

**CITY OF WOBURN  
MARCH 4, 2014 - 7:00 P.M.  
REGULAR MEETING OF THE CITY COUNCIL**

Roll Call

Anderson	Gaffney
Concannon	Gately
DiTucci	Mercer-Bruen
Drapeau	Raymond
Haggerty	

---

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

---

Motion made and 2<sup>nd</sup> to suspend the rules for the purposes of taking the following matter out of order, all in favor, 9-0. A communication dated February 27, 2014 was received from His Honor the Mayor Scott D. Galvin as follows:

Dear President Haggerty and Members of the Woburn City Council:

I am very pleased to submit and Order relative to the disability retirement of Woburn Police Officer Robert DeNapoli.

Office DeNapoli and I have over the course of several meetings agreed on the terms of this retirement package. I will be available to discuss when I appear before the Council on Tuesday, March 4, 2014, and will be respectfully requesting the Council's approval at this meeting.

Respectfully, s/Scott D. Galvin

Attached thereto was the following Order:

**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. 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, or not otherwise covered by health insurance.

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

s/President Haggerty, Alderman Concannon, Alderman DiTucci,  
Alderman Gately, Alderman Gaffney, Alderman Anderson,  
Alderman Mercer-Bruen, Alderman Raymond, Alderman Drapeau

Motion made and 2<sup>nd</sup> that the communication from His Honor the Mayor be accepted, all in favor, 9-0. Motion made and 2<sup>nd</sup> that the ORDER be ADOPTED, all in favor, 9-0. Motion made and 2<sup>nd</sup> that the MATTER be FORWARDED TO THE STATE LEGISLATURE FOR ACTION, all in favor, 9-0.

**Presented to the Mayor: March 6, 2014**

**s/Scott D. Galvin March 6, 2014**

\*\*\*\*\*

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

\*\*\*\*\*

**MAYOR'S COMMUNICATIONS:**

A communication dated February 27, 2014 was received from His Honor the Mayor Scott D. Galvin as follows:

Dear President Haggerty and Members of the Woburn City Council:

I am requesting the City Council allow for a brief presentation before your March 4, 2014 meeting. The purpose is to provide the Council with information about the new Open Checkbook program developed by the City in cooperation with Tyler Technology and with the assistance of a Community Innovation Challenge Grant awarded by the Executive Office of Administration and Finance.

The City of Woburn was the recipient of grant funding in FY2013 and FY2014, totaling \$300,000. We are working with A&F to recruit an additional 20 communities to adopt the Open Checkbook platform.

Open Checkbook provides transparency of financial data to citizens/taxpayers. Open Checkbook gives citizens detailed view into City spending. Transparency helps bring a level of knowledge and trust that engages citizens directly and creates a collaborative atmosphere.

I look forward to seeing you on Tuesday.

Respectfully, s/Scott D. Galvin

Motion made and 2<sup>nd</sup> to suspend the rules for the purposes of hearing from His Honor the Mayor on the Open Checkbook program, all in favor, 9-0. Appearing was His Honor the Mayor Scott D. Galvin and he stated that in 2013 the city received a Community Innovation Challenge Grant for \$120,000.00 with Woburn as the lead community along with four other communities, that the program is an interactive online transparency module, that residents can use the interactive site, that the information will be updated

weekly with live information, that the module gives residents access to government spending information, that the module will go live tomorrow, that the city sought an second round of funding in the amount of \$180,000.00, that the State wants twenty more communities to join the program, and that a recently adopted State law will require all communities to have this data available online by 2017. Charles Doherty, Deputy Auditor stated that the module allows the public to look at city expenditures under various categories, that the module is ADA accessible, that department information will show how vendors and employees are paid, that the module will show when and what amount was paid to which vendors by each department, that the module will show the amount and when payments were made to employees, that the records for a particular employee can be accessed to see what the employee was paid, that the current system will show payments for 2012, 2013 and 2014, that the system is built to show the current year information as well as historical information back for a period of ten years, that information will be available as to revenue received when it is received, that the information will be updated each week, that the system was developed by Tyler Technology and is a MUNIS module, that the school department information is also included in the system, that the pension records are not yet on the system but will be at some point in the future, and that Veteran's cash aid is not yet included. Mayor Galvin stated that retirees' pension information will also have to be included by 2017 under the new law. Alderman Mercer-Bruen stated that this is a fabulous system, that the information has always been available but will be more convenient, and that the system should be used in the school as an education tool. Mayor Galvin stated that the city will have a webinar with Tyler Technology for other communities that have signed up for the program, that Tyler Technology represents 150 communities, and that it will not be difficult to arrange for twenty of the 150 communities to join the program. Deputy Auditor Doherty stated that the other four communities are Brookline, Chelsea, Chicopee and Revere, that now that the template is established other communities can easily become participants, and that the city can also use the information posted on the websites of other communities to compare purchasing of similar items by the city. Alderman Anderson stated that he was not critical of the program but did not understand why Woburn was responsible for recruiting twenty additional communities and what benefit the city would receive for doing so. Mayor Galvin stated that in a way the city is doing the State's work in recruiting twenty additional communities, that this will endear the city to the Massachusetts Executive Office of Administration and Finance, that the city is receiving the benefit of the system, and that the city is in charge of the grant money. No action taken.

\*\*\*\*\*

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

\*\*\*\*\*

ORDERED That the amount of \$65,000.00 be and is transferred as follows from DPW Operations Acct #0141151-511002 \$65,000.00 to DPW O/T Acct #0141151-513100 \$65,000.00

I hereby recommend the above: s/Scott D. Galvin, Mayor

I hereby approve the above: s/John F. Duran, DPW Superintendent  
I have reviewed the above: s/Gerald W. Surette, City Auditor

s/President Haggerty

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

\*\*\*\*\*

ORDERED That the City of Woburn appropriates the sum of Six Million Eight Hundred Dollars (\$6,800,000) to pay costs of infiltration and inflow reduction, including the payment of all costs associated therewith, and that to meet this appropriation, the Treasurer, with the approval of the Mayor, is authorized to borrow said sum under and pursuant to Chapter 44, Section 7(1) of the General Laws, or any other enabling authority; and that the Mayor is authorized to contract for and expend any federal or state aid available for the project.

s/Scott D. Galvin, Mayor

s/Alderman Gately

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

\*\*\*\*\*

ORDERED That the amount of \$135,000.00 be and is hereby appropriated from BLS/Ambulance Receipts Acct #31359-590000 \$135,000.00 to Fire/Ambulance Salary Acct #0122051-511500 \$100,000.00, Fire/Medical Attention Acct #0122054-558103 \$5,000.00, Apparatus Maintenance Acct #0122054-544400 \$15,000.00, Fire/Equipment Acct #0122058-585000 \$15,000.00, Total \$135,000.00

I hereby recommend the above: s/Scott D. Galvin, Mayor  
I hereby approve the above: s/Timothy J. Ring, Chief, Fire Department  
I have reviewed the above: s/Gerald W. Surette, City Auditor

s/President Haggerty

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

---

**PUBLIC HEARINGS:**

On the petition by Joseph Zink, Atlantic Management Corporation, 205 Newbury Street, Framingham, Massachusetts 01701 for special permits pursuant to the 1985 Woburn Zoning Ordinances, as amended as follows: 1. Section 5.1.44 to allow operation of a garage, automobile and truck repair, 2. Section 5.1.57b to allow accessory storage or parking of commercial motor vehicles other than as provided for in Section 5.1.58, trucks, buses or contractor's equipment, and 3. Section 7.3 findings for extension or alteration of non-conforming uses/structures for the following: a. minimum landscaped usable open space requirement under Section 6.1 and footnote 7 (30%), and b. retaining loading bays facing Wildwood Avenue under Section 8.7.10, at 205 Wildwood Avenue. PUBLIC HEARING OPENED. A communication dated February 18, 2014 was received from Erin E. Wortman, Interim Planning Director, Woburn Planning Board as follows:

Re: Joseph Zink, Atlantic Management Corporation - 205 Wildwood Avenue – To allow for the alteration of an existing non-conforming structure to allow for: 1. The operation of a garage, automobile and truck repair, pursuant to Section 5.1.44; 2. Accessory storage or parking of commercial motor vehicles other than as provided for in Section 5.1.58, trucks, buses or contractor's equipment pursuant to Section 5.1.57b; and 3. minimum landscaped usable open space requirement under Section 6.1 and footnote 7 (30%), and b. retaining loading bays facing Wildwood Avenue under Section 8.7.10 pursuant to Section 7.3.

Dear Mr. Campbell and members of the City Council:

At the Planning Board meeting held on February 11, 2014, the Planning Board voted to send a favorable recommendation to the City Council on the Special Permit application of Joseph Zink, Atlantic Management Corporation, regarding the property at 205 Wildwood Avenue to allow for the alteration of an existing non-conforming structure subject to the following conditions:

1. That the Plan of Record shall be "Proposed Site Plan National Express Corporation 205 Wildwood Avenue, Woburn, MA", Sheets Cover Sheet, Sheet C100, Sheet C200, Sheet C201, Sheet C300, Sheet C400 dated December 27, 2013 and Sheet Post Drains dated February 4, 2014 prepared by Metrowest Engineering, Inc, 75 Franklin Street, Framingham, Massachusetts 01702; and
2. That the Planning Board shall review and approve the landscaping plan and shall retain jurisdiction over the landscaping; and
3. That a new snow storage plan shall be submitted and approved by the Engineering Department; and
4. That the Engineering Department shall review and approve the mitigation cost submitted by the developer prior to the issuance of a building permit.

Sincerely, s/Erin E. Wortman, Interim Planning Director

A communication dated February 27, 2014 was received from Jaclyn B. Fraser, Legal Assistant for Attorney Robert C. Buckley, Riemer & Braunstein LLP, Seven New England Executive Park, Burlington, Massachusetts 01803 as follows:

Dear Bill,

This email will serve as our clients request to continue to the public hearing for the above referenced matter from Council meeting scheduled for Tuesday, March 4, 2014 to the next meeting of the City Council.

Thank you, Jaclyn B. Fraser, Legal Assistant, on behalf of Attorney Robert C. Buckley

PUBLIC COMMENTS: Leo Fitzgerald, 7 Kathleen Drive stated that he has lived in his home for 27 years, that he has an issue with Wildwood Avenue, that he is concerned with the petition, that the J.J. Riley leather tannery was still open at this location when he moved in, that the smell of the vats from the tannery made him regret his decision to move to his home, that new commercial buildings were constructed, that there were no issues when BASF operated from the building, that RIS Paper moved to the location and three shifts were working at the locus, that trucks are exiting and entering the property at all times of the day and night, that the trucks make loud noise when at the loading dock, that his house is 500 feet from the building, that the Board of Health investigated but could offer no relief, that he met with the General Manager and the Foreman at RIS Paper about his concerns, that from his residence he can look over the Mahoney's greenhouses and see the loading bays at the locus, that when RIS Paper left the locus conditions became quieter, that he lives in a good neighborhood, that he is retired now and wants to remain in Woburn, that he cannot imagine additional traffic traveling along Wood Street, that vehicles from the locus will travel up Sunset Avenue and Hinston Road, that the proposed light maintenance of the vehicles will lead to heavier automotive repairs, and that he is concerned about the proposed activity at the locus and its effect on his property. Motion made and 2<sup>nd</sup> that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON APRIL 1, 2014 AND THAT THE MATTER BE REFERRED TO THE COMMITTEE ON SPECIAL PERMITS, all in favor 9-0.

\*\*\*\*\*

On the petition by Lytron Incorporated to amend the 1985 Woburn Zoning Ordinances, as amended, as follows:

Be it Ordained by the City Council of the City of Woburn that the 1985 Woburn Zoning Ordinances, as amended, be further amended by revising the following:

- Section 5.1, line 72, Table of Use Regulations shall be amended by replacing the “\_” with “P” in the R-2 Zoning District and inserting: Note 26 under the heading: “Notes; Other Sections”
- Amend Section 5 Notes to 5.1 Table of Use Regulations by adding the following note:

26. Accessory parking facilities in an R-2 Zoning District for use in an IP Zoning District shall be subject to the following conditions:

a) No portion of the parking facility may be located within 100 feet of an immediate abutting property used for residential purposes;

b) Except for the following, the Buffer Requirements set forth in Section 5.7 are not applicable:

i. The buffer zone may be used to calculate the Minimum Useable Open Space percentages required in Section 6.1;

ii. The buffer zone may be used for driveways, useable open space, walkways and landscaped areas; and

iii. The perimeter of the parking facility shall contain a screen of evergreen plantings at least ten (10) feet from the edge of a road except for entrances and exits and any portion of the parking facility abutting a highway. Such evergreen plantings shall not be less than three (3) feet in width and six (6) feet in height at the time of occupancy of the parking facility and shall thereafter be maintained by the owner so as to maintain a dense screen year round. Other alternative screening devices may be permitted by Special Permit where topography, soils or other conditions make the planting or maintenance of such a hedge impractical.

c) The parking facility shall comply with the requirements of Section 8.4, 8.5 and 8.6; and

d) The City Council shall also impose such additional conditions of those specified in this Ordinance as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this Ordinance, including but not limited to the following: Screening, buffers, or planting strip, fences, or walls, as specified by the Council; modification of the exterior appearance of the structure; method and time of operation, or extent of facilities; regulation of number and location of drives, accessways, or other traffic features, and off-street parking or loading, or other special features beyond the minimum required in the Ordinance.

• Section 8.3 shall be amended by adding a new paragraph as follows:

3. Within any R2 district, the City Council by Special Permit pursuant to the requirements of Section may allow accessory parking facilities for a use in the IP Zoning District on a lot separate from the use to be served provided such facilities immediately abut the use to be served in the IP Zoning District and are owned by the user of the parking facilities.

A communication dated February 25, 2014 was received from Attorney Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: Lytron Incorporated Petition to Amend Zoning Ordinance

Dear Mr. Campbell:

I respectfully request that the above-referenced Petition be given leave to withdraw without prejudice. If you need any further information, please contact me. Thank you.

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

IN FAVOR: None. OPPOSED: None. Motion made and 2<sup>nd</sup> that the MATTER be GIVEN LEAVE TO WITHDRAW WITHOUT PREJUDICE, all in favor, 8 in favor, 0 opposed, 1 abstained (Concannon abstained).

\*\*\*\*\*

On the petition by Lytron Realty Corp. and Lytron Incorporated to amend the Woburn Zoning Map for the parcels of land known as 73 Dragon Court containing approximately 5.3 acres of land; 41 Dragon Court containing approximately .52 acres of land; 39 Dragon Court containing approximately 1.31 acres of land; Dragon Court, Lot 1 containing approximately .28 acres of land and Dragon Court, Lot 2 containing approximately .28 acres of land, as shown on Assessors Map 16 Block 02 Lot 02, Map 16 Block 02 Lot 04, Map 16 Block 02 Lot 05, Map 16 Block 02 Lot 06 and Map 16 Block 02 Lot 07 from the R-2/I-P zoning district to the I-P zoning district. PUBLIC HEARING OPENED. A communication dated February 25, 2014 was received from Attorney Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: Lytron Realty Corp./Lytron Incorporated Petition to Amend Zoning Map

Dear Mr. Campbell:

I respectfully request that the City Council public hearing on the above matter presently scheduled for March 4, 2014 be continued to the City Council meeting on March 18, 2014. If you need any further information, please contact me. Thank you.

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

IN FAVOR: None. OPPOSED: None. Motion made and 2<sup>nd</sup> that the PUBLIC HEARING be CONTINUED TO THE REGULAR MEETING OF THE CITY COUNCIL ON MARCH 18, 2014 AND THAT THE MATTER BE REFERRED TO COMMITTEE ON ORDINANCES, 8 in favor, 0 opposed, 1 abstained (Concannon abstained).

\*\*\*\*\*

On the petition by NSTAR Electric Company and Verizon New England Inc. for a grant of right in a way to relocate one pole (#242/34) on Wyman Street southerly side at the intersection of Jericho Road. PUBLIC HEARING OPENED. A communication dated February 13, 2014 was received from Superintendent of Public Works John Duran as follows:

Subject: NStar Petition-Wyman Street Addendum

This letter is to clarify my prior memorandum on the Wyman Estates Subdivision. Melanson Development is required to install underground power to the proposed subdivision per the City of Woburn Subdivision and Regulations and the associated Decision by the Woburn Planning Board. Nstar has a request to relocate poles and to install underground conduit to service the proposed subdivision. The plan depicts relocation of a pole on Wyman Street and associated overhead lines from the adjacent pole on Jericho Road. This pole relocation is necessitated by the proposed entrance into the subdivision for electric service. The pole appears to be positioned properly as long as the overhead wires do not sag lower than the existing wires.

The location of the proposed underground conduit from the easterly end does not clearly identify whether the conduit would be located within the shoulder of the road or within the roadway itself. The Decision dictates that a sidewalk be added for a portion of this area. I recommend that the conduit be installed under this sidewalk or in the shoulder area based upon the proximity of the adjacent water main and other utilities. This roadway is presently in the 5 year moratorium. If this work is undertaken prior to the expiration date, this work or any other openings of the paved roadway will require that the pavement be milled and inlaid with new bituminous concrete. I recommend that the proposed conduit be accurately marked in the field for site review. After an agreed upon location is determined, the proposed conduit should be added to the record plan and discussed at a preconstruction meeting prior to excavation. I recommend that this location can be field determined after site review by the DPW Superintendent or his designee. NStar should add to the plan a proposed typical trench section with depths, manhole cut sheets and specifications, as well as a proposed restoration plan for disturbance of the proposed roadway.

I have re-evaluated my opinion as a condition of this permit based upon the City of Woburn Planning Board requirement. I recommend that NStar be required to remove any double poles within a 1000 foot radius from the subdivision. This work should be completed within one year from the issuance of this permit. If no double poles exist within this area, the requirement shall be waived. Please feel free to contact me with any questions, concerns or recommendations on this matter.

Appearing for the petitioner was Jacqueline Duffy, Right of Way Agent, NStar Electric Company and she stated that this pole should have been included in the previous Wyman Street petition, and that since the last meeting three double utility poles have been removed in the city. IN FAVOR: None. OPPOSED: None. Motion made and 2<sup>nd</sup> that the public hearing be closed, 8 in favor, 0 opposed, 1 abstained (Concannon abstained).

PUBLIC HEARING CLOSED. Motion made and 2<sup>nd</sup> that the GRANT OF RIGHT IN A WAY be APPROVED, AS AMENDED with the condition as follows: 1. Subject to the recommendations of the Superintendent of Public Works, 8 in favor, 0 opposed, 1 abstained (Concannon abstained).

**Presented to the Mayor: March 6, 2014**

**s/Scott D. Galvin March 6, 2014**

\*\*\*\*\*

On the petition by Linear Retail Woburn #1 LLC, 5 Burlington Woods Drive, Burlington, Massachusetts 01803 for special permits pursuant to 1985 Woburn Zoning Ordinances, as amended, Sections 5.1.29, 5.1.63A, 7.3, 8.2.5 and 12 to allow for the alteration of an existing non-conforming structure to allow for: 1. Approximately 9,250 square feet of existing space presently occupied by one retail tenant to be divided into three (3) tenant spaces: Tenant A containing approximately 2,600 square feet more or less of gross floor area; Tenant B space containing approximately 2,500 square feet more or less of gross floor area; and Tenant C space containing approximately 4,150 square feet more or less of gross floor area; 2. A fast food restaurant in the Tenant A space with an outdoor seasonal seating area; 3. A drive thru for Tenant B space (bank); 4. A reduction in the required parking space from 171 parking spaces to 148 parking spaces; 5. Alteration of nonconforming signage; and 6. That Condition 1 to the Landowner's Decision and Notice of Special Permit dated February 20, 2011 be amended by deleting the reference to the Plan of Record and replace with the plan entitled "Site Plans for 299 Mishawum Road, Woburn, MA 01801" dated November 30, 2013 prepared for Linear Retail Woburn #1 LLC, Five Burlington Woods Drive, Burlington, MA 01803 by Allen & Major Associates, Inc., all at 299 Mishawum Road. PUBLIC HEARING OPENED. A report was received from the Committee on Special Permits as follows: "ought to pass, as amended with the fourteen conditions as follows:

1. The Petitioner shall construct and improve the Site as substantially described in the plans submitted with the Petition for Special Permit entitled: "Site Plans For 299 Mishawum Road, Woburn, MA 01801" dated November 20, 2013 and revised on February 20, 2014, Sheets ABB-1, ABB-2, C-1, C-2, C-3A, C-3B, D-1, D-2 and D-3 prepared by Allen & Major Associates, Inc., 100 Commerce Way, Woburn, MA 01801 (hereinafter the "Site Plan") although design adjustments and modifications generally associated with: (i) preparing so-called "working drawings" or (ii) site conditions shall be permitted so long as such changes do not constitute substantial changes from said plans as determined by the Building Commissioner. In the event that the Building Commissioner determines that the building plans filed with the building permit application are not in substantial conformance with the Site Plan, the Petitioner may request a review of said plans by the City Council Special Permits Committee who shall make a final determination. If the Special Permits Committee makes a determination that the proposed plans are not in conformance with the Site Plan, the Petitioner shall be required to file a Special Permit Petition seeking approval to modify the Site Plan.
2. That the Planning Board shall review and approve the landscaping plan and shall retain jurisdiction over the landscaping.
3. That all proposed water services be approved by the Department of Public Works.

4. That a grease trap operation and maintenance plan be reviewed and approved to the satisfaction of the City Engineer prior to the issuance of a building permit.
5. That the handicapped parking spaces as shown on the Plan shall meet all local, state and federal handicap code requirements.
6. The hours of operation for the fast food restaurant shall be limited to 11:00 a.m. – 11:00 p.m. seven days per week.
7. The Petitioner shall provide funds to the City of Woburn in the amount of \$10,000.00 for the Ward Five Traffic Fund as mitigation for this Special Permit.
8. The Special Permit for the fast food restaurant shall be non-transferable.
9. Subject to the approval of the City of Woburn Traffic Commission, City Engineer and Superintendent of Public Works, the Petitioner shall install a “Do Not Block Driveway” sign and associated striping on Mishawum Road at the entrance to 299 Mishawum Road.
10. That the portion of the Special Permit pertaining to “Sleepy’s” be non-transferrable.
11. That the portion of the Special Permit pertaining to Tenant Space B, currently “Century Bank” be non-transferrable to any entity other than a banking use.
12. That the electrical transformer will be moved as shown on Plan of Record dated 2/24/2014.
13. That tractor trailer deliveries be restricted to the hours between 6:00 pm and 9:00 am.
14. That any/all dumpsters on the premises shall be screened.”

Appearing for the petitioner was Attorney Joseph R. Tarby, III, Esquire, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 and he stated that the first public hearing on the petition was held on January 21, 2014 and continued to this meeting, that the Planning Board has sent a favorable recommendation, that the matter was reviewed in the Committee on Special Permits on February 10, 2014 and February 24, 2014, that the Committee on Special Permits has recommended approval with conditions that incorporated recommendations of the Planning Board as well as matters addressed by the Committee on Special Permits, and that he asks that the public hearing be closed and the City Council act on the committee report. Jeff Boehning, Senior Vice President of Linear stated that there is no agreement with other businesses to allow vehicles to park on the locus, that he believes that employees from the neighboring car wash and other businesses park on the locus but the petitioner will police this, and that this parking is not authorized by the petitioner. Alderman Mercer-Bruen stated that there was discussion regarding the signalized intersection, that it is unlikely that there will be an agreement to provide access to the other signalized intersection from the locus, that she reviewed the history of the Dunkin Donuts and Woburn Mall special permit petitions in assessing this matter, that she has not had conversations with the owner of the hotel regarding the signalized intersection, that traffic will back up in this area, there is potential for vehicle collisions, that more discussion and review of the petition might be needed, that the City Engineer can be asked to provide additional comments, that if there is uncertainty regarding the matter the petition should be sent back to committee, that there is new information that would warrant a further review, and that where safety is concerned the City Council should take extra time to fully review the petition. President Haggerty stated that the City Engineer has reviewed the petition and provided comments, that there has been a vigorous review of the petition, and that the petitioner said that the

project could not move forward with a condition restricting left hand turns. Alderman Concannon stated that during review of the petition it seemed that there would be an opening of the two lots to allow access to the signalized intersection, that it now sounds like this opening of the lots will not be possible, that he is concerned about the left turn into and out of the locus, and that there was discussion about a six month review of the matter but the petitioner would not agree to this condition. Alderman Drapeau stated that the tenant of the neighboring property cannot speak for the landowner of the neighboring lot, that there may be discussions which will lead to opening the lots, that the tenant of the neighboring lot only said that he spoke to the property owner of the neighboring lot and the property owner said he was unaware of the potential to open the lots, that there may be a price at which the landowner would be willing to open the lots, that the owner of the neighboring property is not in attendance at this public hearing, and that just adding a condition prohibiting left hand turns at this time after the earlier review of the issues should not be allowed. Alderman Gately stated that someone cannot come in at the last minute and make statements in an attempt to halt the project. PUBLIC COMMENTS: Bill Reinhardt, 129 South Street, Upton stated that he operates the Dunkin Donuts on the neighboring site as well as two other Dunkin Donuts restaurants on Washington Street, that when they were seeking a special permit for the Dunkin Donuts on Mishawum Road there was discussion about opening the two lots, that the property owner Mr. Rotundi has not been contacted about opening the lots at this time, that it would be devastating to his business for these lots to be connected, that it will be difficult for vehicles to turn in this area, that traffic will back up, and that he had a letter of intent with Office Depot to have a pad site with a Dunkin Donuts at the locus but his corporate office turned down the request to locate a Dunkin Donuts at the location. Motion made and 2<sup>nd</sup> that the public hearing be closed, all in favor, 9-0. PUBLIC HEARING CLOSED. Motion made and 2<sup>nd</sup> to add a condition as follows: That left turns entering and exiting the locus shall be prohibited, 3 in favor, 6 opposed (DiTucci, Drapeau, Gaffney, Gately, Raymond, Haggerty opposed). Motion made and 2<sup>nd</sup> that the SPECIAL PERMIT be GRANTED, AS AMENDED with the conditions as follows: 1. That the fourteen (14) recommendations of the Committee on Special Permit be adopted as conditions of the special permit, 8 in favor, 1 opposed (Mercer-Bruen opposed).

---

**CITIZEN'S PARTICIPATION:** None.

---

**COMMITTEE REPORTS:**

**FINANCE:**

On the Order to appropriate the sum of \$30,000.00 from Unreserved Fund Balance Acct to Veteran's Cash Aid Acct, 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: March 6, 2014**

**s/Scott D. Galvin March 6, 2014**

\*\*\*\*\*

On the Order to accept and adopt the provisions of M.G.L. Ch. 32B, Sec. 20 authorizing the city to establish a Trust Fund for Other Post Employment Benefit liabilities, 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: March 6, 2014**                      **s/Scott D. Galvin March 6, 2014**

\*\*\*\*\*

On the Order to appropriate the sum of \$1,356,906.62 from Reserve for Medicare Subsidy – Part D Acct to Other Post Employment Benefits Liability (OPEB) Trust Fund (M.G.L. Ch. 32B, Sec. 20) Fund #7100 , 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: March 6, 2014**                      **s/Scott D. Galvin March 6, 2014**

\*\*\*\*\*

**ORDINANCES:**

On the Order to amend Title 12, Article XIV, Section 12-54 of the 1989 Woburn Municipal Code, as amended, relative to special event permit application fees, 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: March 6, 2014**                      **s/Scott D. Galvin March 6, 2014**

\*\*\*\*\*

**PERSONNEL:**

On the appointment of William Callahan as a Member of the Woburn Public Library Board of Trustees, 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: March 6, 2014**                      **s/Scott D. Galvin March 6, 2014**

\*\*\*\*\*

On the appointment of Tina P. Cassidy as Planning Director/Redevelopment Authority Administrator, 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: March 6, 2014**                      **s/Scott D. Galvin March 6, 2014**

\*\*\*\*\*

A communication from City Auditor Gerald W. Surette relative to his retirement from office effective April 15, 2014, committee report was received “receive and place on file”. Motion made and 2<sup>nd</sup> that the COMMITTEE REPORT be ADOPTED, all in favor, 9-0.

\_\_\_\_\_

**NEW PETITIONS:**

Petition by St. Mary's School of Winchester for a special event permit at Horn Pond for a walk-a-thon and family cookout on April 12, 2014. Alderman DiTucci stated that she had questions regarding this petition, that the petition indicates that food will be sold, that it is not clear if food will be sold to the 250 expected guests or to the general public, and that there is an ordinance that prohibits vendors. Motion made and 2<sup>nd</sup> that the SPECIAL EVENT PERMIT be GRANTED, AS AMENDED with the condition as follows: 1. That the petitioner shall obtain the approval of the Police Department, Board of Health, Fire Department, Building Department and Department of Public Works and shall comply with any requirements of those departments, all in favor, 9-0.

**Presented to the Mayor: March 6, 2014**                      **s/Scott D. Galvin March 6, 2014**

\*\*\*\*\*

Petitions for renewal of Taxi Cab Licenses by Ahmad Abbas dba A.A. Transportation, 600 West Cummings Park, Suite 1175; Mourad Djar dba ABCE Taxi of Woburn, 165M New Boston Street, Suite 241; Ali A. Saleh dba Metro Cab, 10G Roessler Road, Suite 514; Saeed Rajabi dba Sky Taxi of Woburn, 21 Cummings Park #232. Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO COMMITTEE ON PUBLIC SAFETY AND LICENSES, all in favor, 9-0.

\*\*\*\*\*

Petition by Hollywood Limousine Service, 4 Skyview Lane for renewal of Livery License. Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO COMMITTEE ON PUBLIC SAFETY AND LICENSES, all in favor, 9-0.

\*\*\*\*\*

Petition by C.N. Wood Realty LLC, 200 Merrimac Street, Woburn, Massachusetts 01801 for a special permit pursuant to Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended, to allow an addition to be constructed on the existing building as an extension or alteration of a pre-existing non-conforming structure or use at 200 Merrimac Street. Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO PUBLIC HEARING AT THE CITY COUNCIL REGULAR MEETING ON APRIL 1, 2014, all in favor, 9-0.

\*\*\*\*\*

Petition by Peter Mamakos, 43 Almont Street, Medford, Massachusetts for a special permit to amend a special permit pursuant to Section 5.1.29 of the 1985 Woburn Zoning Ordinances, as amended to allow alteration of the floor plan and amend the plan of record at 487-489 Main Street. Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO PUBLIC HEARING AT THE CITY COUNCIL REGULAR MEETING ON APRIL 1, 2014, all in favor, 9-0.

\*\*\*\*\*

Petition by Woburn Truck & Auto, Inc., 1095 Main Street, Woburn, Massachusetts 01801 for a special permit pursuant to Section 7.3 of the 1985 Woburn Zoning Ordinances, as amended to allow for the alteration and extension of the preexisting nonconforming use (motor vehicle junkyard) to allow heavy manufacturing at Lot 04-01-01, 04-01-02, 04-01-03, 04-01-04 Kensington Avenue; 03-06-02, 03-05-05 Ingelow

Avenue; 03-05-06 Florence Avenue; 03-05-12 1095R Main Street. Alderman Raymond stated that he wants the petition returned to the petitioner until the petitioner comes into compliance with the recent court order, that the petitioner is not in compliance with the order of the court issued on January 14, 2014, that the petitioner operated from November 7, 2013 until an injunction issued from the court on January 14, 2014, and that the court order provides conditions that the petitioner is not following. Alderman Raymond offered a copy of the court order to the City Council for 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 response to a question, the City Clerk stated that if the City Council believed that this was in incomplete filing the petition might not be set up for public hearing, however otherwise refusing to hear the matter may raise due process issues. Alderman Drapeau stated that it might be beneficial to obtain a legal opinion as to whether the City Council can refuse to hear a matter if the petitioner is not complying with a court order over the same property. Alderman Anderson stated that perhaps the matter can be set up for hearing and the issues be raised at that time. Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO PUBLIC HEARING AT THE CITY COUNCIL REGULAR MEETING ON APRIL 1, 2014, all in favor, 9-0.

\*\*\*\*\*

Petition by Herb Chambers 128, Inc., c/o The Herb Chambers Companies, 47 Eastern Boulevard, Glastonbury, Connecticut 06033 for a special permit pursuant to Section 7.3 and Section 15 of the 1985 Woburn Zoning Ordinances, as amended to allow for the alteration, change and extension of the existing nonconforming use (overnight parking of commercial vehicles) to allow for the storage, reconditioning and preparation and preparation of motor vehicles at 285 Locust Street. Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO PUBLIC HEARING AT THE CITY COUNCIL REGULAR MEETING ON APRIL 1, 2014, all in favor, 9-0.

\*\*\*\*\*

Petition by Adriano Lopes, 1386 Summit Street #3, Lynn, Massachusetts 01905 for a special permit pursuant to the Section 5.1.44 of the 1985 Woburn Zoning Ordinances, as amended, to allow automotive and truck repair (not mechanical) paint spray booth at 10 Draper Street, Unit 32. Motion made and 2<sup>nd</sup> that the MATTER be REFERRED TO PUBLIC HEARING AT THE CITY COUNCIL REGULAR MEETING ON APRIL 1, 2014, all in favor, 9-0.

---

## **COMMUNICATIONS AND REPORTS:**

A communication dated February 21, 2014 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 this report to you on the parking violations within the city of Woburn for the period ending January 2014: number of violations issued 76, number of violations paid 27, number of violations outstanding 47, amount collected and submitted to the

Collector's Office \$4,921.20. There exists a backlog of 3261 tickets from 1982 through 2013. Demand will be sent until all tickets have been paid. Parking fines referred to the Handicapped Commission \$700.00.

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.

\*\*\*\*\*

A communication dated February 25, 2014 was received from City Auditor Gerald Surette stating that the FY2014 snow removal available budget was -\$433,046.57. Motion made and 2<sup>nd</sup> that the MATTER be RECEIVED AND PLACED ON FILE, all in favor, 9-0.

\*\*\*\*\*

A communication dated February 26, 2014 was received from City Solicitor Ellen Callahan Doucette as follows:

Re: Public Hearing Process under M.G.L. c.40A

This memorandum shall serve as the response to the City Council's request for a legal opinion, consisting of six (6) questions concerning the conduct of public hearings as required by M.G.L. c.40A more specifically, for those public hearings required by §5 (zoning amendments), §9 (special permits) and §10 (variances). A copy of the City Council's request is attached hereto for reference. I also had a conversation with the City Council President who informed me of his goal to facilitate a more efficient special permit process with the elimination of undue delays and continuances. Advice on that issue is also provided herein.

As several of the "Whereas clauses" in the City Council's request refer to a ninety (90) day period "following the public hearing" on petitions for zoning amendments, special permits and variances, I will begin with a brief discussion of the procedural requirements for each form of zoning relief as the ninety (90) day time period is not applicable to all such situations.

#### Procedural Requirements

1. M.G.L. c.40A, §9 – Special Permits - The special permit granting authority ("SPGA") must hold a public hearing within sixty-five (65) days from the date of the filing of a petition for special permit. [It is not clear if the public hearing must be concluded within sixty-five (65) days or if it can be continued to a date outside that time frame. At least one Land Court decision held that the public hearing as continued must also be concluded within sixty-five (65) days.] The SPGA has ninety (90) days from the conclusion of the public hearing, or the last day of the continued public hearing, within which it must take "final action". "Final action" means that a vote is taken, and a written

decision is filed in the City Clerk's office within fourteen (14) days of the vote. The failure to meet any of these procedural requirements could result in a "constructive" grant of the relief requested.

2. M.G.L. c.40A, §15 – Variances – While the criteria upon which a variance must be based is set out c.40A, §10, the procedure for granting a variance is governed by §15. As with a petition for a special permit, a public hearing must be held within sixty-five (65) days of the date of filing of a petition for variance. However, the Board of Appeals has one hundred (100) days from the date of the filing of the variance petition within which it must vote its decision, and the written decision must be filed with the City Clerk's office within fourteen (14) days of the vote. In contrast to the special permit process which requires that both the vote and the filing of the decision occur within ninety (90) days, the written decision need not be filed within the initial one hundred (100) day period. For example, a variance decision filed with the City Clerk's office on the 114<sup>th</sup> day would not result in the constructive grant of the variance.

3. M.G.L. c.40A, §5 - Adoption/Change Zoning Ordinances – Upon receipt of a request to adopt or amend a zoning ordinance (hereinafter "zoning amendment"), the City Council shall, within fourteen (14) days, submit same to the Planning Board for review. No zoning amendment may be adopted until after both the Planning Board, and the City Council, or a Committee thereof, has held a public hearing within sixty-five (65) days after the zoning amendment is submitted to the Planning Board. The zoning amendment cannot be adopted until the Planning Board report with recommendation is received or, twenty-one (21) days elapses after the hearing is held without submittal of such report. If the City Council does not vote to adopt the zoning amendment within ninety (90) days after the City Council hearing, the public hearing process must be repeated. If the vote is against adopting the zoning ordinance or amendment, the ordinance or amendment may not be filed again for two (2) years from the date of such vote.

Under c.40A, §§9 and 15, the time frame within which a public hearing must be held and a decision made, may be extended only by a written agreement signed by the applicant and the City Council/Board of Appeals, and filed with the City Clerk's office. No provision for extending the mandatory time frames is set out in c.40A, §5.

### Specific Questions

1. Whether the Zoning Act contemplates one meeting at which a public hearing is held and closed on a petition for a zoning amendment, special permit or variance and after which time the 90 day time period by which final action must be taken begins to accrue.

As discussed above, the ninety (90) day time period applies only to special permits, and begins to run at the conclusion of the public hearing or hearings. For variances, a vote must be taken within one hundred (100) days of the filing of the variance petition. Because both §9 and §15 provide for written agreements to expand the applicable time frames one can reasonably infer that the legislature recognized that in some instances, a public hearing could not be closed on the same day that it is opened. To the contrary, in

many cases the continuation of a public hearing is necessary to allow for the submittal of additional information or revised plans which would assist the SPGA or the Board of Appeals in its decision making. Where a petition is fairly straightforward and no additional information is required, certainly the SPGA or the Board of Appeals may open and close the public hearing on the same day.

In any event, it is important that the public hearing remain open until all information deemed necessary to the City Council has been received. Once closed, the ninety (90) day time period for “final action” begins to run, and this time period is not tolled if the hearing is subsequently reopened for the submittal of additional information.

2. Whether the Zoning Act permits the applicable boards to continue a public hearing on a petition for a zoning amendment.

The City Council may continue a public hearing on the petition for a zoning amendment, but in doing so, strict attention must be paid to the firm time frames within which the amendment must be voted. As stated above, c.40A, §5 does not have a procedure for extending the requisite time frames. Failure to comply with the time frames applicable to the adoption of legislation renders such legislation null and void.

3. Whether the Zoning Act permits the applicable boards to continue a public hearing on a petition for a special permit or variance without written agreement of the petitioner.

As to special permit petitions, where the ninety (90) time frame does not begin to run until after the public hearing is concluded, as stated above, the public hearing may certainly be continued if additional information is required. Once opened, the public hearing may be continued without the applicant’s verbal consent or a written agreement, which is only required if the time frame for opening the public hearing, or taking “final action” on the petition must be expanded.

For variances a continuance of the public hearing may impact upon the time frame for filing the decision (within 100 days of the filing of the petition) and therefore, in most cases the execution of a written agreement is necessary to avoid a constructive grant. I am aware of situations where applicants have offered to “waive” time frames, but such offers should be rejected and a written agreement requested. In my experience, the Board of Appeals’ clerk has form agreements on hand for this specific purpose.

4. Whether the applicable boards may receive additional documents or oral presentations from petitioners or parties in interest as defined in Section 11 of the Zoning Act after the meeting at which the public hearing is held and closed.

No. Once the public hearing is closed, no information may be received. All decisions must be based upon information received and made part of the City Council’s record during the public hearing because the petitioner and other parties in interest are entitled to know the information which forms the basis for the decision. Relying upon information

received after the hearing is closed may provide a basis for reversing or remanding the SPGA or Board's decision.

5. Whether the applicable boards may consider additional documents or oral presentations from petitioners or parties in interest as defined in Section 11 of the Zoning Act after the meeting at which a public hearing is held and closed.

No. As stated above, all information upon which a decision is based must be received during the public hearing.

6. Whether the applicable board may hold and close a public hearing prior to the night of the final vote on a petition for a zoning amendment, special permit or variance.

The vote on a petition need not occur on the same night that the public hearing is closed, and may take place at a later date, so long as that date and the subsequent filing of the written decision occurs within the applicable statutory time frame.

#### Additional Comment

To my knowledge, one other issue which affects the timeliness in granting special permits is that the City Council will often continue a public hearing because the Planning Board rarely submits its review, comment or recommendation to the City Council within thirty (30) days. If the City Council's goal is to "speed up" the special permit granting process, then this thirty (30) day time frame should be strictly enforced.

To explain, the WZO procedure for the issuance of special permits is set out in Section 11 of the WZO. Section 11.3.2 thereof requires the City Clerk to distribute copies of each special permit petition to the Planning Board, Conservation Commission and City Engineer for "review and comment". Section 11.3.3 provides that "[b]oards and departments may transmit comments and recommendations to the City Council within 30 days of receipt of the petition. Failure to comment will be deemed a lack of objection."

As written, Section 11.3.3 appears to be a courtesy offered to the Planning Board, Conservation Commission and City Engineer in that they may transmit comments and recommendations to the City Council with the failure to do so within thirty (30) days considered to be a "lack of objection". Continuing the public hearing until such time as the Planning Board issues its recommendation elevates this courtesy to a mandatory requirement.

Moreover, it is my understanding that prior to making its recommendation; the Planning Board conducts its own hearings on the special permit petition, accepting documentation and requesting changes to plans submitted with the petition. I also understand that the City Engineer forwards comments on the petition to the Planning Board and not the City Council. I have a few comments regarding this procedure, and recommend that it be dispensed with forthwith.

First of all, I am not aware any authority for the Planning Board to conduct a public hearing in advance of making a recommendation under Section 11.3.3. I am also unaware of any authority which would permit the Planning Board to request revisions to plans submitted with the special permit petition. If revisions are to be made, they must be made at the request of the SPGA. On this issue the law is quite clear that a SPGA may not delegate to another board, or reserve to itself for future decision, the determination of an issue of substance, i.e., central to the matter before the permit granting authority. See, *Weld v. Bd. of Appeals of Gloucester*, 345 Mass. 376, 379 (1963). Substantive plan revisions should be accomplished only through the City Council's actions.

Perhaps even more importantly, is that the special permit process is considered to be quasi-judicial and, in accordance with the so-called *Mullin* rule, those individuals who intend to participate in and vote on a decision must be in attendance throughout the public hearing. That the City Council may consider or incorporate plan revisions made by another board and not during its own public hearing process is of great concern to me. The better practice would be for the Planning Board to provide the City Council (within 30 days) with its recommendation including suggested plan revisions and conditions, which the City Council could then discuss and impose if it chooses to do so.

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 REFERRED TO COMMITTEE ON LIAISON, all in favor, 9-0.

\*\*\*\*\*

A communication dated February 28, 2014 was received from City Solicitor Ellen Callahan Doucette as follows:

Re: Open Meeting Law Issues – Hiring City Auditor

This memorandum shall serve as a response to the request for a legal opinion submitted by the City Council President, regarding the use of executive session in screening applicants for the position of City Auditor specifically, and any other position for which the City Council is the appointing authority generally. A copy of the President Haggerty's email request is attached hereto for reference although for ease of reference, each question and my response is presented below.

1. Whether the attached legal opinion from Kopelman and Paige dated January 17, 2007 is still an appropriate guideline for the council.

Effective July 1, 2010, the Open Meeting Law (formerly M.G.L. c.39, §23B) was recodified as M.G.L. c.30A, §§18-25, inclusive, as part of the Administrative Procedures Act. While the statute is more specific in several respects, the substance of the 2007

K&P memorandum as it applies to the use of a preliminary screening committee and the use of executive session remains sound.

2. Whether the Committee on Personnel, made up of three council members, may serve as a screening committee.

The City Council may, but is not required to, designate its Committee on Personnel to conduct the “preliminary screening” of candidates as that term is defined by c.30A, §18. Preliminary screening committees may even contain individuals who are not members of the City Council.

3. Whether the Committee on Personnel meeting as a Committee of the Whole, may serve as a screening committee.

No, not if there is the potential for going into executive session under c.30A, §21(a)(8) which exception to the OML is only available to a preliminary screening committee, which must contain fewer than a quorum of the members of the City Council.

4. Whether executive session may be used, how it may be used and by whom it may be used when the city council is hiring an employee.

M.G.L. c.30A, §21(a)(8) permits a public body to meet in executive session,

“[t]o consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening.” (emphasis supplied)

The need for executive session under §21(a)(8) is generally triggered by one or more candidates for a position expressing their desire for privacy usually, because they do not wish their present employer to become aware that they have applied elsewhere. Prior to going into executive session for this purpose, the chair must state on the record that having the discussion in an open session will be detrimental to the public body’s ability to attract qualified applicants for the position.

This executive session purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend candidates to the City Council; however it may include multiple rounds of interviews by the screening committee aimed at narrowing the group of applicants down to finalists.

5. If the City Council can only go into executive session after one of the applicants request privacy, then are we allowed/required to notify the applicants of said right?

The preliminary screening committee is allowed to offer that option to the candidates as a courtesy, but they are not required to do so.

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

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

\*\*\*\*\*

A communication dated February 18, 2014 was received from Interim Planning Director Erin E. Wortman as follows:

Re: Alderman Michael Anderson – Zoning Ordinance Amendment – To Amend Section 5.1 Line 75 & Note 14

Dear Mr. Campbell and members of the City Council:

At the Planning Board meeting held on February 11, 2014, the Planning Board voted to place the above referenced matter on file.

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

Sincerely, s/Erin E. Wortman, Interim Planning Director

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

\*\*\*\*\*

A communication date February 25, 2014 was received from Jacqueline A. Duffy, Right of Way Agent, NStar Electric Company, 101 Linwood Street, Somerville, Massachusetts 02143 as follows:

Re: Liberty Avenue, Woburn – W.O. #1943014

Gentlemen:

NStar Electric Company respectfully requests to withdraw its Utility Petition dated December 19, 2013 for the following location: Liberty Avenue – easterly from MH22423 @ the intersection of Eastern Avenue – installing approximately 589 feet – conduit. Also installing two (2) new manholes (MH29793 & MH29792).

This location/street is under the jurisdiction of Woburn Housing, so we will be dealing directly with them.

If I can be of further assistance, please contact me.

Very truly yours, Jacqueline A. Duffy, Right of Way Agent

Motion made and 2<sup>nd</sup> that the MATTER be GIVEN LEAVE TO WITHDRAW WITHOUT PREJUDICE, all in favor, 9-0.

---

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

---

**APPOINTMENTS AND ELECTIONS:** None.

---

**MOTIONS, ORDERS AND RESOLUTIONS:**

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 Title 5, Article XII, Sections 5-68 through 5-81 in their entirety and replacing same with the following new Sections 5-68 through 7-75:

Article XII. Taxis and Liveries

5-68 Definitions

For the purpose of this section, the following words shall have the following meanings:

A. Livery Car Service or Livery Limousine Service - an unmarked vehicle with a seating capacity not to exceed the manufacturer's recommended seating capacity that is operated for hire and used to provide livery service, by or on behalf of a named insured, or by an employee of the named insured, and which displays a livery registration number plate issued by the Massachusetts Registry of Motor Vehicles. A livery car service shall:

1. be hired on a prearranged basis only, with a minimum of 12-hour notice;
2. not pick up fares on the street;
3. not take on-demand requests for transportation;
4. manage on a prearranged, scheduled business day and return

to the vehicle's base of operation (fixed business address) for a continuous period of least 4 hours in each 24 hour period;

5. be operated by the licensed, named insured or a licensed employee of the named insured, who shall be in attendance as a chauffeur;
  6. be managed from a base of operation, which is a fixed business address within the City of Woburn that is properly insured and zoned for said business and whose vehicles shall each have two-way telephone or cell phone communications between each driver of a vehicle and the base of operations;
- B. Taxicab - a metered motor vehicle with a seating capacity not to exceed manufacturer's recommended seating capacity, displaying on its exterior, permanently painted or decal identification markings, a light, which shall be affixed to the roof of said vehicle, and a taxi registration number plate issued by the Massachusetts Registry of Motor Vehicles, operated for hire by or on behalf of the named insured or by an employee or independent contractor of said named insured; but which does not pickup, transport, or discharge passengers along a route. A taxicab shall be hired on a hailed, on an on-demand or on a prearranged basis and shall:
1. Must contain a rate meter and charge for service based upon time and miles traveled or on a prearranged billed basis;
  2. be operated by the licensed, named insured, a licensed employee, or licensed independent contractor of the named insured, and who is in attendance as the driver of the taxicab;
  3. manage from a base of operation, which is a fixed business address within the City of Woburn that is properly insured and zoned for said business;
  4. have vehicles with a two-way radio dispatching or two-way computerized dispatching communications system with said base of operations;
  5. maintain at the start and end of each shift, waybills including all of the following information for each vehicle:

- a. current date-by-date, month and year;
- b. the name of the vehicle's associated company and/or licensed owner;
- c. the name of the vehicle's driver,
- d. the vehicle's license, Permit, or medallion number,
- e. the time of pick-up of passenger(s),
- f. the place of origin by number, street and city of each passenger;
- g. the place of destination by number, street and city of each passenger; and
- h. the form of primary payment method and amount received.

#### 5-69 Licenses/Fees

- A. The number of taxicab licenses to be issued shall not be in excess of twenty-eight. The number of livery licenses to be issued shall not be in excess of forty-one.
- B. No person shall engage in the business of transporting persons for hire in a vehicle within the limits of the City of Woburn without first having obtained a license from the Woburn City Council. This Ordinance shall apply both to businesses located within the city or to vehicles employed for transportation trips originating within the city.
- C. No license shall be required for:
  - 1. hearses and grieving-family transport vehicles used by funeral homes for funerals and burials.
  - 2. taxis/livery vehicles lawfully licensed in other communities, provided that such taxis/livery vehicles shall not originate transportation trips within the city unless:
    - a. no taxi licensed by the City of Woburn is available to respond to a request for transportation; or
    - b. use of such taxi is originated by a Woburn Police Officer.

D. No person having charge of a vehicle licensed hereunder shall demand or receive a rate or fare other than as established by the City Council for the class of license issued hereunder.

E. The following provisions relate to all taxi and livery licenses:

1. Each license shall be effective for one year only, expiring each year on April 30<sup>th</sup>.
2. Each license shall specify the Massachusetts motor vehicle registration number, the Vehicle Identification Number (VIN) and the make and model of the vehicle that may be used under said license.

Before a license may be issued for a vehicle, a copy of the registration issued by the Massachusetts Registry of Motor Vehicles shall be filed with the City Clerk. Said registration shall contain the name of the license holder, the principal place of business and of garaging that is identical to that approved by the City Council, the name of the insurance company through which the vehicle is insured, and the VIN, make and model of the vehicle referenced in the application and approved by the City Council. No amendment of the registration may be made during the term of the license without the approval of the City Council.

3. For every vehicle license so granted each year there shall be paid for the use of the City the following license fees:

Taxis	\$50.00 per year
Livery Car Service and Livery Limousine Service	\$50.00 per year

4. No person shall be eligible to receive such a license who cannot demonstrate familiarity with the streets of the City of Woburn and unless they are either a citizen of the United States or a person lawfully documented for work in the United States. With respect to corporations and businesses, no such corporation or business shall be eligible to receive such a vehicle license unless the manager or principal representative in charge of the business can demonstrate familiarity with the streets of the City and is either a citizen of the United States or a person lawfully documented for

work in the United States. Proof of residence within the City by the applicant shall be prima facie evidence of familiarity with the streets of the City.

5. In addition to any insurance requirements established by state law or regulation, the following minimum insurance coverage shall be obtained by any person seeking a license to operate within the City of Woburn:

Taxis	\$50,000 per occurrence/\$ 100,000 annual aggregate
Private Livery	\$75,000 per occurrence/\$150,000 annual aggregate
Limousines	\$100,000 per occurrence/\$300,000 annual aggregate

- a. Upon cancellation of the motor vehicle insurance coverage amounts as required herein or the reduction of the motor vehicle insurance coverage amounts to levels that are less than what are required herein, or upon the motor vehicle no longer being registered with the Massachusetts Registry of Motor Vehicles, then the license shall be void with one exception. If the termination of motor vehicle insurance coverage or the termination of the motor vehicle registration is solely due to the acquisition of a replacement motor vehicle, then the license may be suspended for a period not to exceed 3 months pending the satisfactory inspection of the replacement vehicle, as provided herein and the approval of a new license by the City Council.
- b. This ordinance shall require the insurance company issuing the certificate of insurance to the license holder to notify the city of a cancellation of the required insurance.
- c. The license holder must provide their insurance company with a copy of this ordinance.

All licensees are required to submit a certificate of insurance satisfactory to the City Clerk or his designee, indicating therein the amount of coverage and the maximum number of persons to be carried in each vehicle.

6. No license shall be sold, assigned or transferred directly by conveyance, assignment or transfer of the license itself, nor

indirectly by sale of the business or ownership interests in a corporation holding the license without City Council approval.

7. Any person in whose name a license is taken out for one or more vehicles for hire, for all purposes of this Ordinance shall be considered as the owner of the same and liable to all forfeitures and penalties herein contained.
8. There shall be no advertisements or other displays or any references to products or services on or about the licensed vehicles other than references to the licensee's operation.
9. Primary payment method shall be by cash, voucher, credit or debit card, check, or prearranged billing including name of billed individual or company.
10. All vehicles for hire and registered in the city shall have the name, trade name, and telephone number of the owner and the word "Woburn" painted on both sides of the exterior body of the taxicab in standard letters not less than four (4) inches high and one-half (1/2) inch wide.

F. Credit Card Payments:

No Taxi Driver shall refuse to accept a credit card as payment for a fare after May 1, 2015 and no Driver may demand a fee above the fare in return for accepting a credit card payment. (M.G.L. c. 140D, § 28A).

G. Be Equipped for Credit Card Processing:

1. Effective May 1, 2015 all taxicabs shall be equipped with an electronic credit card processing capability. Such equipment shall allow the passenger to swipe the card in the rear compartment of the taxicab without handing the card to the Driver. Such equipment shall list fare, tolls, fees, and tips separately for processing purposes. Such equipment shall have the ability to electronically authorize the transaction in a timely manner. Such equipment will provide a printed receipt that includes:
  - a. Woburn Licensed Taxi Number,
  - b. Date,
  - c. Time,
  - d. Charge Amount,

2. All Taxis shall have a functioning credit card reader at all times. If a Taxi does not have a functioning credit card reader, it shall be deemed unfit for service as a taxi.

5-70 Operation of all licensed vehicles:

A. No person to which a license has been granted shall suffer or allow any person other than the driver licensed pursuant to Section 5-74 hereof by the Chief of Police to drive such a vehicle for hire.

B. All vehicles licensed hereunder shall be kept in a good condition suitable for occupancy and mechanically fit for the safety of the passengers. The interior and exterior shall be clean and sanitary at all times. Owner and driver shall each be held responsible for violations of this provision as the case may be.

C. No license shall be issued until each vehicle intended to be used has been inspected by the Chief of Police or his designee, as follows:

1. No license shall be issued until each vehicle intended to be used shall have been thoroughly inspected by the Chief of Police or his designee. A list of items to be inspected by the police department shall be furnished to all license applicants by the City Clerk. If the vehicles are found to be safe and suitable for hire and being in the same condition as supplied by the manufacturer with reasonable wear and tear being excepted, the Chief of Police or his designee. The Inspector shall issue a certificate of inspection, which shall designate by registration number, make, model, VIN, seating capacity and intended use of each so approved. Such certificate shall be filed in triplicate with each application with the City Clerk for any license established by this Ordinance. When and if issued by the City Council, any license shall be deemed to cover only the vehicle described in such certificate.

2. Each vehicle shall be inspected each year before any license is renewed by the Woburn Police Department. The certificate of inspection shall be filed with the renewal application. Any vehicle that fails to pass



regularly scheduled meeting after May 1<sup>st</sup> and after November 1<sup>st</sup> each year.

#### 5-72 Livery Car Service

- A. Any vehicle operated as a livery car service as defined by Section 5-68 (A) must be licensed prior to operation. A Livery Car License may only be issued to those applicants who meet the qualifications below:
1. Rate Qualification: the fares charged for a vehicle is to be exclusively the rates specified as "private livery rates" in Section B below; any private livery vehicle charging taxi rates shall be considered an unlicensed taxi and shall have its private livery license revoked;
  2. Size Qualification: a public vehicle of any type with a seating capacity not in excess of eight passengers excluding the driver;
  3. Use Qualification: such private livery vehicle may be rented only from a garage or the residence of the owner, with the owner or an employee of the owner in attendance as a chauffeur, for use only in connection with social functions, funeral, touring, shopping trips and similar purposes. This type of license DOES NOT APPLY to taxis (5-71), scheduled limousine service (Section 5-73), or any vehicle that is used in any of the following ways:
    - a. stationed at or for hire from a railroad, bus or gasoline station, club, stand, hotel, parking lot, street, highway, airport or any other public place.
    - b. used to transport persons for a hotel, transportation company or similar organization.
    - c. used under agreement with a hotel, club, or private organization to provide a regular transportation service for its members and guests.
    - d. operated with a fare structure determined by zones or taximeter or primarily by distance traveled
    - e. used to pick up, transport and discharge passengers along a route or on a schedule
- Any private livery engaged in the foregoing not applicable uses shall be considered an unlicensed taxi.
4. Vehicles licensed as Private Liveries shall have a livery license plate issued by the Massachusetts

Registry of Motor Vehicles, bear no light but shall display at least one of the following methods of identification:

1. A removable identification card, with the name of the livery company and/or the client printed thereon;
2. Bear on the right and left side rear windows a livery sign containing only the name of the livery service in letters not to exceed two inches (2") in height;
3. Small logo on front doors on both driver and passenger sides.

B. Fares for Livery Car Service and Livery Limousine Service

1. The fares for Livery Car Services shall be established primarily by time used rather than distance traveled. The fares shall be a fixed rate and the same rate for all classes of riders (senior citizens and children discounts are recommended). Each licensee shall present its base rate structure at the time of licensing and such structure shall go into effect unless the City Council determines otherwise. The City Council reserves the right to review livery rates if, among other things, a passenger voices a complaint.

C. Every Livery Car Service vehicle licensed hereunder shall have in the vehicle, a chart setting forth the fare and rate schedule and a photocopy of the livery license.

5-73 Special Operator's Licenses

- A. No person shall drive or operate a taxi, livery car service or livery limousine service within the limits of the City of Woburn without first obtaining a special operator's license from the Chief of Police or his designee. No person shall be eligible to receive such a license that cannot demonstrate familiarity with the streets of the City of Woburn and must be either a citizen of the United States or a person lawfully documented for work in the United States.
- B. For every such special operator's license so granted there shall be paid the sum of \$20.00. Applications for such license must be filed in person, on a form furnished by the

Chief of Police or his designee. The license shall include the name, address and photograph of the licensed driver.

- C. No such license shall be granted unless the applicant shall possess a current and valid Massachusetts Motor Vehicle Driver's License, and be at least 18 years of age.
- D. Every licensed operator having charge of a licensed vehicle shall at all times have in his/her possession a special operator's license. A copy of this Ordinance shall also be maintained in each vehicle. Every operator of a licensed vehicle while engaged in the operation of the vehicle shall display his Special Operators License in one of the following four ways:
  - 1. a suitable frame or other device upon the dashboard or
  - 2. sun visor of said vehicle where it is in plain view and can be viewed by passengers riding in the rear seat of the vehicle;
  - 3. As an identification badge either pinned on the drivers shirt/jacket, or
  - 4. on strap around his/her neck.
- E. Every licensed operator shall be courteous and respectful to the passengers of such vehicles and shall operate the same with due regard to the safety of such passengers, the rights of pedestrians, the occupants of these vehicles and the public generally. Said drivers shall be clean and appropriately dressed.
- F. An applicant may be barred from receiving or holding a special operator's license under this Ordinance for any of the following reasons:
  - 1. shows evidence of the use of intoxicating liquors or narcotic drugs while driving;
  - 2. has a criminal record within the past seven years for any of the following:
    - a. Conviction of a felony;
    - b. Violation of parole or probation;
    - c. Illegal possession of firearms;
    - d. 3 or more moving violations of motor vehicle laws in one year.
- G. No person shall be licensed as a driver who:

1. Is not at least 18 years old;
  2. Does not possess Massachusetts RMV driver's license;
  3. Is registered as a sexual offender;
  4. Is neither a citizen of the United States nor a person lawfully documented for work in the United States.
- H. All applicants are required to have a registry of motor vehicle background check and/or CORI check to be conducted by the Woburn Police Department. The Chief of the Woburn Police Department shall provide to the City Council approval or disapproval of the license application based on the background and/or CORI check to the extent allowed by law.
- I. A special operator's license may be revoked after a formal hearing by the City Council. Upon any conviction or finding of responsibility for a moving violation, the City Council may suspend the operator's license for a period of time as determined by the City Council.
- J. Notwithstanding the preceding subsections, where evidence shows that the applicant's or license holder's other activities or condition would present a danger to the health, safety, welfare or morals of the inhabitants of the City of Woburn, the City Council may reject an application, or may suspend, revoke or refuse to renew an existing license.
- K. All Special Operator Licenses shall expire 2 years after issuance and may be renewed.

#### 5-74 Enforcement/Temporary Suspension of Licenses/Hearings

- A. It shall be the duty of the Woburn Police Department to enforce the provisions of this Ordinance. Whoever violates any provision of this Ordinance shall be punished by a fine of Seventy Five dollars (\$75.00) for the first offense, one-hundred dollars (\$100) for the second offense and two-hundred (\$200) for each subsequent offense within a 12 month period. This penalty may be enforced by means of the noncriminal disposition provisions of M.G.L. c.. 40, § 21D or by filing of a criminal complaint by any enforcing persons in the Woburn District Court.

- B. In addition to the foregoing, the City Council may, following notice and an opportunity for a hearing, enforce this Ordinance by means of suspension or revocation of any license issued hereunder.
- C. Upon a determination that the public good and safety so requires, the Chief of Police and/or his designee is authorized to immediately suspend any license issued hereunder for up to two weeks, pending a hearing before the City Council,
- D. The Woburn Police Department shall have the authority to impound any vehicle in violation of these sections.

5-75 Effective Date

This Article shall become effective on May 1, 2015.

s/President Haggerty, Alderman Raymond,  
Alderman DiTucci and Alderman Concannon

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

---

Alderman Gately requested that a letter of condolence be sent on behalf of the Woburn City Council to the family of State Representative James J. Dwyer on the death of his father, James J. Dwyer.

---

Motion made and 2<sup>nd</sup> to ADJOURN, all in favor, 9-0. Meeting adjourned at 8:10 p.m.

A TRUE RECORD ATTEST:

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