

**MEEETING MINUTES FOR**  
**DECEMBER 16, 2013**

A regular meeting of the Board of Selectmen was held on December 16, 2013 in the Conway Hearing Room at 7:00 p.m. Present were Selectman David Gagliardi, Chairman, Selectman Robert Accomando, Vice Chairman, Selectman Michael Rosa, Secretary, Selectman Andrew Deslaurier, Member, Selectman George Simolaris, Member, John Curran, Town Manager and Cathleen O’Dea, Assistant Town Manager.

**CALL TO ORDER**

Chairman David Gagliardi called the meeting to order at 7:00 p.m.

**OPEN MICROPHONE**

Rome Capobianco, 29 Andover Road came to the podium and expressed his opinion on composting and sidewalks in Billerica Center.

John Kleschinsky, 33 Broadway came to the podium and expressed his opinion on a new High School and spoke about “Building Billerica’s Future”.

**LIP PROGRAM FOR FRIENDSHIP STREET**

Town Counsel Patrick Costello came to the podium and gave an explanation on the Local Initiative Program (LIP) Program for Friendship Street, which started with Town Meeting making available a parcel of land on Friendship Street for the purpose of developing it for affordable housing, Requests for Proposals from the Board of Selectmen and Town Manager, and the awarding of the proposal to Habitat for Humanity of Greater Lowell.

The Board was being asked to endorse the application for the LIP program to make Habitat for Humanity eligible for subsidies from the Department of Housing and Community Development.

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Chairman David Gaglilardi asked if there were any question from Board members.

A discussion ensued among Board members.

Selectman Michael Rosa, seconded by Selectman Andrew Deslaurier, made a motion that the Billerica Board of Selectmen approved the Local Initiative Application for Friendship Street, Map 78, Block 76.

It was voted: 5 – In Favor  
0 – Opposed

**MIDDLESEX COUNTY SHERIFF’S FACILITY MEMORANDUM OF AGREEMENT**

Town Counsel Patrick Costello came to the podium and spoke about the pending appeal with DEP relative to the sewer permit that DEP issued for the proposed House of Correction expansion and the subsequent discussion between the Town, DCAM and the Executive Office of Administration and Finance to put together a mitigation that would compensate the Town for any impact that would be caused by the expansion.

Attorney Costello summarized the terms and conditions of the agreement between Billerica and the Commonwealth.

The Commonwealth on behalf of the Middlesex County Sheriff will pay the Town a sewer connection fee that will be calculated in accordance with the formula in place. That fee will amount to approximately \$1,529,644.00. That is a comprehensive connection fee for all services required of the Town for the interconnection of the additional facilities at the House of Correction. The State, through its Executive Office of Administration and Finance agrees to pay to the Town a one-time capital infrastructure fee of \$1,080,000.00, which represents the Middlesex Sheriff’s Office facilities pro rata share of the capital expenses that the Town has incurred while that facility is being operated for sewer improvements.

That total figure of \$40,000,000.00, that the Town had incurred in primarily debt for the purposes of upgrading, maintenance and the improvement of the sewer infrastructure facilities; most of that is borne by the taxpayer through the general tax assessments rather than the designated sewer improvement fees or betterment assessments. The \$1,080,000.00 figure represents the State’s cost of full recovery of that cost had they been a tax payer of the Town.

In terms of the fee the Town will charge for the use of the water and sewer, the Sheriff’s Office will continue to pay the same rates that they are now paying under the same calculations set annually by the Board of Selectmen.

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The State has also agreed to pay a one-time payment to the Town of 1.2 million dollars which represents \$400,000 per year for the three years of the permit to be renewed next February. That is based on an estimate of the Sheriff's Office share of the Capital Improvement schedule of the Wastewater Treatment Plant of the three year period.

The Commonwealth has further agreed to pay the Town \$200,000 toward a feasibility study to locate a regional Public Works facility on a portion of restricted Town land. That fee is payable once the Facility has received its extension permit for the extended sewer operations.

The State further agreed to support legislation authorizing DCAMM to amend that restricted Town land deed by removing the Conservation and building restriction that apply to that land for all or part of the land as the Board of Selectmen may ultimately determine.

The Commonwealth will pay the Town the sum of \$200,000 toward the cost of the installation of a traffic light and other roadway improvements on Republic Road. This fee will be paid no more than 60 days after the Sheriff's Office receives the extension of the Waste Water permit.

The Executive Office of Administration and Finance has agreed that it will support legislation to rename the MSO Sheriff's facility to remove the word "Billerica" from the name and DCAMM will change and pay for all signage at the facility to reflect the new name.

The EOAF has also agreed to provide full cooperation in support of the Town's applications for State funding from the Mass DOT and the MassWorks program in the amount of \$2.3 million to rehabilitate the state portion of Boston Road from Cummings Street to the intersection at Charnstaffe Lane.

Since this will probably be a grant program, there is no guarantee that the Town will receive it, but the Town will have the full cooperation of the Governor's Office and the Office of Administration and Finance in the application process.

The EOAF will provide full cooperation in support of the construction of sidewalks on the state owned portion of Boston road in conjunction with any major repair work of Boston Road undertaken by the State.

Attorney Costello further stated that there is one clause in the agreement that is still under discussion and that is in consideration of the mutual promises and commitments of this agreement, the EOAF has agreed on behalf of the Commonwealth to state that it has no intention for further expansion of the total number of beds at the MSO facility beyond the 496 additional beds proposed. There was some discussion to revise language to indicate that there will be no further expansion of any beds without consent of the Board of Selectmen. The

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Commonwealth had a reservation about agreeing to the unequivocal “we will not expand” language due to the uncertainties as to what might arise in the future. Attorney Costello further stated that there is an endeavor underway to build a new HOC in Southern Middlesex County, but that is several years of away.

Attorney Costello stated that the last clause of the agreement is still in dispute.

Attorney Costello commented on the appeal pending relative to DEP’s approval of the sewer extension permit. One of the conditions of agreement is that the Town agrees to withdraw that appeal in consideration of the remunerations and other considerations outlined previously.

Attorney Costello stated that notwithstanding that the new permit that DEP just approved does allow for an increase in the gallons per day that would be permissible by 20,000 gallons per day, their intentions and the evidence offered indicates that they do not intend to exceed the number they are currently permitted for.

Chairman David Gagliardi asked if there were any questions from Board members.

Selectman Andrew Deslaurier stated his thanks to the Manager and Town Counsel for putting this agreement together with the State.

Selectman Deslaurier asked Attorney Costello if he could cordon out the hard dollars versus the supportive statements in the document.

Attorney Costello responded that the additional dollars above and beyond what the Town would receive based on the rates that would be charged now the \$1,529,664 additional sewer connection fee. As a result of the expansion, the Town will receive that one- time fee. The Town will also receive a one- time capital infrastructure fee of \$1,080,000.

A sum of \$200,000 will be provided to the Town; \$200,000. For the Feasibility study for the regional DPW and \$200,000 for the traffic improvements on Republic Road.

Selectman Deslaurier asked if the Board of Selectmen as Water Commissioners would be able to adjust new rates in the future as part of their normal process of adjusting rates.

Attorney Costello responded that that was correct.

Selectman Deslaurier stated that prisons need to be located somewhere and need to be supported; but the Communities that have the prisons need to be partners with the State and he felt that this this is what this agreement does.

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Selectman George Simolaris expressed his displeasure and concerns over the House of Correction expansion. He expressed concerns over the 200,000 gallons per day the prison was utilizing as opposed to the 65 gallons per day residents allowed.

Selectman Simolaris asked Town Counsel what the chances were to pressure the state into doing sidewalks on Boston Road whenever they do a project.

Attorney Costello responded that if a project came down the pipeline, the Town could remind the State of the contract and contact EOAF.

Selectman Simolaris asked Town Manager John Curran if the State had to pay the infrastructure fee of \$1,080,000.00 that did not get paid to the Town.

Town Manager John Curran responded that the State didn't have to do any of what was agreed upon. At the beginning the process had been rocky, but lately there have been negotiations in earnest with DCAMM and EOAF.

Mr. Curran further stated that no one wanted this project; however, they need to use the leverage of the situation to see how best Billerica can benefit from it and that the items items in the agreement were the channels open to the Town.

Mr. Curran further stated that there was one sticking point about language on the future of the facility. The language would be "in an effort to address concerns that the Town has about further expansion, it was made clear to Mr. Curran by Scott Jordan that they had no plans to expand in the future at this time. The state was hesitant to restrict themselves in that regard. There was compromise language which is that the State would not expand the Facility beyond the 20% of the current square footage without approval of the Town. If the State wanted to do any major expansion they would have to come before the Town. It gives the State some wiggle room and protects the Town.

Selectman George Simolaris asked the Town Manager about the 2.3 million dollar grant regarding Boston Road and the fact that the Governor would probably not be in office when this occurs, and how could the Town make sure it still had State backing when they applied for it.

Town Manager John Curran responded that the Town would be doing a Mass Works application, which would be due in August and the award would be in October. The Governor would not be leaving until the next year. The funds would be awarded before the Governor left office.

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Mr. Curran has already spoken with Administration and Finance and they know about the Town's interest in this project and the fact that the Town is going to re-apply.

Selectman Robert Accomando thanked the team who cultivated the agreement and he intended to support it, and it was time to move forward.

Secretary Michael Rosa brought up various points.

On page 2 regarding the removal of restrictions on the Town land, it is specific in parcel and map and is what the Town received for the new Water Treatment Plant in exchange for the House and 5.5 acres. Where it reads "Whereas the Town now desires that certain restrictions placed on the restricted Town land be removed to facilitate Economic Development"... Selectman Rosa felt it should read with "the restrictions for Town land be removed.

Town Counsel and Town Manager John Curran stated that that portion has already been amended.

Secretary Michael Rosa asked if the rate issue had been dealt with.

Attorney Costello responded that it had and will read "the rate which currently applies to the Facility as amended annually by the Board of Selectmen".

Secretary Michael Rosa inquired about the \$200,000 for the Feasibility Study and the restriction of it to the restricted Town land. He questioned the fact that this money could only be used for the restricted portion of the parcel and not even the whole parcel that they are talking about. The Agreement is almost saying that the Town can only spend the \$200,000 for a study on the restricted portion, not even the entire parcel. Secretary Rosa further stated that it should not be restricted just to that piece of land. He said they should be able to look at the Town as a whole and decide where the best location would be for the facility. Secretary Rosa stated that this portion of the Agreement should be re-worked and take out the verbage on the restricted Town land because that is less than half of the parcel.

Town Manager John Curran stated that when there is a reference to restricted town land, it is referring to the parcel they are talking about; not the fact that the Town can only locate on the restricted portion of the property. The reason it was put forward was so it could be done as a regional project. If the facility was going to be located somewhere else, it would be of no benefit to the Sheriff's office. The intent was the Town would be working with the Sheriff's Office to study the feasibility of such a joint project. The obvious location is the restricted Town land.

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Secretary Rosa asked Attorney Costello if there was a difference between restricted land and unrestricted land.

Attorney Costello responded that in this case the restricted Town land phrase relates to the entire Parcel 111 on Assessor's Map 59. Only portions of that parcel are actually restricted.

Attorney Costello stated that he believed you could study the feasibility of the project on any portion of that land.

Secretary Rosa stated that on Number 10 of the Agreement, he would like to see the word "intention" struck out. This was specific to inmate beds.

Secretary Rosa stated that during the last expansion, a second bed was put in all of the cells and doubled their capacity. He believed that this could potentially happen again and strongly urged the Board to support this.

Secretary Rosa inquired about the language change in Number 11 relative to the wording "vital project". He stated it is not a vital project to the Town. It is a detriment to the town. The change of language would be that "the Town acknowledges that the MSO expansion project is a vital project of the Commonwealth".

Secretary Rosa questioned Number 14 where it reads the part "The Parties agree to cooperate to accommodate the wastewater from the proposed addition of 496 new beds for detainees at the MSO's Facility in Billerica including renewal by the Town of the Wastewater Permit which is due to expire on February 20, 2014." Secretary Rosa asked if that was a duplication of Number 1, page 3, halfway through the second paragraph.

Attorney Costello responded that that particular section relates to the time at which the sewer connection fee is to be paid.

Secretary Rosa again stated the importance of striking the word "intention" out of Number 10.

Chairman David Gagliardi asked Town Manager John Curran to read what the proposed new language.

Before he read the proposed new language, Mr. Curran asked Attorney Costello about the standard severability clause at the end of the contract.

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Attorney Costello responded that was not an issue. A severability clause is that if any single provision of the Agreement is deemed to be unenforceable in a court of law, the remaining items of the Agreement not involved would remain in full force and effect.

Town Manager John Curran read the proposed language for Number 10.

“In consideration of the mutual promises and commitments set forth herein, EOAF on behalf of the Commonwealth, hereby notes that any expansion and square footage that increases the total square footage by more than 20% of the expanded facilities square footage shall require the approval of the Board of Selectmen.”

Chairman Gagliardi stated that is striking all references to the beds.

Mr. Curran stated it is really making it based on size. If it breaks at 20%, it will require Board of Selectmen action.

Secretary Rosa wanted to know what 20% of the entire foot print was.

Town Manager John Curran stated he didn't know the total square footage of the total sight. He was looking at it from the perspective of the beds alone. He believed it offered the Board the protection they need without “killing the deal”. His perception is that the State will not agree to an absolute commitment on that item.

Chairman David Gagliardi stated there was no perfect solution to this and the State was probably not going to forgo all rights to expansion so there did need to be a compromise.

Chairman Gagliardi asked Liz Minnis, Deputy Director of DCAMM what the figure was.

Ms. Minnis replied that with the expansion it was 247,000 square feet. It was permitted in 2001 for 531,000 square feet.

Secretary Michael Rosa asked Ms. Minnis what the total square footage would be at the completion of this expansion and what would the square footage at 20% equate to.

Ms. Minnis replied it would be 447,000 square feet.

Secretary Rosa stated that 20% of the existing 447,000 square feet would be 89,000 square feet. The current expansion is 85,000 square feet. Secretary Rosa stated that they could do this expansion yet again at 496 beds. They could do a bigger expansion because the Town is giving them 5,000 more square footage.



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Secretary Rosa stated he did not agree to take out the language about the beds. He reminded the Board about the last expansion. The State said they were going to put in so many prisoners with so many beds. After the expansion was completed, they put second bunks in all of the cells.

Secretary Rosa further stated that the part that really impacts Billerica is the numbers and types of prisoners that are going to be housed at the Facility.

Selectman Rosa stated that the only way to restrict this is to restrict the number of beds. The language relative to the beds is important to stay in the document. He did not agree with the 20%. After calculation the very same expansion could be done again, but it can be 5,000 square feet bigger.

Secretary Rosa re-iterated that it was vitally important to strike the word "intention". He suggested leaving Number 10 as it is but strike the word "intention".

Secretary Rosa expressed his disappointment that Scott Jordan from DCAMM was not present at the meeting. He said that it goes to show how little commitment the state has to working with Billerica and that this has been status quo since the beginning of the process. It is important to keep the cap at 1,506 beds and not have it relate to any percentage of the building.

Selectman Andrew Deslaurier stated that the Sheriff had commanding control as to whether or not to add beds. He further stated that there were 400 pre-trial detainees. While they have been charged with various crimes, they are technically considered "not guilty. The proposed facility would more than satisfy the needs until a new facility is constructed. He believed that these figures have been analyzed and forecasted correctly. He said that striking the word "intention" would not guarantee anything. This is a business agreement and he was satisfied with it.

Selectman Michael Rosa stated that he agreed with Selectman Deslaurier that the Sheriff is one who makes those types of decisions and he should have been participating at these meetings.

Secretary Rosa stated that he was here back in 2001 and the State said they were going to do one thing and ultimately did another. That particular expansion was supposed to be large enough because of the analyses and projections that they did.

Secretary Rosa further stated that if the present projections and analyses were correct, there should be no problem with striking the word "intention" from the agreement. He would like to see the number of beds solidified at 1, 506.

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Ms. Minnis responded that in this case the State is specifically noting the beds and not cells. The last time the discussion was about cells and the number of beds in the cells. This time it is specifically about the beds. The beds they are counting are double bed in the cells. There won't be any more beds than that.

There is also a count cap on the number of beds. They would have to go back to court to get the court cap increased based on the new beds. There are other constraints on it and there is a plan for a Southern Middlesex Jail to accommodate the Southern Middlesex population of the jail and expect to remove those beds.

Ms. Minnis further stated that relative to the issue for the State in terms of putting into the MOU that there will be no further expansion, it is hard to predict what their future needs would be.

Ms. Minnis stated that she believes that the Sheriff and the Town have an interest in a regional lock-up that would have a benefit on all surrounding communities.

Secretary Michael Rosa proposed that since the only thing that Ms. Minnis had mentioned that might be of potential benefit to the Town is regional lockup; even though he does not believe it would be a benefit to Billerica, he would be to strike the word "intentions" so that it is a concrete statement and we add at the end after 1,506 beds unless further expansion is approved by the Billerica Board of Selectmen. If the need should arise, the sitting Board at that time has the authority to approve that.

Secretary Rosa asked Ms. Minnis what her thoughts were on this.

Ms. Minnis replied that she did not feel completely authorized to make those decisions. She stated that Scott Jordan would be the person authorized to make those decisions.

Town Manager John Curran stated that he had spoken with Scott Jordan a short time before and had discussed this issue with him. The State is not going to agree to restrict the property to level. The board needs to decide whether to keep the original language or the other language that gives the Town some protection. Mr. Curran stated he was not partial to either version, but it was the Board's decision.

Mr. Curran further stated that the severability clause needs to be added as well.

Secretary Michael Rosa stated he would not support the new language because it gives the State the opportunity to an 89,000 square foot facility which is 5,000 square feet longer than the one currently being done. He further stated that if those were the only choices he would stick with the current language.

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Secretary Rosa stated that the Town is being forced to make decision without the right people being present to discuss it.

Secretary Rosa further stated that he believed the Board should change the language in Number 10 for the best interest of the Town and then approve the Agreement.

Secretary Rosa stated that the Board's fullest responsibility is to the Town and he would agree to add language so the State can expand subject to the approval of the Billerica Board of Selectmen and striking the word 'intention' and make that the new Agreement.

Selectman George Simolaris stated that he did not think the State was giving the Town much of a choice in this matter. He believed the State could have done more for the Town.

Selectman Andrew Deslaurier referenced another matter that had come before the Board previously regarding a citizen who had purchased a piece of property with an easement on it. He came before the Board and had to sign an agreement in which the Town could possibly bulldoze his tennis courts. Selectman Deslaurier stated that the Town would probably never do that, but they retained the right to do so. That citizen was given no choice in the matter. He either signed the Agreement and accept the risk or not sign the Agreement and be at greater risk. The Town did not budge on that.

Selectman Deslaurier stated that he felt this was the same thing as the MOU with the State. The Town must take in good faith the intention of the Commonwealth not to use that.

Selectman Robert Accomando stated that he felt that a regional lock-up would be a major benefit to the Town of Billerica. It would take a lot of the problems of housing prisoners away from the Town.

Chairman David Gagliardi asked Attorney Patrick Costello if the Board removes the word "intention" from number 10 and passes the document and the State agrees to it, could the State sometime in the future challenge it based on the fact that basically by Massachusetts General Law, they are allowed to build on their own property.

Attorney Costello responded that conceivably yes. There is a legislative intent to allow this property to be used for detainment of prisoners. The Commonwealth can use the property as it deems appropriate. They would have to comply with all building codes and required permitting.

Chairman Gagliardi asked Attorney Costello that by taking the word "intention" out, would it have legally no effect because they are allowed to build on that land?

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Attorney Costello responded yes. Looking at the language in paragraph 10, it is basically saying the EOAF, on behalf of the Commonwealth, hereby notes there will be no expansion. The EOAF does not make the decision; it is up the Sheriff under Mass General Law to determine how and to what extent prisoners are detained.

Selectman George Simolaris asked Town Counsel Patrick Costello about the pending appeal with the State regarding the House of Correction's water permit and what would happen regarding that appeal if the Town does not agree to the MOU.

Attorney Costello responded that he did not think it was appropriate to comment on pending litigation in open session. He did state that this had been discussed in Executive Session. The next step in the appeals process would be DEP to set up a pre-hearing or screening conference where both parties will state their positions in detail. Attorney Costello stated he was confident that what will happen after that is that DCAMM and DEP will file a motion to dismiss a good portion of the Town's claim based on what they consider to be the current facility and the proposed expanded facility's compliance with all Title V requirements.

Attorney Costello stated he would do all he could to prevent that, but if they do file and prevail, the DEP permit as issued already stands. If the Town should prevail in the appeal, the Town will go back to the "drawing board" with DEP and try to modify the volumes of flow that would be allowed to run the facility to be consistent with the overall plan.

Chairman David Gagliardi asked Attorney Costello if the new language on item 10 offered the Town more protection than the current language.

Attorney Costello read for the record "that EOAF on behalf of the Commonwealth hereby notes that there will be no further expansion of the number of beds at the MSO facility beyond the 496 additional beds proposed in the MSO expansion project without the Board of Selectmen.

Chairman Gagliardi stated he was speaking about the language that was agreed to.

Attorney Costello stated he thought that was what Secretary Rosa was proposing.

Secretary Michael Rosa read his proposal which read: "In consideration of the mutual promises and commitments set forth herein, the EOAF on behalf of the Commonwealth, hereby note that there is no further expansion of the total number of beds at the MSO Facility beyond the 496 additional beds proposed in the MSO Expansion Project totaling beds at the Facility upon completion of expansion to be 1, 506." Secretary Rosa would like to add "unless further expansion is approved by the Billerica Board of Selectmen.

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Attorney Costello stated that he believed the Commonwealth had not agreed to that language even though proposed.

Attorney Costello stated that the new language before the Board now reads: "In consideration of the mutual promises and commitments set forth herein, EOAF, on behalf of the Commonwealth, hereby notes that any expansion and square footage that increases the total square footage by more than 20% of the expanded facility's square footage shall require the approval of the Board of Selectmen".

Attorney Costello stated that that offers the Town some protection to the extent that there is an expansion beyond the 20% of the existing square footage, about 89,000 square feet.

Chairman David Gagliardi asked about the language proposed by Selectman Rosa if it would legally violate Mass General Law.

Attorney Costello stated it was not so much violating Mass. General Law, but the Commonwealth is making a commitment to the Town and stating an intention to adopt a position, but EOAF and even the Governor does not have the final legal authority to determine how, where, and how many prisoners are to be housed at any facility. It is the Sheriff's decision under clear possession of General Law.

Chairman David Gagliardi stated that he would opt for the language that provides some protection rather than language that is not binding on the Sheriff at all.

Secretary Michael Rosa asked Attorney Costello if the 20% language is anymore binding on the Sheriff than his proposal.

Attorney Costello responded it was the same.

Secretary Michael Rosa that the difference is it would allow them to basically do this again with 20% without having to come before the Board.

If the 20% proposal that Mr. Jordan agreed to is no more binding then his proposal, the Town should err on the side of caution for the benefit of Billerica and go with his proposal which according to Town Counsel is no more binding than the proposed language that was agreed to.

Town Manager John Curran stated that the difference between Secretary Rosa's proposal and the proposal from the State is that Secretary Rosa's proposal is unilateral. His proposal is not a memorandum of agreement. It is stating that this is what we are going to do without any

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consideration if the State agrees to it or not which ultimately means that the State will probably not sign this Agreement and the Town gets nothing.

Secretary Rosa stated that the person who could make these decisions for the State was not present.

Chairman Gagliardi asked if Mr. Jordan could be reached by phone.

Town Manager John Curran stated that he did not think that was a productive endeavor for the Board to engage in right now. The matter was discussed at length in Executive Session.

He stated that he believed that the Board needs to take the information they have and decide if they want to enter into an agreement that is mutual between the Town and the State. There are two options available to them and Mr. Curran suggested that they make that decision tonight.

Secretary Michael Rosa asked why it was a unilateral decision when he wants to do something that is a benefit to the Tow, but the change to the 20% portion of this section was done with a phone call with the Town Manager who was negotiating on behalf of the Town. The State is basically telling the Town you can take the language here as is or you can take this 20% language.

Secretary Rosa agreed it was discussed in Executive Session but the exact verbiage was never discussed and they only received the agreement in their Selectman's packages on Friday evening.

Secretary Michael Rosa stated he did not believe that the Town's proposed changes are that restrictive. They have the option to expand.

Chairman David Gagliardi stated that this was a negotiation. He asked Town Counsel if this language had been available to the Town at the last Executive Session meeting.

Attorney Patrick Costello stated it was added at the suggestion of Selectman Rosa. It would not have appeared until the first draft that the Selectmen received on Friday evening.

Chairman Gagliardi asked if they did discuss that language. Attorney Costello responded that it was the concept of the language that was discussed.

Secretary Michael Rosa stated it was the concept of a cap.

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Attorney Costello stated he prepared the language and forwarded it to the Commonwealth and they came back with their revisions to it, which is what had been presented this evening.

Chairman Gagliardi stated that there was subsequent language that they had agreed to.

Attorney Costello agreed and stated that was negotiated this evening.

Chairman David Gagliardi stated that this was not “take it or leave it”. They were being given an option. The Town can either take this language or the new language that was negotiated between the Town Manager and the Director of EOAF.

David Johnson came to the podium and expressed his opinion on the expansion and the Memorandum of Understanding.

Selectman George Simolaris stated that the only matter that they can fight on if the Board tries to hold this up is whether the HOC take 200,000 gallons per day capacity or the 220,000 gallons capacity.

Town Counsel Patrick Costello stated that they had requested excess capacity of up to 220,000 gallons per day pursuant to the formulas that would apply under 310 CMR for a facility of this type and size.

Their Engineer and the Town’s Engineer have indicated a strong possibility that they could nonetheless operate the facility at the existing 200,000 gallons per day.

Selectman Simolaris stated that they could easily do that and it concerns him that they are asking for more. He further stated that he felt pressed. The Town either has to sign the Agreement or fight it and get nothing. He was not happy with the deal, but he stated if there is a prison in your community, you were stuck with it and its ramifications.

Secretary Michael Rosa asked Attorney Costello when he drafted the language for Section 10, was the language weighted more to the Town.

Attorney Costello stated yes.

Attorney Costello inquired if any of Secretary Rosa’s concerns were addressed during the pre-meeting.

Chairman Gagliardi responded yes.

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In response to Secretary Rosa's request to see the language that Town Counsel had drafted for Section 10, Attorney Costello read as follows:

"In consideration of the mutual promises and commitments set forth here, EOAF on behalf of the Commonwealth hereby agrees that there shall be no further expansion of the detainee population at the MSO facility beyond the 496 additional beds proposed in the MSO expansion project.

Attorney Costello than read the language counter-proposed.

"In consideration of the mutual promises and commitments set forth here, EOAF on behalf of the Commonwealth, hereby note that there is no intention for further expansion at the MSO facility beyond the 496 additional beds proposed in the MSO (total beds at facility upon completion of the expansion will be 1,506).

Secretary Michael Rosa stated for the record that the draft that the Board did have copies of, he had no issue with Section 10.

Selectman Michael Rosa, seconded by Selectman Robert Accomando made a motion that the Billerica Board of Selectmen amend Section 10 of this Agreement to read as follows:

"In consideration of the mutual promises and commitments set forth herein, the EOAF on behalf of the Commonwealth, hereby notes that there is no further expansion of the total number of beds at the MSO facility expansion beyond the 496 additional beds promised in this MSO expansion project. Total beds at the facility upon completions of the expansion will be 1,506 unless further expansion is approved by the Billerica Board of Selectmen.

It was voted:

2 – In Favor

3 – Opposed

Selectman George stated that he would like to make a motion to go into Executive Session.

Town Counsel Costello stated that Executive Session had to be posted on an agenda noting the subject matter to be discussed. This subject was posed in the Open Session section of the meeting. It would be inappropriate to convene into Executive Session.

Selectman Simolaris asked if they could table this matter and then have an Executive Session.



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Attorney Costello stated that if the Board wanted to meet on this matter again in Executive Session that would be their prerogative. He further stated that they will be proceeding with the DEP appeal. He will be reporting back to DEP tomorrow and without an agreement they will probably schedule a conference within week or two.

Secretary Michael Rosa suggested that Board schedule a meeting later this week to review all the changes that are agreed to and the revised changes.

Town Manager John Curran stated that with the exception of item 10, all other items have been agreed to by all parties and all Selectmen. He felt that the Board should move forward with this tonight.

Selectman Andrew Deslaurier stated he would not support another Executive Session on the matter.

Town Manager John Curran suggested that the Board make some motion to accept the last document either with number 10 as is or with the provision that number 10 be reverted to what it previously was.

Secretary Michael Rosa stated that he would prefer to stick with the old number 10 that talk about specific beds.

Selectman Michael Rosa, seconded by Selectman Robert Accomando made a motion that the Billerica Board of Selectmen approve the Memorandum of Understanding between the Commonwealth of Massachusetts Executive Office of Administration and Finance and the Division of Capital Asset Management and the Town of Billerica that has the original section 10 to denote the total number of beds and all other changes including a severability clause.

It was voted:

5 – In Favor

0 - Opposed

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**ANNOUNCEMENTS**

**ALL NIGHT PARKING BAN**

Secretary Michael Rosa announced that beginning November 15, 2013 until March 15, 2014 an all- night parking ban will be in full force on Billerica roadways. Vehicles found parked in roadways longer than 2 hours between the hours of midnight and 6:00 a.m. will be tagged and subject to a \$25.00 fine. If a vehicle is parked as to interfere with snow removal, a fine will be assessed and will be subject to towing.

Upon the declaration of a snow emergency by the Town Manager, parking on all public ways will be prohibited. Vehicles parked on public ways will be subject to a \$50.00 fine and towing. The Chief of Police requests the cooperation of all residents to comply with this public safety ordinance to insure that snow plowing operations will not be hampered by illegally parked vehicles.

**VACANCIES**  
**BOARD OF SELECTMEN**

<b>Cable Advisory Committee</b>	<b>1 members to 2016</b>
<b>Cabot Land Re-Use Com.</b>	<b>3 members to 2016</b>
<b>Commission on Disability</b>	<b>3 members to 2016</b>
<b>Elderly &amp; Disabled Taxation Fund Committee</b>	<b>1 member to 2016</b>
<b>Financial &amp; Compliance Audit Committee</b>	<b>2 members to 2014</b>
<b>Historical Commission</b>	<b>1 member to 2016</b>
<b>Open Space &amp; Recreation Com</b>	<b>1 member</b>
<b>Scholarship Foundation Com</b>	<b>2 members to 2016</b>
<b>Water Conservation Oversight Committee</b>	<b>1 member to 2016</b>

## **BOARD OF SELECTMEN MEETING MINUTES**

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### **MERRIMACK VALLEY LEAD PAINT REMOVAL PROGRAM**

Secretary Michael Rosa stated that for information on the Lead paint removal program to contact the Billerica Board of Health at 978-671-0931.

### **TOWN OF BILLERICA MERCURY RECOVERY PROGRAM**

Secretary Michael Rosa stated that for information on the Mercury Recovery Program to contact the Billerica Board of Health 978-671-0931.

### **WATER CONSERVATION REBATE PROGRAM**

Secretary Michael Rosa stated the Town of Billerica has a Rebate Program for the replacement of toilets, urinals and clothes washers with water conserving features. The “Water Conservation Fund” was established to mitigate the demands on the Town water supply and allows the DPW to offer these rebates. To qualify for the rebate, Billerica water customers must be in good standing and own the property where the fixtures will be changed out. Tenants may participate with written permission from the property owner. Toilets, urinals and clothes washers must be specific models to qualify for rebate. Go to [www.billericadpw.org](http://www.billericadpw.org) or contact the DPW Director’s office for list of qualifying models. Qualifying toilet rebates are \$100.00. Qualifying urinal rebates are \$25. Qualifying clothes washer rebates are \$225.00. All rebates are \$100. All rebates will be applied as a credit on your water bill. Rebate applications can be picked up at the DPW Director’s Office at Town Hall or at the Water Treatment Facility located at 270 Treble Cove Road. Applications must be submitted to the DPW within 90 days of purchase.

### **SUNSHINE GALS KITCHEN-MEALS PREPARED AND SERVED FOR NEEDY FAMILIES LIVING IN BILLERICA**

Secretary Michael Rosa stated the Sunshine Gal’s Kitchen prepares and serves meals on the fourth Saturday of each month between 12:00 Noon and 1:30 p.m. for needy families living in Billerica. This luncheon is homemade and prepared and served at the First Parish Church located in Billerica Center. If you have any questions, please call Jo Leary at 978-270-4509 or go to [sunshinegals@yahoo.com](mailto:sunshinegals@yahoo.com).

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**CHRISTMAS TREES – DISPOSAL AFTER THE HOLIDAYS**

Secretary Michael Rosa stated that the Department of Public Works is encouraging residents to bring real Christmas trees to the Highway Division at 250 Boston Road after the holidays for recycling. The drop off will be available from Thursday, December 26 until Friday January 31<sup>st</sup>.

The DPW is planning to have the trees turned into mulch. All ornaments, tinsel, and lights must be removed.

For those who are unable to bring their Christmas trees to the designated site, Waste Management has scheduled the week of January 6 – 10 for curbside collection. Residents must have their tree on the curb on the scheduled collection day for Trash and Recycling.

All ornaments, tinsel and lights must be removed prior to drop-off at the Highway Division or curbside collection.

Secretary Rosa further stated that for residents with more cardboard than will fit in their recycle cart, the Department of Public Works will have a special drop off for cardboard at the Highway Division, 250 Boston Road. The drop-off containers will be available from Thursday, December 26 until Saturday, January 4.

Residents should collapse boxes. All cardboard needs to be clean in order to be recycled. Other recyclables may be dropped off as well, but NO plastic bags and absolutely NO TRASH. The DPW is offering this drop-off service for the first time this year and is counting on residents to follow those guidelines.

Chairman David Gagliardi cautioned residents to be aware of phone scams this time of year and not give out credit card numbers. If people want to donate, do it locally.

**MINUTES**

**DECEMBER 2, 2013**

Selectman Michael Rosa, seconded by Selectman Andrew Deslaurier made a motion that the Billerica Board of Selectmen accept the minutes of December 2, 2013 as presented.

It was voted:

4 – In Favor

0 – Opposed

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1 - Abstention  
(Selectman Accomando absent  
From the room at the time of  
this vote.)

**OLD BUSINESS**

**TOWN MANAGER REPORT**

Town Manager John Curran updated the Board on the potential High School project.

He stated that the School Building Committee has been appointed and will be meeting on Tuesday to be sworn in.

There has been a Financial Analysis done and for the Parker School together with the High School, using conservative numbers, the cost to the average tax payer will be no greater than \$225.00 per year over the 28 years of the bond service based on \$150,000,000.00 and a 4.5 interest rate .

Mr. Curran also reported that the Middlesex III Coalition is receiving the Kenneth Pickett award from the MMA and it will be presented at the Annual Meeting.

Mr. Curran reported that an OPB and architect have been selected for the Town Hall Window Project. Estimated completion date will be November 2014.

**BOARD OF SELECTMAN POLICIES AND PROCEDURES – ADD A POLICY TO REQUEST TOWN COUNSEL TO REVIEW THE POLICIES AND PROCEDURES ANNUALLY**

Selectman Andrew Deslaurier stated that he would like to see the Board of Selectmen's Policies and Procedures reviewed either annually or bi-annually for conflicts or potential conflicts with Mass General Law to protect the Town and make the Board a more effective governing body.

Chairman David Gagliardi agreed and stated that he would like Town Counsel to make sure they were not in conflict with Town's By-Laws and Charter as well as Mass General Law.

Secretary Michael Rosa also agreed and asked Selectman Deslaurier to put together the policy for the next Selectmen's Meeting.

Selectman Deslaurier agreed to do that.

**BOARD OF SELECTMEN MEETING MINUTES**  
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Selectman George Simolaris asked if Town Counsel was going to review new Policies and Procedures or all of them.

Selectman Andrew Deslaurier stated that it was his intention to have all of Policies and Procedures reviewed on an annual basis.

Selectman Simolaris stated that if they were reviewed once then that should be sufficient.

Selectman Deslaurier disagreed stating that he believes that it needs to be done annually since Mass General Law is always changing.

Town Counsel Patrick Costello stated that he just received an updated copy of the Policies and Procedures. The last one he had received was dated 2008. There were 14 additional ones that he did not have. He will review them.

Attorney Costello suggested that as part of the policy change, when they are initially filed with the Board for review, forward it to him as well. He will review and give the Board his input.

Secretary Michael Rosa suggested that Selectman Deslaurier include in his presentation to write the date when the policy was approved so as Town Counsel is reviewing it, he has an idea of how long it has been in relation to changes in the Law.

Selectman Deslaurier stated that that was a good suggestion.

**BOARD OF SELECTMEN POLICIES AND PROCEDURES – AMEND TO ENLARGE THE NEGOTIATING TEAM FOR TOWN MANAGER CONTRACT RENEWAL**

Selectman George Simolaris stated he put this on the Agenda.

Town Counsel Patrick Costello stated that he would strongly recommend that the Board not adopt this policy.

It does not accomplish anything. If three members of the Board meet on any business matter under the jurisdiction of the Board, that constitutes a full Board meeting. He recommended that if the Board did not like the two member Negotiating Team policy to ignore it altogether. If three members convene a meeting of the Board, it would be a full meeting and not a subcommittee.

Selectman George Simolaris stated he would like to have the other three members of the Board give their input to the Negotiating Team prior to them entering negotiations and before a final vote on the contract.

**BOARD OF SELECTMEN MEETING MINUTES**  
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Chairman David Gagliardi stated that this was part of the review process; you state your opinions, recommendations and suggestions at that time.

**DISCUSSION ON RESIDENT PETITION TO STOP THE PRISON EXPANSION**

Selectman George Simolaris expressed his gratitude to all those who participated in the petition process.

**EXPLAIN PROCEDURES REGARDING PLOWING OF SNOW**

Selectman George Simolaris asked the DPW Director what the policy was on snowplowing and clearing sidewalks. He also asked about the by-law that states that residents are responsible for clearing the sidewalks in front of their homes.

DPW Director Abdul Alkhatib stated that that is a common by-law in many communities. He stated that approximately 21 miles of sidewalks are plowed. That is contracted out and the Contractor has 48 hours to complete the snow removal from the sidewalk from the end of the snow event. The plowing of sidewalks occurs when the accumulation is 2 or more inches.

Mr. Alkhatib further stated that with the most recent storm he did not know what more could have been done other than treating the sidewalks prior. He did not think they could have plowed it because of the icy mix.

Mr. Alkhatib then explained the sequence of events that occurs when a snow event is imminent.

The first thing that takes place is to have the sanders ready to treat the roads with salt until it is felt that the accumulation is sufficient to go into the plowing phase.

DPW takes into consideration the duration of the event, snow totals, intensity and time of day. They then make the decision if it is to be a plowable event and then call the contractors in.

There are approximately 125 private contractors who plow for the Town in addition to about 30 Town plows.

There are five zones in Town and each zone is divided into a number of other zones. There are supervisors for each zone who monitor when plows come in, when they leave and make sure the area is completed. Once the event is over, they are given two to three hours for clean-up and pushing back the snow. They then punch out. The Town staff stays on to treat the roads.

**BOARD OF SELECTMEN MEETING MINUTES**

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At the beginning of the event, during the duration of salt use, plow drivers focus on the main roads, the hills and the bridges. Once the plowing starts, the focus is on main roads and then they go everywhere else.

Selectman George Simolaris suggested that in sensitive areas could individuals who use plows try to get the snow removed before it gets treacherous.

Secretary Michael Rosa commented to Mr. Alkhatib that perhaps through GIS when a contractor is given his routes that he is given his routes that he be given a road width as well.

**LICENSE RENEWALS FOR 2014**

Secretary Michael Rosa stated he was going to do the licenses in two motions. One would be all the licenses, excluding the licenses that will not be renewed for various reasons and excluding all liquor licenses so Selectman Accomando can participate. He will then make a second motion to exclude those licenses and then vote the liquor licenses.

Selectman Michael Rosa, seconded by Selectman Andrew Deslaurier made a motion that the Billerica Board of Selectmen approve all the License application for 2014, excluding all Liquor Licenses and excluding License #3, 41, 64, 97, 108, 134, 71, 114, 63 and 121.

It was voted

5 – In Favor
0 – Opposed

Selectman Michael Rosa, seconded by Selectman Andrew Deslaurier, made a motion that the Billerica Board of Selectman approve all the Liquor Licenses for 2014 excluding License numbers 3, 41, 64, 97, 108, 134, 71, 114, 63, and 121.

It was voted:

4 – In Favor
0 – Opposed
1 – Abstention (Selectman Accomando)

Secretary Michael Rosa stated that there was one applicant that requested to stay open until 2:00 a.m. on December 31.

Selectman Michael Rosa, seconded by Selectman Andrew Deslaurier, made a motion that the Billerica Board of Selectmen approve the extension of hours for the Center Café doing business at 432 Boston Road to stay open until 2:00 a.m. on December 31, 2013.



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It was voted:

4 – In Favor  
0 – Opposed  
1 – Abstention (Selectman Accomando)

**MEETING SCHEDULE**

The meeting schedule is January 6 and 27, 2014.

**ADJOURNMENT**

Selectman Michael Rosa, seconded by Selectman Robert Accomando, made a motion to adjourn at 9:50 p.m.

It was voted:

5 – In Favor  
0 – Opposed

**A TRUE COPY ATTEST**

**Sue Aker, Recording Secretary**

**LICENSE RENEWALS FOR 2014**