

**TOWN COUNCIL MINUTES**  
**Ordinance Committee**  
**January 10, 2023**

Present: Kenneth DiFazio, Chair  
Gary MacDougall, Vice Chair  
John Abbott, Councilor  
Lisa Belmarsh, Councilor  
Arthur Mathews, Councilor

Also Present: Richard McLeod, Town Solicitor  
Robert Luongo, Director of Planning  
Andrew Hultin, Conservation Administrator  
Robert Hedlund, Mayor  
David Tower, DPW Business Manager  
Kathy Swain, Citizen Proponent  
Alyson Dossett, Citizen Proponent

Recording Secretary: Mary Barker

Chair DiFazio called the meeting to order at 6:30 PM.

**22 131- Citizen Petition-Proposed New Building Moratorium**

Chair DiFazio provided a brief outline of the background and reported councilor Mathews will be late. The committee last met on Nov 16, 2022. A public hearing on December 5, 2022 (joint with the Planning Board). On December 13, 2022, the Planning Board met and then issued their unanimous recommendation on December 16, 2022 to deny it, which Chair DiFazio read into the record.

He reminded those present no public testimony will be accepted at this time. The committee will address their questions; then a discussion will follow between the committee and the administration. All members of the committee were supplied with a volume of the technical data that has been accumulated. The chair added that his personal opinion is that using the actual decision and research for utilizing MWRA is not relevant to the decision on a moratorium. The MWRA portion will resolve issues taking place 10-15 years down the road. The moratorium is more of a short-term issue, while a water resolution is long-term.

Councilor Abbott asked if it is within the committee's purview to alter the language on the measure? The chair responded yes; through amendment.

Councilor MacDougal treat like it's an ordinance- it's already in place.

Councilor Belmarsh liked the thought process used; similar to Jackson Square. There is an ordinance in place. It's a productive way to do it.

Councilor MacDougall noted he had trouble looking at the package- particularly understanding of the actual usage of water, raw vs. finished, allowed amount permitted for #1. What is the status of well #1?

David Tower responded Winter Street #1, well is online and can be operated. It has been rehabbed over the years. They revamp 1-2 per year. It is able to be used at the superintendent's discretion. Councilor MacDougall asked how many gallons are being used today? Mr. Tower responded that he would have to get that information. If they aren't taking water from that well, where is it coming from? Mr. Tower responded that there isn't a current need for it, to get to the 5 million gallons. The town went over the 5 million in 2021. Mr. Tower responded that the 5 million gallons is based on an average per day, and is also based on finished water production (about 90% of raw water).

Councilor Belmarsh noted that the documentation was impressive and she thanked the chair. Some of it they are viewing for the first time. The committee has asked a number of questions since October. One of the documents, a response to the DEP sent December 5<sup>th</sup>, which they were not provided before now. She still does not have copies of everything requested including a full copy of this letter and the attachments. Mr. Tower responded that he will ask the director or superintendent for it. Question #5 asks about the additional well. The first couple pages of the document indicates Weymouth considers it finished water, and there is some discrepancy between that and the regulations listed. Because DEP has not told them that if it is finished or raw, they need to wait for the response from DEP. Mr. Tower believes they will agree to the raw water criteria, which most towns are using. In 1987 Weymouth has been using finished water for the basis of their permit. Councilor Abbott added that if the DEP changes it in line to what most communities, they expect the DEP would adjust accordingly. Mr. Tower agreed that there would be a negotiation and resolution with DEP. Councilor Belmarsh responded that her point is that they still don't know. The fact that they haven't responded doesn't mean they accept it. There hasn't been an issue until now, reaching that capacity.

Councilor MacDougall asked how much water is being pulled from Whitmans or South Cove? Mr. Tower responded that the first 9 months of 2022 about 19 million gallons (4 days use). There has been rain. This is the time of year to bring the level. (Pumps are off with recent rain.)

Chair DiFazio asked if they take water from Whitmans Pond if it's not an emergency? Mr. Tower responded that South Cove is a water source and permitted to draw all year- they have agreed not to when herring are running but do draw to get the pond to capacity before spring. Chair DiFazio asked if there is a plan to memorialize the pumping policy, and the operation of the sluice gate. Mr. Tower responded that they have the information in recorded data in the annual stat reports. The chair asked if that was adequate documentation. Mr. Tower responded that it is not set in stone now. It could be a part of the water permit process

Councilor MacDougall asked when Mr. Tower got the pump year-to-date figure? Mr. Tower responded that it was in October.

Councilor Abbott noted they have testimony from residents and herring wardens who have seen things at South Cove; pumping at strange times or to the point where it becomes dry or ecological damage. Is that false? Mr. Tower responded that information needs to come from the water superintendent. There is a discrepancy; people who believe the pump is being clandestinely run and doing long term damage to the pond.

Councilor Belmarsh added that this is a question they are waiting on a response still.

Councilor MacDougall noted that the wells seem to be high risk for contamination. Is that a concern? Mr. Tower responded that they are treated accordingly and meet all water quality standards. How much water is the town pulling from all the wells. Mr. Tower was unsure. If they lose any will have to rely more on South Cove and Whitmans Pond. Mr. Tower responded that his is not presuming they will lose any. Councilor MacDougall noted is concern with the ecological impact of continually drawing water from South Cove. Is there mitigation there to protect the ecology? Mr. Tower responded that it is a question for the water superintendent.

Chair DiFazio reported that 60 questions were submitted; at least 3 on the protocols for operation of sluice gate. He urged the administration to have written protocols – DEP is asking for the same thing. Mr. Tower responded that he sat with DEP and they have a draft protocol. That is what they are trying to follow.

Chair DiFazio noted that one document has Whitmans Pond listed as emergency source by the state; another says it's not. Mr. Tower responded that the main body is but they are required to report it. Chair DiFazio asked for clarification that the EP report is correct.

During the discussion, at 7:04 PM, Councilor Mathews arrived.

Councilor Belmarsh pointed out that the petition for a moratorium alleges there is not sufficient water. Would this be a second one, since there already is one at Union Point?? Mr. Tower responded that there is a lack of agreements between UP and the town. In response from Mayor's office Q 9 – not issued building permit since 2009 – until the water is addressed, no permits will be issued. This moratorium is asking for the same thing. There is outrage over citizens petition, but not the UP one.

Planning Director Luongo clarified. Union Point is not a moratorium- the mayor told SRA and new developer that no permits will be issued until they come up with a plan to supply water. Mayor is now seeking MWRA along with SRA. It's not a zoning moratorium. Directive from the mayor. Councilor Belmarsh responded that it's essentially the same thing.

Councilor MacDougall noted that it is a similar issue although not technically the same.

Mr. Luongo added that UP is a blank canvas- they know they don't have an infinite supply of water. Save it for Weymouth proper- the blank canvas is not producing revenue to the town. It's more important to revitalize commercial corridors- measured development within Weymouth proper.

Mayor Hedlund added that there were three agreements with developers on UP- explicit benchmarks to hit development for UP, in order to get water. When they failed to reach the benchmarks, they were shut off, essentially. This administration inherited a prior agreement, set up the benchmarks, and followed through.

Chair DiFazio asked if there is anything on UP under agreement – that would require providing water? The Mayor responded that they have been approached by several entities.

The Mayor responded that they were approached by several entities. One was a hotel; they denied it.

Chair DiFazio noted that graph on Environmental Partner's plan- what year Weymouth will meet the limit- two different years are proposed, 2025 and 2026, while supplying UP 100K. The short-term ramifications are what's important. Without giving any more water to anyone, they are looking at a point in the near future meeting the limit. The Mayor responded there is nothing on the table to make any changes to that.

Councilor Belmarsh noted the report indicates a recent agreement between SRA and Weymouth- to provide 600K to UP that should be incorporated into the permit. The Mayor responded that in the water agreements, there is a threshold number and timeline requirements. Those requirements have not been met.

Chair DiFazio asked if constituents be notified via a report each time new development requiring water draw is reasonable to request. The Mayor responded that would be an ask to the staff that would have to prepare it. Councilor MacDougall pointed out it could be added to the language in the moratorium.

Councilor MacDougall asked about water demand projections. He supports putting the brakes on at UP. There is significant growth there- not sure how many units (1300, per Mr. Luongo). The spirit of the commercial overlay was the same thing. Add a mixed-use component. It's not a level playing field- residents of UP are treated differently. The moratorium does not solve the water issues.

Councilor Abbott asked what the town's short-term plan before the MWRA plan is feasible? The Mayor responded continued conservation measures, continued repair of the existing infrastructure, and balanced growth. Mr. Tower reviewed the I/I program. The developments that produce mitigation fees that positively impact the rates.

Chair DiFazio pointed out that Environmental Partners report suggested periodic water audits; will the town implement the suggestion? Mr. Tower responded that they already have, and started a large meter program. Chair DiFazio noted the permit renewal takes place in 2023 and it was recommended they ask for an increase in the use limits. Is the town planning to ask? Mr. Tower responded not at this time; it could trigger other restrictions. Chair DiFazio asked when they expect to hear back from DEP with a response to the December 5<sup>th</sup> letter? Mr. Tower noted the last permit application in 2009 took 11 years; he expects it will be much quicker.

Councilor MacDougall asked what is the administration's stance on projects involving upgrading infrastructure; does the town require developers to pay for them? Mr. Luongo responded that when a project comes in, it's vetted to each department. If issues are brought up, the burden is placed on the developer, within reason. They would have to take care of mitigation for any water and sewer issues. Mr. Tower added there were numerous issues that should have been taken care of by the base developer, but weren't so the town did. Mr. Luongo noted they have an idea when a project comes in how much water it will require. A quarterly report of estimated usage can be generated based on projects.

Councilor MacDougall asked what would happen if estimates are blown out consistently? Mr. Tower responded that it isn't possible. There is a two-tier rate system in place. Asking for additional water will trigger impacts.

Councilor Belmarsh noted that is what has been asked- what is current construction/ number of units, and without any further permits, they are at 100K over what already using. Is there a substantial need for a halt in permits? Water demand is increasing, they are waiting on DEP for baseline, and in the Mayor's presentation- will reach capacity in 5 years. This is coming to light in the last 3 months. Mr. Luongo took offense; she is implying that the town employees are not watching the water. It's insulting. If not for the citizens petition, town would have ignored the problem until there is no water. Councilor Belmarsh responded that the council has not been aware until the last 3 months. The Mayor added that the council held other committee meetings where this subject has come up. The town staff has held developers to account.

Councilor Belmarsh responded she is not implying they are not doing their jobs. They just want to be included in the process. She wants it clear that the report indicates there is a MOA to seek additional water- the town is not doing at this time? The Mayor responded no.

Councilor Abbott in EP report, they projecting demand 2025-2030- shows modest increases in residential. 10% water loss - sitting right now at 20%. Why is there such a difference? Mr. Tower responded that it is their intent to get to 10%. Councilor Abbott asked what additional steps will be taken. Mr. Tower responded programs are ongoing. Councilor Abbott said it sounds like more of the same; but has it changed? Mr. Tower noted in 1990's under consent order- brought usage down to acceptable limits. Will

follow that same path and will turn lost water into revenue. If there was a simple solution, they would already have taken it.

Chair DiFazio asked if it's possible to increase the mitigation fee? Mr. Tower responded that Weymouth's fees are already up there. Costs are much higher than they can charge the developer. What would be the pushback of increasing and what are the issues?

Chair DiFazio asked about the submetering. Can they require it? Mr. Tower responded that they already require new developments.

Councilor Mathews added his comments: components of the measure have merit. Question he has is this the appropriate way to do the moratorium. Better approach from his point of view would be more oversight by DEP for the town. DEP will put a consent order if they follow the current path. Town isn't asking for increase because threshold has changed- DEP has imposed new thresholds, if Weymouth applies for new or amended permit, they would be looking at new thresholds. The solution might be to ask DEP for more oversight. Water level at Whitmans Pond. He would also like to see DEP get into water detection- and mitigation money should be used to fix. He thinks they should increase the mitigation- this is an opportunity- there were several breaks on Washington Street- replace a certain amount of pipes, etc., and instead they chose to use the money to offset the rates. It might upset developers, but would have more money to go after fixing. He doesn't think the moratorium is the way to go. If they don't take a more aggressive approach to mitigation they could be looking at consent order. He would rather increase fees than rates to users. Mr. Tower responded that mitigation is part of the revenue stream; it's only there to offset rates. Leak detections come out of the operating budget.

Mr. Luongo asked how they calculate mitigation fees. Mr. Tower responded 3:1 or 10:1 conservation to mitigation fee. They ran out of programs. They collect fees and use to fix problematic issues. Could the fee go up? That's a decision for the administration can make. 110gal per bedroom is the count they use to calculate. 3.10 CMR governs commercial, based on square feet.

Councilor MacDougall cautioned that some of the problems could be corrected in the ordinance. Mitigation, DEP oversight and language and be done in the ordinance to put guardrails in place. The council changed the overlay zoning and pulled that back a bit.

Mayor Hedlund responded that he would like to hear more from DEP before making changes and bringing back its oversight. This is the same entity that issued an air quality permit for a compressor station.

Councilor Mathews responded that the water side to being more conservative. The pumping of South Cove maybe DEP needs to be more involved. Late 1960's pumping from South Cove began. He doesn't believe it would be opposed to raising mitigation fees. Administrations will be renewing permit yearly, until get to MWRA. He wants to see more conservation items; he'd rather not let a developer go without fixing identified lines.

Councilor Belmarsh asked if they can combine the two and put it into the language? Like the commercial corridor was done. She asked Mr. Tower about a list of what was done for the mitigation. He explained there isn't a list because they ran out of things to do. There are other restrictions that would

Councilor Belmarsh asked can they establish a program- who's watching permitting? Write in stricter parameters in the zoning, similar to Jackson Square.

Mr. Luongo pointed out some things belong in zoning code, not a zoning ordinance. He would want to have the discussion with the solicitor. Councilor Mathews agreed and added there are guidelines.

Councilor Belmarsh suggested letting the petitioners speak. The chair responded he addressed at the start of the meeting, unless she has a specific question to ask.

Councilor Abbott suggested they need a long-term solution, what is the timeline administration will come to the council with a potential plan.

Mayor Hedlund responded that they got a sense of the cost of the app \$360k. there were discussions with the master developer and they were asked to bear the cost. Alternate source to UP. Once the application process in underway, a contract will be initiated soon. EP have done a lot of the background work already and likely will be involved. Once that's underway, a lot of the questions can be answered then.

Councilor Mathews read the MWRA regional study- water side- wastewater side- MWRA cannot accept all the flow from UP. The mayor responded there are constraints to get it from UP. Developers will bear the cost of the upgrades to get it beyond Weymouth's borders. Councilor Mathews has always pushed for a wastewater treatment plant. He cautioned accepting wastewater flows for other municipalities (Rockland). He would hate to have to restrict future growth to accommodate. There are already problems at the Bra-Wey Interceptor.

Mr. Tower pointed out they were committed to the town of Weymouth, but the original developer would not accept any flows outside of the town of Weymouth.

Mr. Luongo added that a resolution might be building a wastewater treatment plant. The Mayor responded that the developers have a clear understanding of that.

Kathy Swain, 134 Mill Street- added she agrees with Councilor Mathews re mitigation. She spoke to Duane at DEP on January 8, 2023 but DEP will not help with unaccounted water. In 2007 they were involved in court case that they lost. Its involvement is with permitted Well #1. They have very little regulation over the rest of the sources. Mitigation- water restrictions are going to come with the new permit and be very restrictive.

Councilor Belmarsh indicated there is a water supply working group. Who is part of the working group? She also asked is there any consideration for Town Council and citizen to be added. She requested the names.

Chair DiFazio summarized that the committee is now tasked with taking the responses and what are the next steps. The committee will come up with their focus and come back to deliberate at the next meeting.

#### ADJOURNMENT

At 8:20 PM, there being no further business, Councilor Mathews motioned to adjourn and was seconded by Councilor Abbott. Unanimously voted.

Attachment: Planning Board Decision, December 16, 2022

Respectfully Submitted by Mary Barker as Recording Secretary.

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Approved by Kenneth DiFazio as Ordinance Committee Chairman  
Voted unanimously on 6 March 2023