

TOWN COUNCIL MINUTES  
BUDGET/MANAGEMENT COMMITTEE  
Town Hall Council Chambers  
June 7, 2010 - Monday

Present: Kenneth DiFazio, Chairperson  
Patrick O'Connor, Vice Chairperson  
Arthur Mathews, Council President  
Michael Molisse, Councilor  
Michael Smart, Councilor

Also Present: James Wilson, Chief Financial Officer  
George Lane, Town Solicitor  
Richard Swanson, Interim Town Auditor  
Ed Harrington, Councilor  
Thomas J. Lacey, Councilor  
Brian McDonald, Councilor  
Victor Pap III, Councilor  
Kevin Whitaker, Councilor  
Sean Guilfoyle, Chair, School Committee  
Diana Flemer, School Committee  
Gail Sheehan, School Committee  
Mary Jo Livingstone, Superintendent of Schools

Recording Secretary: Mary Briggs

Chairman Kenneth DiFazio called the Budget/Management Committee meeting to order at 6:30 PM.

**10 023-Unpaid Bills**

Mr. Swanson received all unpaid bills from the town accountant and examined the invoices and supporting documentation listed in the memorandum from Mayor Kay dated March 31, 2010, except for the unpaid bill from ESRI - \$8843.47 for IT/GIS services. As discussed with the Mayor, Mr. Gallagher and Mr. Wilson, the Town Council is required to pass a measure to fund the unpaid bills in order for a contract to be approved, and then the invoice from ESRI can be paid. This is due to the fact that there is no invoice available until the measure is voted. The Council must fund the contract prior to the vendor entering into the agreement. Mr. Wilson noted that there have been various consultations regarding the GIS contract. Because the work is over \$5000, the town is required to have a contract in place, and the contract is contingent on funding. Once appropriated, and the contract signed, an invoice will be generated. Then and only then will the invoice be paid.

Chairman DiFazio noted that no further action is required on this measure; it was

unanimously voted at a prior Budget/Management meeting.

**10 030-Reserve Fund Transfer-Veterans' Benefits**

Mr. Wilson reported that this request for a reserve fund transfer in the amount of \$10,000 is from the Veterans' Services Director. In a memo dated March 16, 2010 and attached to the measure, he indicated that there was a known shortfall in the Veterans' Services budget of approximately \$7,700. Since that time, it has increased to about \$9,000, if requests for benefit services continue to come in at the current rate. The original estimate of \$10,000 is good and Mr. Wilson requested the committee consider favorable action.

Councilor Smart asked how the invoices are handled. Mr. Wilson responded that Mr. Burke handles the field work, and once he approves the invoices, they are submitted to the finance department for payments to be generated.

A MOTION was made by Councilor O'Connor to forward item 10 030 to the full Town Council with a recommendation for favorable action and was seconded by Councilor Mathews. UNANIMOUSLY VOTED.

**10 059-Appointment of Town Auditor**

Chairman DiFazio noted that this measure was referred by Town Council President Arthur Mathews to the Budget/Management Committee on June 3, 2010. Councilor Mathews reported that in accordance with Section 2-8 (a) of the Weymouth Town Charter, he respectfully submits the name of Richard Swanson of Dedham, Mass to be named as Town Auditor. His term will commence on June 10, 2010 and expire on June 10, 2013. A copy of the contract was attached to the measure, and President Mathews briefly reviewed it. Mr. Swanson is currently on a thirty day interim appointment which expires June 9<sup>th</sup>, so the contract will begin on June 10, 2010. It will be a part-time consultant appointment, for 3 years with an average of 18 hours per week but not to exceed 980 hours per year. The Town of Weymouth agrees to pay Mr. Swanson \$50 per hour and the position will not be eligible for benefits (no sick or vacation days, nor health insurance).

A MOTION was made by Councilor Mathews to forward this item to the full Town Council with a recommendation for favorable action and was seconded by Councilor Smart. Chairman DiFazio noted he was glad to have Mr. Swanson back; he has already seen a change in the cooperation the committee has received. Councilor Mathews noted that Mr. Swanson has clearly proven he can do the job efficiently on a part-time basis. UNANIMOUSLY VOTED.

**Discussion on receipt of fiscal year 2011 school budget material**

Chairman DiFazio thanked the members of the school committee and superintendent for appearing. As time is of the essence with regard to finishing the budget review, Chairman DiFazio stated why this matter was placed on the agenda:

*"The Budget/Management Committee has conducted eight meetings to date, and completed an initial review of all town departments except the school department. On*

*April 5, 2010, the Mayor's FY11 budget was referred to the Budget/Management Committee for review. This budget included a one-line appropriation of \$51.1 million for the Weymouth School Department. The school department budget was originally scheduled for review on June 3, 2010; however it was subsequently moved to June 9, 2010 due to not having received budget materials from the school department until June 1, 2010. Upon receipt and initial review, with the chairman and the internal auditor, the following appears to be undisputed:*

- 1. On March 4, 2010, the School Committee approved a \$55.5 million budget*
- 2. Mayor Kay, on or about April 1, 2010, after considering the effects of the school department's requested appropriation, would have upon the total town operating budget, informed the school committee that their total appropriation would be \$51.1 million*
- 3. Since the communication by the Mayor to the school committee of the \$51.1 million appropriation, the school committee has deliberated, conducted a public hearing, and proposed a line item budget which supports a \$51.1 million FY2011 appropriation, and has now issued materials to the Budget/Management Committee which supports such a budget.*

*Section 6-2 of the Charter requires the school committee to take a roll call vote on its amended budget after it concludes its public hearing and makes any amendments. It became clear to me as chair that on June 3, 2010 at the school committee's last meeting that it has not adhered to Section 6-2 of the Town Charter by intentionally not voting the \$51.1 million budget proposal, which has been forwarded now to the Budget/Management Committee. Therein lies the issue before the committee; for the first time in ten years, the school department deliberately provided documents for the Budget/Management Committee's review which have not been previously voted on in accordance with the requirements of the Town Charter.*

*As chair of the committee that was asked to review the Fiscal Year 11 budget, and make recommendations to the full Town Council, I suggest that before this committee commences upon a review of the unvoted school department budget material presented, that we report to the Town Council of the circumstances prior to our commencing review of the school department material. On the one hand, time is of the essence; it would be very beneficial to begin review of the unvoted, draft material presented. On the other hand, reviewing the material and deliberating on material which is not properly before the committee is premature without the agreement of the full Town Council. Therefore, I'm requesting the members of the Budget/Management Committee agree that the chair report out to the Town Council at its meeting and advise the Town Council of the issue before us before we decide to review and deliberate the unvoted budget materials.*

Councilor Mathews noted as a point of order that the budget amount is \$51.5. He asked for Solicitor Lane's opinion. Mr. Lane responded that he does have an opinion. The committee is dealing with the town's entire operating budget and as a result there are certain duties and responsibilities under the charter. Under section 6, the Mayor is required to consider the materials submitted including the school committee materials

and then to submit an operating budget to the Town Council for appropriation. The first question that may arise is the authority of the Budget/Management Committee to review these particular matters. After review, it becomes abundantly clear under the charter that the Council shall assign to a committee, which it has done, this particular matter; the report for study and recommendation. Whether or not there is a vote of the school committee, for \$51.5 million, the Mayor must deal with the numbers that are facing the whole town for an operating budget, which again is a town issue. The \$51.5 Councilor Mathews mentioned would be submitted to the Council and to the Budget/Management Committee for its report and recommendation. He stated, however, that in the deliberation by the Council, programs cannot be increased, per the charter, there can only be decreases. Therefore that the legislative body of the town, which is the Town Council would authorize the total appropriation for the town and the schools, which goes back to the schools for their administration. They then allocate to their line items as is their prerogative. It appears to be abundantly clear although there has been much commentary on the effect of the minimum contribution. Solicitor Lane was called upon at the annual Town Meeting to expound on the issue and it became clear that the duty of an annual appropriation, the minimum contribution is separate and apart from the legality of the operating budget. The budget if it balances as to appropriation and expenditures, becomes a budget and that budget is a legal budget, and thereafter the DOR agreed and so stated. President Mathews also noted there has been some disagreement as to sanctions or prohibition of minimum contribution is in Chapter 70, MGL. This opinion was also distributed to the chair of the Education Committee. It does not affect the legality of the budget. The Mayor has submitted an annual operating budget which the Council must consider.

Chairman DiFazio repeated that the only issue before the committee is that for the first time in ten years, they are being asked to consider a budget which has not been voted by the school committee. The Charter reads that their budget should be voted before it comes to the committee. The issue of net school spending is not germane to the discussion, and that the committee and Town Council should commence a review of a budget which has not yet been voted. If that is the Council's decision, he is fine with it. This is a situation that the committee has not had to deal with previously. He is concerned with beginning a review of drafted materials that could be changed prior to June 30, 2010. He is asking for clarification on reviewing drafted material.

Solicitor Lane responded that in reference to the specific inquiry, the Town Charter, Section 6-2 (c), the Town may deliberate and act only on the Mayor's proposed operating budget; the Town Council can enact the budget, take no action, or amend only in the matter indicated (decrease of programs).

Councilor Mathews asked if the school committee does not take action before July 1<sup>st</sup>, what would happen.

Solicitor Lane responded that then the Town Council is authorized to go forward on the material that's proposed in the annual operating budget of the Mayor, regardless of whether there is an affirmative vote of the school committee.

Councilor Mathews then asked Mr. Wilson what would occur if the school committee does not take action before July 1<sup>st</sup>.

Mr. Wilson responded that if the Town Council votes affirmatively on the Mayor's recommendation of a proposed operating budget of \$51.5 million, without further reduction, but only upon the allocation of that amount by the school committee, neither the Council nor the Mayor have line item authority, or the ability to create a spending plan for the school committee. In order to implement a budget, that spending plan must be approved by the school committee. A \$51.5 million appropriation cannot be implemented against a \$55.5 million spending plan; Mr. Wilson is prohibited by statute from substituting his judgment for the school committee's as to how they wish to allocate and based upon that, he would have no spending plan to implement July 1<sup>st</sup>. Therefore no monies may be expended by the school committee until such time as that allocation is made by them. It must be allocated, and the Charter specifies it be reported by August 1<sup>st</sup> to the CFO, and broken down by quarter. He cannot implement a budget that is out of balance between the amount voted by the Council and the amount allocated by the school committee.

Councilor Smart asked why the school committee or superintendent would jeopardize its ability to pay bills?

School committee chair Sean Guilfoyle responded that he does not believe the school committee is in violation of Section 6-2 of the town charter. The committee did vote a budget; they have not met the allocation of the Mayor's office yet and that is something to be done prior to July 1<sup>st</sup>. there is some disagreement within the school committee, but there is still time to vote it before July 1<sup>st</sup>.

Councilor Smart responded that this will depend on whether the Town Council votes within enough time for the school committee to react. If deliberations continue, the vote may not take place within adequate time for the school committee to vote. He asked why the superintendent did not comment at the school committee's meeting.

Superintendent Livingstone responded that she does not believe it is her role to do so. It's the committee's budget, and she advises them in terms of line item allocation. She does believe the school committee has met the mandated charter requirements. The spending plan before the committee is essentially what the impact will be with the Mayor's proposed budget.

Chairman DiFazio noted that the school committee has voted a \$55.5 million budget. Last paragraph of Section 6-2 of the Charter reads "*the action of the school committee in adopting the proposed budget, following the public hearing...*" After adopting a \$55.5 million, the school committee held a public hearing.

Mr. Guilfoyle responded that the school committee held two public hearings.

Chairman DiFazio continued, *“Following the public hearing, shall be summarized, and the results of a roll call vote taken, on each amendment to the proposed budget as may be offered shall be recorded.”*

There is now a spending plan of \$55.5, it was not subsequently voted again.

Mr. Guilfoyle noted that the school committee was not required to hold additional public hearings, but he did so to inform the public of the impact of the cuts.

Chairman DiFazio noted that changes were made to the school committee’s budget after it was voted by them and those changes should have been subject to a vote prior to being forwarded to the Budget/Management Committee.

Solicitor Lane responded that it does not make a difference; the Town Council will have to vote on the Mayor’s proposed operating budget.

There was a brief discussion of the vote taken by the school committee and whether there needs to be an additional vote taken on the amended amount. The superintendent noted that the spending plan before the committee for review meets the \$51.5 million budget. Due to the impact of the cuts across the district, more time was needed this budget year to come to an agreement on where to make the cuts. Portions of the spending plan are still under discussion. Councilor Smart took exception to the superintendent’s comment that it was not her position to comment; he has heard and read her comments several times in the press regarding the budget. The committee chair urged passage of the budget at the last meeting; Councilor Smart would have expected the superintendent to step up and advise and give her opinion. Why is the committee reviewing a budget that is still under discussion?

Mr. Guilfoyle responded that during the year, things will change without a vote of the committee; the budget is somewhat fluid. There will be small adjustments to be made.

Chairman DiFazio noted that this is not justification for not taking a vote; time is of the essence. He will ask the committee whether they should be reviewing a budget that is in draft form.

Councilor Smart asked Solicitor Lane if a second vote needs to be taken per the charter? Solicitor Lane responded that the Council is under an edict to submit an operating budget. It is not an obstacle whether the committee gets involved with the issue of multiple votes of action by the school committee.

Chairman DiFazio asked Mr. Guilfoyle if the school committee plans to vote the \$51.5 million budget before July 1<sup>st</sup> and Mr. Guilfoyle responded in the affirmative. The draft spending plan before the Budget/Management Committee meets the \$51.5 budget. Mr. Guilfoyle noted that he cannot speak for the entire school committee as to how the budget will be voted.

President Mathews noted that he has monitored the school committee meetings and has heard talk of school committee members seeking an opinion from outside counsel and reminded them, citing Section 3-30 of the Code of Ordinances, Town Solicitor, Section B, Powers and Duties: “The Town Solicitor shall:

- “1. Be responsible for all legal affairs for the town and shall personally provide, or shall personally supervise provisions by others of all legal services necessary for the proper and efficient conduct of the town’s affairs.
- “5. To the Mayor, Town Council and all elected or appointed officer, the town’s departments, boards or committees, pertaining to the discharge of their official duties. All requests for legal opinions, other than routine day-to-day questions shall be made in writing to the Town Solicitor and routed through the Mayor’s office for the purposes of administrative control.
- “6 (g) Appointment of a Special Counsel: No town officer or agency shall, unless specifically authorized to do so by the Mayor, employ, advise with or consult any attorney, counselor at law, other than the Town Solicitor or his designee with regard to its duties or to any town business. Whenever it is determined that the services of a legal specialist is necessary or desirable, the Town Solicitor shall select such counsel after consultation with the Mayor, and the office or agency involved.”

President Mathews cautioned the school committee to refer to this during their deliberations.

Chairman DiFazio concluded that he would like to report out to the Town Council that the committee now understands the status of the material and request the Council President give the committee the okay to begin deliberations on the proposed \$51.5 million spending plan.

Councilor Smart asked if anyone on the school committee has sought an opinion from Solicitor Lane with regard to the Code of Ordinance or Charter matters. Mr. Guilfoyle responded no. He has spoken with counsel from the Massachusetts Association of School Committees regarding procedural issues only.

Councilor Whitaker questioned if once the Town Council has voted the Mayor’s budget, what are the timeline/voting requirements, so the Council can estimate the timeline necessary if the school committee’s vote takes place after the Council’s. Mr. Guilfoyle responded that the only requirement needed would be the 48 hour publication notice; no further public meeting is necessary. Councilor Whitaker also noted that not every budget presented by the Mayor is approved; the Council may still vote to reduce it; if that were to happen, he questions what the next legal step would be. Mr. Guilfoyle responded that it is his understanding that the school committee would have to meet, via a vote, the appropriation of the Council. Any decrease would need to be voted. Mr. Whitaker noted that if the majority of the Council were to vote down the budget, what effect would this have on the school side. Chairman DiFazio asked Mr. Wilson to restate the position.

Mr. Wilson responded that he has no authority to allocate any specific line items to meet the total appropriation voted. As a result, if there is a disparity between the school committee vote and whatever the vote is by the Council, he cannot implement their budget. No spending can occur, and contracts cannot be signed with regard to the school department. Councilor Whitaker asked what happens then. Chairman DiFazio noted that there would be no funds for them to expend and they would conduct meetings to rectify this. He noted that he would not as a Town Councilor want to perpetuate that situation. There was a brief discussion on possible remedies to the situation.

Chairman DiFazio asked if the members of the Budget/Management Committee had any objection to reporting out to the full Council as discussed, and there were none. President Mathews asked as a point of information if the committee is looking to request a vote of the full Council at its next meeting on how the committee should proceed with its review. Chairman DiFazio noted he will take verbal direction from the President, as the review procedure is different than has been done in prior years.

Mr. Guilfoyle asked once again if the school committee is in violation of 6-2 of the town charter; Solicitor Lane said not. Councilor Smart noted the solicitor advised earlier that he was not prepared to offer that decision. Councilor Mathews made a point of order, and suggested giving Solicitor Lane a day or two to offer a written opinion. Solicitor Lane responded that it is not necessary; whatever materials are submitted, whether \$55.5 or \$51.5 million, goes to the Mayor; the Mayor reviews, and submits a number to the Council. The Council then votes on the annual operating budget. It is not necessary to render an opinion as to whether they are in violation; they have already taken one vote. Councilor Mathews disagreed with Solicitor Lane, both Councilor Smart and Mr. Guilfoyle asked about a specific section, and both bodies do not have a total knowledge or assurance that satisfies. It needs to be further clarified. Solicitor Lane noted he will take a look at it prior to the next meeting.

### **Adjournment**

At 7:32 PM, there being no further business, Councilor O'Connor made a MOTION to ADJOURN the meeting and was seconded by Councilor Smart. UNANIMOUSLY VOTED.

Respectfully submitted by Mary Briggs as Recording Secretary

Approved by Chairman Kenneth DiFazio