

**ANNUAL TOWN MEETING
TOWN OF WHATELY
April 28, 2015**

Pursuant to the recorded warrant the annual meeting of the Town of Whately held at the Whately Elementary School, 273 Long Plain Road was called to order Tuesday, April 28, 2015 at 7:02 p.m. by Moderator Paul M. Fleuriel, Jr. Town Clerk, Lynn M. Sibley read the Constable's return of the warrant. Virginia Allis and Maryellen Cranston acted as checkers and assigned voting placards to those voters attending the meeting. Maximum attendance was 194 voters. The Moderator appointed Robert Halla and William Smith to serve as counters. This meeting was being broadcast on Channel 15 as well.

Article 1. Upon motion made and seconded, it was

Voted that the town accept the Annual Reports of the officers of the Town, and to hear any other reports of the Boards and Committees.

Moderator declared vote passed in the affirmative.

Clerk's Note - Recognition was made by Joyce Palmer Fortune regarding the dedication of the 2014 Annual Town Report to Conservation Commission member Scott Jackson.

Article 2. Upon motion made and seconded, it was

Voted that the town authorize the Town Treasurer, with the approval of the Board of Selectmen, to borrow money from time to time in anticipation of the revenue of the Fiscal Year beginning July 1, 2015, in accordance with the provisions of General Laws, Chapter 44, Section 4, and to renew any note or notes as may be given for a period of less than one year, in accordance with the provisions of General Laws, Chapter 44, Section 17.

Moderator declared vote passed in the affirmative

Article 3. Upon motion made and seconded, it was

Voted that the town authorize the Town Treasurer, with the approval of the Board of Selectmen, to enter into compensating balance agreements with banking institutions having their principal offices in the Commonwealth during Fiscal Year 2016, as permitted by General Laws Chapter 44, Section 53F.

Moderator declared vote passed in the affirmative

Article 4. Upon motion made and seconded, it was

Voted that the town apply for, accept, and expend any federal, state or private grant monies on behalf of the Town and authorize the Town Treasurer with the approval of the Board of Selectmen to borrow in anticipation of reimbursement.

Moderator declared vote passed in the affirmative

Article 5. Upon motion made and seconded, it was

Voted that the Town authorize revolving funds for certain Town departments under General Laws Chapter 44, s. 53 E ½ for the fiscal year beginning July 1, 2015.

| Revolving Fund | Authorized to Spend Fund | Revenue Source | Use of Fund | FY2016 Spending Limit | Disposition of FY16 Fund Balance | Spending Restrictions or Comments |
|------------------------------------------|----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-----------------------------------------------------------------------------------|---------------------------------------------------------------------|
| Dog Licensing and Control Revolving Fund | Town Clerk, Animal Control Officer | Dog license fees, fines and late charges | Any lawful expense related to dog licensing, animal control officer operating expenses, or any expense related to the implementation of the Town's Animal Control By-law | \$1,000 | \$1,000 of balance available for expenditure, remainder to revert to General Fund | Funds may not be spent for the salaries of any full-time employees |
| Recreation Revolving Fund | Recreation Commission by majority vote of its membership | Sports program registration fees, building and park rental fees, donations and proceeds from fund-raisers | Any lawful expense related to the activities, programs, and facilities operated by the Recreation Commission | \$20,000 | Balance available for expenditure | Funds may not be spent for the salaries of any full-time employees |
| Library Revolving Fund | Trustees of S. W. Dickinson Memorial Library, by majority vote of its membership | Fees from overdue books and videos and fees from copy machine use | Any lawful expense associated with the activities and programs of the S. W. Dickinson Memorial Library | \$1,000 | Balance available for expenditure | Funds may not be spent for the salaries of any full-time employees |
| Public Hearings Revolving Fund | Town Clerk | Fees for costs of public hearings | Costs related to hearings: advertising, recording fees, and other expenses | \$2,500 | Balance available for expenditure. | Funds may not be spent for the salaries of any full-time employees |
| Cordwood Sales Revolving Fund | Tree Warden, Highway Superintendent | Revenues from sale of cordwood. | Purchase of replacement trees on Town property. | \$2,500 | Balance available for expenditure | Funds may not be spent for the salaries of any full-time employees. |
| Cemetery Commissioners Revolving Fund | Cemetery Commissioners | Opening Graves Fees | Costs of contractor expenses for digging graves and Commissioners' expenses for burial | \$1,000 | Balance available for expenditure | Funds may not be spent for the salaries of any full-time employees |
| Trench Permit | Highway Superintendent and Police Department | Trench Permit Fees | Costs of enforcement of Trench Permit Regulation | \$1,000 | Balance available for expenditure | Funds may not be spent for the salaries of any full-time employees |
| Recycling and Solid Waste Revolving Fund | Solid Waste Committee and Board of Health | Recycling Revenues | Any lawful expense associated with the operation of the Town's solid waste and recycling programs, membership in and services of the Franklin County Solid Waste Management District and purchase of recycled content or environmentally preferable products. | \$15,000 | Balance available for expenditure | Funds may not be spent for the salaries of any full-time employees |
| Total Spending: | | | | \$44,000 | | |

Moderator declared vote passed in the affirmative

Article 6. Upon motion made and seconded, it was

Voted that the Town fix the salaries or compensation of the elected officers of the Town for Fiscal Year 2016 as follows:

| | FY16 (1.7% COLA) |
|----------------------------------|-----------------------------|
| Moderator | \$118.21 |
| Selectmen – Chair | \$1,802.62 |
| Members | \$1,654.87 |
| Town Clerk | \$20,530.64 |
| Assessors – Chair | \$1,802.62 |
| Members | \$1,654.87 |
| Water Commissioners | \$709.23 |
| School Committee | \$341.71 |
| Elector: Oliver Smith Will | \$10.17 |
| Board of Health – Chair | \$856.99 |
| Members | \$709.23 |
| Constables | \$13.40 hr |
| Cemetery Commissioners – Sextons | \$12.15 hr |
| Opening Graves Fee | \$600.00/grave |

Moderator declared vote passed in the affirmative

Article 7. Upon motion made and seconded, it was

Voted that the town appropriate **\$112,932.00** from the Water Department Enterprise Fund to finance the operation of the Water Department for the fiscal year beginning July 1, 2015 (detail below).

| | |
|-----------------------------------------------------------|------------------------|
| I. Water Enterprise Revenues | FY 2016 |
| User Fees | \$112,932.00 |
| Enterprise Available Funds | \$0.00 |
| Investment Income | \$0.00 |
| Total Revenues | \$112,932.00 |
| II. Costs Appropriated for the Enterprise Fund | |
| Direct Costs | |
| Salaries | \$29,990.00 |
| Operating expenses | \$48,200.00 |
| Total Costs Appropriated for Enterprise Fund | \$78,190.00 |

III. Costs Appropriated for General Fund to be charged to the Enterprise Fund

Indirect Costs

| | |
|------------------------------------------------------|---------------------|
| Health Insurance | \$14,070.00 |
| Medicare & Social Security | 1,155.00 |
| Workers Comp. Ins. | 570.00 |
| Life Insurance | 60.00 |
| Retirement | 4,326.00 |
| Property Insurance | 3,543.00 |
| Selectmen's Office | 1,618.00 |
| Legal Counsel | 570.00 |
| Audit | 90.00 |
| Town Buildings | 807.00 |
| Treasurer/Collector Dept. | 5,650.00 |
| Accountant | 507.00 |
| Harpers Payroll | 51.00 |
| Payroll Preparation | 35.00 |
| Town Vehicles Fuel | 1,690.00 |
| Total Costs Appropriated for the General Fund | \$34,742.00 |
| Total Costs | \$112,932.00 |

Moderator declared vote passed in the affirmative

Article 8. Upon motion made and seconded, it was

Voted to transfer from available funds (Free Cash) the sum of **\$4,000.00** to fund a long range planning study with the Frontier Regional and Union 38 schools to determine how Town offices and school space could be consolidated.

Moderator declared vote passed in the affirmative

Article 9. This article was petitioned to the warrant. Upon motion made and seconded, it was

Voted to transfer from available funds (Free Cash) the sum of **\$1,750.00** to compensate those employees who meet the criteria of the current town policy of the school departments' longevity bonus which states "After ten (10) years of satisfactory service, employees will be paid a lump sum amount of \$250.00 at the beginning of the fiscal year, on a regular basis."

There was an explanation regarding this article but little debate.

Moderator declared vote passed in the affirmative

Prior to Article 10 (FY16 Omnibus Budget) there was a power point presentation by Paul Antaya, Chair of the Finance Committee.

Article 10. Upon motion made and seconded, it was

Voted that the town act on the report of the Finance Committee on the Fiscal Year 2016 budget and to raise and appropriate or transfer from available funds, money for the operation of the Town's departments and the payment of debt service and all other necessary and proper expenses for the year.

(Note: Water Department Enterprise Fund costs are appropriated in **Article 7**)

Proposed Fiscal Year 2016 Budget

The Finance Committee recommends that the amounts shown in the column captioned "FY16 Finance Committee Recommendations with water removed" be raised or appropriated or transferred from available funds for FY16 department operating purposes, debt service and other Town expenses.

| | FY16 Finance Committee Recommendations With Water Removed |
|--------------------------|------------------------------------------------------------------------------|
| <u>Gen. Govt.</u> | |
| Selectmen's Office | 88,225.00 |
| Legal Counsel | 35,030.00 |
| Audit | 2,910.00 |
| Town Report | 700.00 |
| Town Bldg. Oper. | 26,083.00 |
| Town Clerk | 29,686.00 |
| Town Accountant | 16,368.00 |
| Harpers Payroll | 5,049.00 |
| Payroll Preparation | 3,395.00 |
| Acct Software | 750.00 |
| Treasurer/Collector | 45,712.00 |
| Tax Takings | 5,000.00 |
| Assessors | 32,893.00 |
| Planning Board | 1,873.00 |
| Zoning Bd. Appeals | 1,571.00 |
| Finance Comm. | 150.00 |
| Moderator | 150.00 |
| Cons. Comm. | 500.00 |
| Historical Comm. | 200.00 |
| Agricultural Commission | 1,500.00 |
| Computer replacement | 2,000.00 |
| Connect CTY | 2,400.00 |
| Website Update | 200.00 |
| Housing Committee | 200.00 |
| Municipal Building Comm. | 800.00 |
| Sub-Total: | 303,345.00 |

Cult., Rec., Serv.

| | |
|------------------------|-----------|
| Tri-Town Beach | 4,440.00 |
| Recreation Comm. | 11,900.00 |
| Cemetery Comm. | 5,729.00 |
| Library | 54,918.00 |
| Senior Center | 13,905.00 |
| Veterans | 8,990.00 |
| Local Council on Aging | 500.00 |

Sub-Total: 100,382.00

Public Health

| | |
|-------------------|-----------|
| Board of Health | 2,577.00 |
| Health Agent | 13,719.00 |
| Solid Waste Disp. | 38,220.00 |
| Hazardous Waste | 1,000.00 |
| FC Waste Dist. | 5,721.00 |

Sub-Total: 61,237.00

Public Safety

| | |
|----------------------|------------|
| Fire | 56,575.00 |
| Ambulance | 131,887.00 |
| Police | 176,852.00 |
| Quinn Bill Incentive | 4,607.00 |
| Animal Control | 4,176.00 |
| Animal Inspection | 492.00 |
| Emergency Mgt. | 1,350.00 |
| FC Inspection Prog. | 6,500.00 |

Sub-Total: 382,439.00

Public Works

Highway Dept.

| | |
|----------------|------------|
| Salaries | 120,037.00 |
| Gen. Highways | 78,000.00 |
| Winter Roads | 124,149.00 |
| Road Machinery | 20,955.00 |
| Garage Maint. | 7,560.00 |
| Trees | 5,000.00 |

Sub-Total: 355,701.00

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|--------------------|-----------------|
| <u>Water Dept.</u> | |
| Salaries | 2,990.00 |
| Operations | |
| Sub-Total: | 2,990.00 |

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|----------------------------|------------|
| <u>Ins. & Benefits</u> | |
| Prop. & Liab. Ins. | 40,737.00 |
| Health Ins. –Town/School | 399,744.00 |

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|-----------------------------|-------------------|
| Medicare & Soc. Sec. | 25,095.00 |
| Workers Comp. Ins. | 14,830.00 |
| Life | 1,940.00 |
| Unemp. Ins. | 7,000.00 |
| Retirement | 139,842.00 |
| Police & Fire Insurance | 12,960.00 |
| OPEB Liability | 25,000.00 |
| Division of Medicaid Assis. | 1,575.00 |
| Sub-Total: | 668,723.00 |

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|---------------------------|------------------|
| <u>Unclassified</u> | |
| Temp. Loan Int. | 2,000.00 |
| Reserve Fund | 20,000.00 |
| FR Council of Govt. | 18,351.00 |
| Physicals & Tests | 1,750.00 |
| Town Vehicles Fuel | 32,110.00 |
| Vaccinations | 0.00 |
| Educational Inc.(T.Clerk) | 1,000.00 |
| Sub-Total: | 75,211.00 |

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|--------------------------|---------------------|
| Total Town Govt.: | 1,950,028.00 |
|--------------------------|---------------------|

Schools

| | |
|-------------------|---------------------|
| <u>Elementary</u> | |
| Operating | 1,564,490.00 |
| Transportation | |
| Fixed Assets | |
| Sub-Total: | 1,564,490.00 |

| | |
|------------------------|-------------------|
| <u>Frontier</u> | |
| Operating | 910,121.00 |
| Exist. Cap. Costs | |
| Transportation | 13,253.00 |
| Sub-Total: | 923,374.00 |

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|----------------------------|-------------------|
| <u>FC Technical</u> | |
| Operating | 129,910.00 |
| Sub-total: | 129,910.00 |

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|----------------------------------------|------------------|
| <u>Smith Vocational Tuition</u> | 24,300.00 |
|----------------------------------------|------------------|

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| Total Schools: | 2,642,074.00 |
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|---------------------------------|---------------------|
| Total Town & School: | 4,592,102.00 |
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| <u>Long term-Debt</u> | |
| Frontier Bond | 8,540.00 |

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|-------------------|-----------------|
| Sub-Total: | 8,540.00 |
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|------------------------|------------------|
| <u>Short term-Debt</u> | |
| Dump Truck | 52,300.00 |

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| Total Operating Budget | 4,652,942.00 |
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Moderator declared vote passed in the affirmative

The following six articles are recommendations of the Capital Planning Committee

Article 11. Upon motion made and seconded, it was

Voted that the Town transfer from available funds (free cash) the sum of **\$40,000** for a replacement heating/cooling system in the S. W. Dickinson Library.

Moderator declared vote passed in the affirmative

Article 12. Upon motion made and seconded, it was

Voted that the Town transfer from available funds (free cash) the sum of **\$10,000** to purchase a 52" deck lawn mower for the Highway Department.

Moderator declared vote passed in the affirmative

Article 13. Upon motion made and seconded, it was

Voted that the town transfer from available funds (free cash) the sum of **\$7,000**, only if matched by equal sums by the Towns of Sunderland and Deerfield, to purchase a used bucket truck to be shared with the Towns of Sunderland and Deerfield.

Clerk's note: There were some questions on this article. People were concerned about who pays for the repair if another town breaks the machine and how much the additional insurance might be on the town's policy. It was stated that these things will be worked out in the inter-municipal agreement. There was also a suggestion to make a priority arrangement in the agreement for multi-town events should each town need the truck at the same time.

Moderator declared vote passed in the affirmative

Article 14. Upon motion made and seconded, it was

Voted that the town borrow the sum of **\$400,000** for the purchase of a pumper truck for the Fire Department as part of the 2016 Capital Improvement Plan, and authorize the Treasurer, with the approval of the Selectmen, to issue any bonds or notes that may be necessary for that purpose, as authorized by General Laws Chapter 44, §7 (9), or any other general or special law, for a period not to exceed 5 years.

Moderator declared vote passed in the affirmative

Article 15. Upon motion made and seconded, it was

Voted that the town transfer from Water Department Retained Earnings (Free Cash) the sum of **\$10,000** to purchase a pump house generator for the Water Department.

Moderator declared vote passed in the affirmative

Article 16. Upon motion made and seconded, it was

Voted that the town transfer from Water Department Retained Earnings (Free Cash) the sum of **\$5,000** to build capital for the replacement of the Water Department at a later date to be determined.

Moderator declared vote passed in the affirmative

The following three articles are recommendations of the Community Preservation Committee

Article 17. Upon motion made and seconded, it was

Voted that the town hear and act, pursuant to G.L. c.44B, on the report of the Community Preservation Committee for the Fiscal Year 2016 Community Preservation Budget and vote to appropriate or reserve

from the **Community Preservation Fund** a sum of money in the amounts recommended by the Community Preservation Committee for committee administrative expenses, community preservation projects and other necessary and proper expenses in the fiscal year beginning July 1, 2015, including debt service for any approved Community Preservation projects, with each item to be considered a separate appropriation:

Appropriations:

| | |
|-----------------------------------------------------------------------|-----------------|
| From FY 2016 estimated revenues for Committee Administrative Expenses | \$ 7,000 |
|-----------------------------------------------------------------------|-----------------|

Reserves:

| | |
|----------------------------------------------------------------|------------------|
| From FY 2016 estimated revenues for Historic Resources Reserve | \$ 14,500 |
|----------------------------------------------------------------|------------------|

| | |
|---------------------------------------------------------------|------------------|
| From FY 2016 estimated revenues for Community Housing Reserve | \$ 14,500 |
|---------------------------------------------------------------|------------------|

| | |
|--------------------------------------------------------|------------------|
| From FY 2016 estimated revenues for Open Space Reserve | \$ 14,500 |
|--------------------------------------------------------|------------------|

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|------------------------------------------------------|------------------|
| From FY 2016 estimated revenues for Budgeted Reserve | \$ 94,500 |
|------------------------------------------------------|------------------|

Moderator declared vote passed in the affirmative

Article 18. Upon motion made and seconded, it was

Voted that the town, pursuant to G.L. c.44B, appropriate and transfer from the Community Preservation Fund Open Space Reserves the sum of **\$23,600** as the Town's match for a permanent Agricultural Preservation restriction on 22 acres of farmland on Christian Lane, Assessors Map 21, Lot 5 and Map 21, portions of Lots 9 and 12, currently owned by Scott and Wayne Hutkoski, upon such terms and conditions as the Board of Selectmen, in consultation with the Agricultural Commission, shall deem appropriate.

Moderator declared vote passed in the affirmative

Article 19. Upon motion made and seconded, it was

Voted that the town, pursuant to G.L. c.44B, appropriate and transfer from the Community Preservation Fund Historic Resources Reserve the sum of **\$2,500** for the purchase of metal shelving and a dehumidifier for the storage of historic Town records in the Center School.

Moderator declared vote passed in the affirmative

Article 20. Upon motion made and seconded, it was

Voted to amend the vote on Article 1 of the December 14, 2004 Special Town Meeting by deleting the text shown below in ~~strike through~~ and inserting the text shown below in **bold**, with text not being changed shown for informational purposes only, and make provision for the current members of the Agricultural Commission, as follows:

That the Town establish an Agricultural Commission to represent Whately farming community. Said Commission shall be established to address and represent agricultural issues and interests in the Town. The Board of Selectmen shall appoint a ~~five~~ **seven** member Commission: ~~Two~~ **Three** members for a term of three years, ~~two~~ **three** members for a term of two years, and three years thereafter, and one member for a term of one year and three years thereafter. Any vacancy shall be filled by the appointing authority based on recommendations of the Commission, for the

unexpired term of the vacancy. At least three of the members of the Commission shall be engaged in the business of farming or related industries.

The Board of Selectmen may appoint non-resident farmers who farm land in Whately as members of the Commission. The duties and responsibilities of the Commission shall include, but not be limited to:

1. Advising the Board of Selectmen, Planning Board, Zoning Board of Appeals, Conservation Commission, Board of Health, and other local organizations, on projects and activities, including acquisitions and other transactions, involving agricultural lands in town.
2. Engaging in projects and activities to promote the business of farming activities and traditions, and farmland protection in town, including programs and community events.
3. Reporting on its projects and activities on an annual basis within the town report.

The current five members of the Commission shall continue to remain in office for the duration of their appointed terms unless they otherwise leave office; the two additional members shall be appointed for a term of 2 years and 3 years, respectively.

Moderator declared vote passed in the affirmative

Article 21. Upon motion made and seconded, it was

Voted that the town delete the existing text of Chapter 65 of the Code of Whately, Animals, as adopted under Article 1 of the April 26, 1994 Annual Town Meeting (Article 16), and replace it with the following:

Chapter 65

ANIMALS

ARTICLE I

Dogs

§ 65-1. Purpose

§ 65-2. Definitions

§ 65-3. License requirements; fees; fines for failure to license.

§ 65-4. Prohibited activities

§ 65-5. Complaints; Animal Control Officer and Town Pound Regulations.

§ 65-6. Violations and penalties

§ 65-7. Liability for damage to person or property.

§ 65-8. Property damage; appraisal and reimbursement.

§ 65-9. Reimbursement in certain cases.

[HISTORY: Adopted by the Town of Whately Annual Town Meeting as indicated in article histories. Amendments noted where applicable.]

ARTICLE 1

Dogs

[Adopted 4-26-1994 ATM, Art. 16]

§65-1. Purpose

In addition to the requirements set forth in this bylaw, the licensing, keeping and control of animals shall be in accordance with all applicable provisions of the Massachusetts General Laws, including but not limited to the provisions of MGL c. 140, §§136A to 174E, inclusive.

The Town requires that all dog owners keep their dogs under control at all times for the purpose of:

- A. Protecting people and animals from injury.
- B. Protecting property from damage.
- C. Preventing dog-related nuisances.

Under control shall mean the dog is within the real property limits of its owner or keeper or on the premises of another person with the knowledge and express permission of such person, or secured by a leash, lead or under the direct control of the owner or keeper.

§ 65-2. Definitions

As set forth in MGL c. 140, §136A and below, the following words shall have the following meanings:

Animal Control Officer – an officer appointed by the Board of Selectmen authorized to enforce sections 136A to 174E, inclusive and this bylaw.

Attack – aggressive physical contact initiated by an animal.

Commercial boarding or training kennel – an establishment used for boarding, holding, day care, overnight stays or training of animals that are not the property of the owner of the establishment, at which such services are rendered in exchange for consideration and in the absence of the owner of any such animal; provided, however, that “commercial boarding or training kennel” shall not include an animal shelter or animal control facility, a pet shop licensed under section 39A of chapter 129 of the MGL, a grooming facility operated solely for the purpose of grooming and not for overnight boarding or an individual who temporarily, and not in the normal course of business, boards or cares for animals owned by others.

Commercial breeder kennel – an establishment, other than a personal kennel, engaged in the business of breeding animals for sale or exchange to wholesalers, brokers or pet shops in return for consideration.

Dangerous dog – a dog that either: (i) without justification, attacks a person or domestic animal causing physical injury or death; or (ii) behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.

Domestic animal – an animal designated as domestic by regulations promulgated by the Department of Fish and Game.

Domestic charitable corporation kennel – a facility operated, owned or maintained by a domestic charitable corporation registered with the department of agricultural resources or an animal welfare society or other nonprofit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals, including a veterinary hospital or clinic operated by

a licensed veterinarian, which operates consistent with such purposes which providing veterinary treatment and care.

Euthanize – to take the life of an animal by the administration of barbiturates in a manner deemed acceptable by the American Veterinary Medical Association Guidelines on Euthanasia.

Hearing authority – the Board of Selectmen or their designee are charged with the responsibility of handling dog complaints in the Town of Whately.

Keeper – a person, business, corporation, entity or society, other than the owner, having possession of a dog.

Kennel – a pack or collection of dogs on a single premise, including a commercial boarding or training kennel, commercial breeder kennel, domestic charitable corporation kennel, personal kennel or veterinary kennel.

License period – the period of time for which a municipal licensing authority prescribes the validity of a dog license, including the date of issuance of the license through the date on which the license expires, inclusive.

Licensing authority – the Town Clerk of the Town of Whately

Livestock or fowl – a fowl or other animal kept or propagated by the owner for food or as a means of livelihood, deer, elk cottontail rabbit, northern hare, pheasant, quail, partridge and other birds and quadrupeds determined by the department of fisheries, wildlife and environmental law enforcement to be wild and kept by, or under a permit from, the department in proper houses or suitable enclosed yards; provided, however, that “livestock or fowl” shall not include a dog, cat or other pet.

Nuisance dog – a dog that (i) by excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity; or (ii) by excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one’s quiet and peaceful enjoyment; or (iii) has threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under all the circumstances.

Personal kennel – a pack or collection of more than 4 dogs, 3 months old or older, owned or kept under single ownership, for private personal use; provided, however, that breeding of personally owned dogs may take place for the purpose of improving, exhibiting, or showing the breed or for use in legal sporting activity or for other personal reasons; provided further, that selling, trading, bartering or distributing such breeding for a personal kennel shall be to other breeders or individuals by private sale only and not to wholesalers, brokers or pet shops; provided further, that a personal kennel shall not sell, trade barter or distribute a dog not bred from its personally-owned dog; and provided further, that dogs temporarily housed at a personal kennel, in conjunction with an animal shelter or rescue registered with the department of agricultural resources, may be sold, traded, bartered or distributed if the transfer is not for profit.

Shelter – a public animal control facility or other facility which is operated by an organization or individual for the purpose of protecting animals from cruelty, neglect or abuse.

Veterinary Kennel – a veterinary hospital or clinic that boards dogs for reasons in addition to medical treatment or care; provided, however, that “veterinary kennel” shall not include a hospital or clinic used

solely to house dogs that have undergone veterinary treatment or observation or will do so only for the period of time necessary to accomplish that veterinary care.

§65-3. License requirements; fees; fines for failure to license

- A. The registering, numbering, description and licensing, pursuant to the provisions of MGL Chapter 140 of all dogs and all kennels in the Town of Whatley shall be conducted in the office of the Town Clerk between March 1 and June 1 of each year. The dog and kennel license year shall begin on April 1 and end on March 31 of the following year. Licensing shall be in accordance with MGL c. 140, §§137 and 137A.
- B. Except as provided by MGL c. 140, §§137 and 137A, the fees shall be as prescribed in MGL Chapter 140, except that the annual fee for the licenses shall be:
 - 1. Male: \$15.
 - 2. Female: \$15
 - 3. Neutered male: \$10.
 - 4. Spayed female: \$10.
 - 5. Kennel License to include commercial boarding or training kennel, commercial breeder kennel, personal kennel or veterinary kennel, or otherwise as provided by MGL c. 140, §§137 and 137A: (A domestic charitable corporation kennel license shall be free of charge)
 - a. Not more than four dogs: \$ \$40.
 - b. Not more than 10 dogs: \$75
 - c. More than 10 dogs: \$100
 - 6. Duplicate tag .50¢
 - 7. Transfer license \$1.00

Whoever violates Sections 137, 137A, 137B, or 138 of Chapter 140 of the General Laws and/or the provisions of this section shall be assessed a penalty of \$50 pursuant to MGL c. 140, § 141, and may be subject to any other penalty established by this bylaw.

- D. The fees collected shall be deposited in the Dog Licensing and Animal Control Revolving Fund.

§65-4. Prohibited activities.

Any owner or keeper who allows his/her dog to do any of the following is in violation of the bylaw:

- A. Run at large or go beyond the confines of his or her property unless the animal is held firmly on a leash or under the verbal control of the owner or keeper.
- B. Bite, bark, howl or in any other manner disturb the peace or quiet of any neighborhood or endanger the safety of any person.
- C. Run at large or unmuzzled in violation of any order of the Board of Selectmen or of the Animal Control Officer.
- D. Worry, kill, maim or otherwise injure another's fowl, livestock or domestic animal.
- E. Chase another's vehicle, person or bicycle on any way open to public travel.
- F. Be unlicensed or untagged in violation of state law.

G. Failure to remove waste.

- (1) Each person who owns, keeps or controls a dog within the Town shall remove and dispose of any feces left by such dog on any sidewalk, street, park or other public areas or on any private property which is not owned or occupied by such person.
- (2) No person who owns, keeps or controls a dog within the Town shall permit such dog to be on any sidewalk, street, park or other public area unless such dog is accompanied by a person carrying a device, which is suitable for picking up and containing feces unexposed to such person and to the general public.
- (3) For the purposes of Subsection G(1), feces may only be disposed of at a place suitable and regularly reserved for the disposal of human feces or otherwise designated as appropriate by the Board of Health.
- (4) Subsection G(1) through (3), inclusive, shall not apply to a dog accompanying any handicapped person, who due to a handicap, is physically unable to comply with the requirements of such paragraphs.

§65-5. Complaints; confinement; release or destruction.

- A. Any person may complain to the Animal Control Officer of a violation of the preceding subsections. On receipt of such a complaint, the Officer shall investigate and may order the owner or keeper of the dog to restrain or muzzle the dog as the Officer deems necessary. The Officer may file a report with the Board of Selectmen in accordance with MGL c. 140, §157.

In addition to the above, any person may make a written complaint to the Board of Selectmen that any dog owned or kept within the Town is a Nuisance Dog or a Dangerous Dog, as those terms are defined in MGL Chapter 140, §136A. The Board of Selectmen shall investigate or cause to be investigated such complaint, including an examination under oath of the complainant at a public hearing to determine whether the dog is a Nuisance Dog or a Dangerous Dog, and shall make such order concerning the restraint or disposal of such dog as provided in MGL c.140, Section 157. Violations of such orders shall be subject to the enforcement provisions of MGL Chapter 140, Section 157 and 157A, which, upon conviction, may include: for a first offense, a fine of not more than \$500 or imprisonment for not more than 60 days in a jail or house of correction, or both, and for a second or subsequent offense by a fine of not more than \$1,000 or imprisonment for not more than 90 days in a jail or house of correction.

- B. Animal Control Officer may pick up nonconforming dogs as described in §65-4. If by license or other means the owner of a dog can be identified, the Animal Control Officer may return the dog to the owner and issue a citation. Or he/she may confine the dog to an appropriate facility within the Town of Whately for not more than seven (7) days or at the Franklin County Sheriff's Office Regional Dog Shelter and Adoption Center.
- C. If a veterinarian certifies that a dog is seriously injured or ill, the dog may be euthanized before the seven (7) days is over.
- D. No dog shall be released until it is licensed and all kennel fees and penalties are paid. Kennel fees shall be set from time to time by the Board of Selectmen and shall reflect the cost for boarding and care of a dog on a daily basis. [Amended June 20, 2000 STM Article 1]

- E. Any dog not claimed after seven (7) days may become the property of a local nonprofit humane organization to be placed for adoption or euthanized.

§65-5. Violation and penalties.

Penalties for violation of any section of this bylaw shall be \$50 for the first offense, \$100 for the second offense, and \$200 for any additional offense. Each day a violation exists shall constitute a separate violation with the exception of chapter 65-3. This bylaw may be enforced through any means available in law or in equity, including a non-criminal disposition in accordance with MGL c. 40 §21D and MGL c. 140, § 173A. Non-criminal disposition penalties may be issued by any member of the Board of Selectmen and/or the Animal Control Officer.

§65-6. Liability for damage to persons or property.

If any dog shall do any damage to either the body or property of any person, the owner or keeper, or if the owner or keeper be a minor, the parent or guardian of such minor, shall be liable for such damage, unless such damage shall have been occasioned to the body or property of a person who, at the time such damage was sustained, was committing a trespass or other tort, or was teasing, tormenting or abusing such dog. If a minor, on whose behalf an action under this section is brought, is under seven years of age at the time the damage was done, it shall be presumed that such minor was not committing a trespass or other tort, or teasing, tormenting, or abusing such dog, and the burden of proof thereof shall be upon the defendant of such action.

§65-7. Property damage, appraisal and reimbursement.

- A. Whoever suffers loss by the worrying, maiming or killing of his livestock or fowls by a licensed or unlicensed dog or dogs, outside the premises of the owner or keeper of such dog or dogs, may inform the Animal Control Officer who shall proceed to the premises where the damage was done and determine whether the same was inflicted by the dogs and, if so, appraise the amount thereof if it does not exceed \$50.
- B. If, in the opinion of said Animal Control Officer, the amount of said damage exceeds \$50, the damage shall be appraised, on oath, by three persons acting as appraisers. The appraisers shall be comprised of the Chairman of the Selectmen, the Chief of Police or his designee and a person designated by the person alleged to be damaged. Said appraisers shall determine, if possible, the owner of the licensed or unlicensed dogs and present said dog owner, by certified mail, with such evidence and a certificate of damage to include the labor and time necessary expended in the finding and collecting of the livestock or fowl injured or separated and the value of the lost or otherwise damaged livestock or fowl. Awards shall in no case exceed the fair cash market value of such livestock or fowl. Said dog owner shall pay the aggrieved person for the damage within 30 days of receipt of the certificate of damage. The aggrieved person shall have the right to take District Court action if said dog owner fails to comply with the required payment.
- C. If the appraisers cannot determine the owner of the licensed or unlicensed dog or dogs then payment shall be made from the Revolving Fund for Dog Licensing and Control.

§65-8. Reimbursement in certain cases.

No owner of livestock or fowl shall be reimbursed for damages inflicted by his own dog or dogs, nor shall he be reimbursed for any damage by and dog or dogs if, at the time such damage was inflicted, he was himself the owner or keeper of an unlicensed dog of six months of age or older. No reimbursement shall be made on account of damage inflicted by a dog or dogs to a deer, elk, cottontail rabbit, northern hare,

pheasant, quail, partridge or other livestock or fowl determined by the Department of Fish and Wildlife to be wild unless they are kept by a permit issued by said Department. No reimbursement shall be made for damage inflicted by a dog or dogs to dogs, cats or other household pets.

Moderator declared vote passed in the affirmative

Clerk's note: It was explained that the changes to the existing bylaw include; adding a definition section, changing the license fees, adding a removal of waste section, and adding a violation and penalties section for enforcement and to be in accordance with the new Mass. General Law.

Article 22. Motion was made and seconded, to vote that the town amend the Code of Whately by adding a new Chapter, Chapter 88, as follows:

Chapter 88
NON-CRIMINAL DISPOSITION

Whoever violates any provision of this Code, the violation of which is subject to a specific penalty, may be penalized by a non-criminal penalty in the method provided in Section 21D of Chapter 40 of the Massachusetts General Laws. The non-criminal method of enforcement may also be used for violations of any rule or regulation of any municipal officer, board, or department which is subject to a specific penalty.

Without intending to limit the generality of the foregoing, it is the intention of this provision that the following bylaws, rules and regulations are to be included within the scope of this section and the specific penalties as listed here shall apply in such cases and that in addition to Police Officers, who shall in all cases be considered enforcing persons for the purpose of this Chapter, the municipal personnel listed for each section, if any, shall also be enforcing persons for such section. Each day on which any violation exists shall be deemed to be a separate offense.

Chapter 65 of the Code of the Town of Whately related to Animal Control, with the exception of Chapter 65-3 with regard to licensing (any member of the Board of Selectmen and the Animal Control Officer):

| | |
|-----------------|-------|
| First Offense: | \$50 |
| Second Offense: | \$100 |
| Third Offense: | \$200 |

Amendment: An amendment was made to change the last sentence to read Third and Subsequent offenses: \$200.

Vote on the amendment passed in the affirmative.

It was then moved and seconded to vote the original motion as amended as follows:

Voted that the town amend the Code of Whately by adding a new Chapter, Chapter 88, as follows:

Chapter 88
NON-CRIMINAL DISPOSITION

Whoever violates any provision of this Code, the violation of which is subject to a specific penalty, may be penalized by a non-criminal penalty in the method provided in Section 21D of Chapter 40 of the Massachusetts General Laws. The non-criminal method of enforcement may also be used for violations of any rule or regulation of any municipal officer, board, or department which is subject to a specific penalty.

Without intending to limit the generality of the foregoing, it is the intention of this provision that the following bylaws, rules and regulations are to be included within the scope of this section and the specific penalties as listed here shall apply in such cases and that in addition to Police Officers, who shall in all cases be considered enforcing persons for the purpose of this Chapter, the municipal personnel listed for each section, if any, shall also be enforcing persons for such section. Each day on which any violation exists shall be deemed to be a separate offense.

Chapter 65 of the Code of the Town of Whately related to Animal Control, with the exception of Chapter 65-3 with regard to licensing (any member of the Board of Selectmen and the Animal Control Officer):

| | |
|--------------------------------|-------|
| First Offense: | \$50 |
| Second Offense: | \$100 |
| Third and subsequent offenses: | \$200 |

Moderator declared vote passed in the affirmative

Article 23. Upon motion made and seconded, it was

Voted that the town transfer from available funds (free cash) the sum of **\$1,200.00** to pay for the expenses related to estimating the cost of removing and rebuilding the Highway Department roof.

Moderator declared vote passed in the affirmative

Article 24. Motion was made and seconded that the town vote to support a resolution to oppose the Tennessee Gas Pipeline and to champion Sustainable Energy as provided below:

Resolution to Oppose the Tennessee Gas Pipeline and to Champion Sustainable Energy

WHEREAS Tennessee Gas Pipeline Company, L.L.C. is preparing to construct a high-pressure pipeline carrying natural gas obtained through hydraulic fracturing through our state, including Franklin County; and

WHEREAS said pipeline would destroy a significant amount of forest, wetlands, conservation land and farmland in Franklin County and throughout the state; and

WHEREAS a high-pressure gas pipeline, by its nature, carries the potential for leaks, ruptures or devastating explosions, posing a risk to the integrity of our drinking water, public safety, and personal health; and

WHEREAS the pipeline would negatively affect open space, scenic vistas, farmland, and property values; and

WHEREAS the pipeline infrastructure would be partially funded by ratepayers through an electric utility bill tariff; and

WHEREAS town taxpayer money would pay for emergency response in the event of explosions, fires or other accidents; and

WHEREAS natural gas and its delivery mechanisms are exempt from the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and the Superfund Act; and

WHEREAS said pipeline is not consistent with and does not promote current Massachusetts commitments to renewable energies and combating global climate change; and

WHEREAS we the citizens of Whately want to minimize our participation in and support of activities that rely on the extraction of gas by hydraulic fracturing, a process a large number of scientists and experts have shown will cause grave damage to groundwater, farmland, and public health

NOW, THEREFORE BE IT RESOLVED, that the people of Whately, Massachusetts:

1. Oppose said pipeline, and any pipeline carrying natural gas obtained through hydraulic fracturing, within the borders of our Commonwealth;
2. Instruct our state legislators and executive branch officials, in recognition of our state leadership with clean energy, energy efficiency, and the fight against climate change, and the role of clean tech as an economic engine across Massachusetts, to enact legislation and take other such actions as are necessary and reasonable to disallow such projects that go against our commitment to the environment, our economic wellbeing, and our personal safety, and instead to legislate and/or promote even more stringent energy efficiency and further efforts to expand renewable energy resources.

AND BE IT FURTHER RESOLVED that copies of this Resolution be sent to the Federal Energy Regulatory Commission; U.S. Senators Markey and Warren; Congressman Jim McGovern; Governor Charlie Baker; State Senator Stan Rosenberg; and State Representative Stephen Kulik.

Amendment: An amendment was made to change section Now, Therefore Be It Resolved, that the people of Whately, Massachusetts, number 1 to read as follows:

1. Oppose said Tennessee Gas Pipeline within the borders of our Commonwealth;

Vote on Amendment: The vote on the amendment failed to pass garnering 58 Yes votes and 84 No.

The original motion was brought to a vote and it failed to pass garnering 78 Yes votes and 87 No votes.

Article 25. Upon motion made and seconded, it was

Voted that the town authorize the Selectmen to extend the **4-year** copier lease contract to a **5-year** contract for the purpose of extending the Town Hall copier lease for one additional year.

Moderator declared vote passed in the affirmative

Article 26: Motion was made as follows:

I move that the Town appropriate \$815,000 to pay costs of purchasing the Western Massachusetts Regional Library System building at 4 Sandy Lane, Whately, for the purposes of housing Whately Town Offices, including the payment of all costs incidental and related to this purchase, and that to meet this appropriation, the Treasurer, with the approval of the Selectmen, is authorized to borrow said amount under and pursuant to Chapter 44, Section 7(3) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor. Motion was seconded.

Amendment: An amendment was requested that the vote be contingent on a Proposition 2 ½ debt exclusion vote. The original mover of the article moved the following amendment:
I move that the Town appropriate \$815,000 to pay costs of purchasing the Western Massachusetts Regional Library System building at 4 Sandy Lane, Whately, **contingent on a Proposition 2 ½ debt exclusion vote**, for the purposes of housing Whately Town Offices, including the payment of all costs incidental and related to this purchase, and that to meet this appropriation, the Treasurer, with the approval of the Selectmen, is authorized to borrow said amount under and pursuant to Chapter 44, Section 7(3) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore. Amendment was seconded.

The amendment was then voted and declared carried by a majority vote.

Amendment: Another subsidiary motion was made and seconded to postpone the vote on Article 26 to a Special Town Meeting to be held the end of June.

Amendment: Another subsidiary motion was made and seconded to vote the amendment by secret ballot.

This secret ballot amendment failed to carry a majority vote.

The Postponement amendment was then voted and failed to garner a majority vote.

Amendment: Another subsidiary motion was made and seconded to take the main motion vote by secret ballot.

This subsidiary motion for a secret ballot failed to carry a majority vote.

A vote was then taken on the original motion as amended and it was:

Voted that the Town appropriate \$815,000 to pay costs of purchasing the Western Massachusetts Regional Library System building at 4 Sandy Lane, Whately, contingent on a Proposition 2 ½ debt exclusion vote, for the purposes of housing Whately Town Offices, including the payment of all costs incidental and related to this purchase, and that to meet this appropriation, the Treasurer, with the approval of the Selectmen, is authorized to borrow said amount under and pursuant to Chapter 44, Section 7(3) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore.

The motion as amended passed with a 2/3rds vote. 136 Yes and 42 No

Article 27. Upon motion made and seconded, it was

Voted that the town authorize the Board of Assessors to transfer from Free Cash the sum of **\$68,000** to reduce the tax levy for FY16.

Article 28. Upon motion made and seconded, it was

Voted that the town authorize the Selectmen to enter into a five-year contract with the Massachusetts Department of Environmental Protection and Waste Management Recycle America, LLC for recycling services at the Springfield Materials Recycling Facility.

Adjournment: Motion was made and seconded to adjourn without date at 9:38 p.m.

Moderator declared vote passed in the affirmative

A true record,

ATTEST:

Lynn M. Sibley, MMC, CMMC
Town Clerk of Whately