into service. All weighing and measuring devices shall thereafter be inspected and tested on an annual basis.

#### 5.3.9 Purchases

- A. No secondhand dealer or secondhand collector or any employee thereof shall directly or indirectly purchase or receive by way of barter or exchange any regulated article from a person under the age of eighteen (18) years.
- B. A secondhand dealer or secondhand collector shall not purchase or receive by way of barter or exchange any regulated property whose serial number or other identifiable marking has been wholly or partially tampered with or removed.
- C. Any regulated property that is taken under "consignment" where the secondhand dealer or secondhand collector receives any type of gain, profit, trade of property, or the recovery of expenses shall be considered regulated property and shall be subject to the provisions of this ordinance.
- D. No secondhand dealer or secondhand collector may purchase or sell any property of any type without the consent of the owner.

#### 5.3.10 Retention Periods for Regulated Property; Exemptions

- A. Where the regulated property purchased is gold, silver, coins, precious and semi-precious gems, platinum or electronics, no secondhand dealer or collector shall permit the same to be altered, broken up, taken apart, defaced, melted, sold or otherwise disposed of until at least thirty (30) days from the date of its purchase or receipt has elapsed, unless permission has been obtained from the Chief of Police or his designee.
- B. All other regulated property purchased by a secondhand dealer or secondhand collector shall be held by said secondhand dealer or secondhand collector for at least 15 days from the date of purchase.

- C. The secondhand dealer or secondhand collector shall maintain the property in substantially the same form as when purchased and shall not alter, exchange or commingle the property. During the holding period the regulated property shall be kept on the business premises during normal business hours and shall be subject to inspection by the Chief of Police or his designee.
- D. The Chief of Police or his designee may give written notice to a secondhand dealer or secondhand collector holding regulated property that the Chief of Police or his designee has reasonable grounds to believe that more likely than not a specific item of regulated property is associated with criminal conduct. The secondhand dealer or secondhand collector holding the regulated property shall then continue to hold the property specified in the notice in the same manner and place as required under Subsection A of this section until released by the Chief of Police Chief. The holding period for any item of regulated property shall not exceed 180 days from the date of purchase, unless the item is subject of a pending civil or criminal proceeding.
- E. A secondhand dealer or secondhand collector may from time to time request, in writing that the Chief of Police shorten the length of the holding period. If the Chief of Police or his designee determines relief from the holding period is appropriate due to unreasonable hardship, the Chief of Police or his designee shall provide the secondhand dealer or secondhand collector who requested relief with written authorization to sell, transfer or otherwise dispose of the regulated property. The request shall identify the property and state the basis or bases of the unreasonable hardship or hardships. The authorization shall be effective only upon delivery of the written authorization to the secondhand dealer.
- F. Secondhand dealers or secondhand collectors retailing or wholesaling used property limited to the following are exempt from Subsection B above:
  - 1. Used clothing, furniture, knickknacks, footwear, and houseware items such as dishes, pots, pans, cooking utensils, and cutlery; or
  - 2. Any person who knowingly writes or records the wrong name, date of birth, address, or identification number of a person offering any item for sale or knowingly permits the signing of such wrong name, date of birth, address, or identification number shall be subject to suspension or revocation of license by the City Council.
  - 3. Used clothing, furniture, footwear and houseware items such as dishes, pots, pans, cooking utensils and cutlery, obtained only from or through a registered charity or by donations; or
  - 4. Used books, papers, or magazines.

#### 5.3.11 Inspection of Licensed Premises and Records

- A. The book or other means of recording shall at all times be open to the inspection of the Chief of Police or his designee. When the Police Chief or his designee has reasonable grounds to believe that a specific item of regulated property held by a secondhand dealer or secondhand collector is associated with criminal conduct.
- B. Whenever necessary to make an inspection to enforce the provisions of this ordinance, or when the Chief of Police or his designee has reasonable grounds to believe more likely than not that a specific item of regulated property held by a secondhand dealer or secondhand collector is associated with criminal conduct, the Chief of Police or his designee may enter the premises of the secondhand dealer or secondhand collector at any reasonable time, provided that the premises is occupied at the time of entry and the Chief of Police or his designee presents proper official identification at or near the time of entry. If entry is refused, the Chief of Police or his designee shall have recourse to every remedy provided by law to secure entry, including an administrative search warrant or a criminal search warrant.
- C. Authority to inspect secondhand dealer or secondhand collector premises under this ordinance is in addition to and not in limitation of the authority the City or the Chief of Police or any police officer would otherwise have to enter the business premises.

#### 5.3.12 Penalty and Enforcement

Violations of this Ordinance shall be subject to a fine of two hundred (\$200.00) for each violation. Each violation of this Ordinance shall constitute a separate offense, and each day that any such violation continues shall constitute a separate offense. The Police Chief or his designee, and any Woburn Police Officer shall have authority to enforce the provisions of this Ordinance. Any alleged violation of this Ordinance may, in the sole discretion of the enforcing agent, be made the subject matter of noncriminal disposition proceedings commenced by such agent in accordance with M.G.L. c.40, §21D.

#### 5.3.13 Severability

If any provision of this ordinance is held to be invalid, it shall not affect the validity or application of the remaining provisions, or take any other action relative thereto.

s/Alderman Haggerty, Alderman Anderson and  
Alderman Mercer-Bruen

Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO COMMITTEE ON  
ORDINANCES, all in favor, 9-0

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Motion made and 2<sup>nd</sup> to ADJOURN, all in favor, 9-0. Meeting adjourned at 9:45 p.m.

A TRUE RECORD ATTEST:

William C. Campbell  
City Clerk and Clerk of the City Council