

OLD BUSINESS

12-21-09

**TOWN OF MIDDLEBOROUGH
EARTH REMOVAL PERMIT
FINAL ORDER OF CONDITIONS**

Permit No. 2009 - 04

G. Lopes and Red Dog Cranberry

**Plympton Street
Cranberry Bog Project**

December 21, 2009

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BOARD OF SELECTMEN

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Preferred Traffic Route:

Plympton Street to Route 44, east and west

Has a plan and Notice of Applicability (NOA) or Intent (NOI) been submitted to the Town of Middleborough's Conservation Commission? Yes

Has Order of Conditions by the Conservation Commission been issued: if so what is project number and date of conditions: D.E.P. File No. SE 220-785, Issued 6/05/08 and extended until June 5, 2011

Is there a Department of Environmental Protection-Water Management Act Registration or Permit for this property? Yes

Permit No. _____ Registration No. 4-25-182.31

Has a Farm Plan been completed? Yes Please provide a copy.

Expected Date of Project Completion: Unknown

Engineering Firm Name: G.A.F. Engineering, Inc.

Engineer's Contact/Name: William F. Madden, P.E.

Street: 266 Main Street

Town/City: Wareham, MA 02571

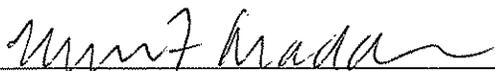
Phone Number: 508-295-6600

Have you authorized the engineer to speak on your behalf regarding project questions that may come up prior to the public hearing?

√ yes _____ no

Do you owe any property taxes, water, sewer or any other financial obligation to the Town of Middleborough that is not current?

_____ yes √ no


Signature of Agent, William F. Madden, P.E.
G.A.F. Engineering, Inc.

Phone Number: 508-295-6600

ORDER OF CONDITIONS

BOARD OF SELECTMEN

General Information

The time line and proposed work for the G. Lopes and Red Dog Cranberry, LLC 109 Plympton Street - Map 34 and Lot 4315 Cranberry Bog Project shall be as outlined in the **Project Plan** required under this permit, and approved by the Town's Agent.

This permit is issued as a continuance of previously permitted work. The permit is for a three (3) years, and the permittee agrees to waive the rights to a one (1) year extension request.

This permit is provided so that Bogs Nos. four (4) and five (5) can be completed. Bog Four shall be completed and planted prior to work commencing on Bog No. 5.

The Project Plan outlines the proposed construction sequence and time lines for the project that establish defined milestones for timely completion of the earth removal and cranberry bog and reservoir construction. The project plan shall be updated annually and approved by the Town's Agent.

The following sections are applicable under this permit:

- a. General Conditions
- b. Standard Conditions and Site Requirements
- c. Special Conditions
- d. Inspection Fees and Bonding

A. General Conditions

1. All phased construction work consisting of regrading shall be completed and required plantings shall be 'growing' prior to any application for a future earth removal permit or opening of new phases. No cutting, clearing or grubbing of areas not included under the Project Plan as 'phased' work shall be performed at the site.

If any aforesaid described work is done in unpermitted areas - without the written permission of the Town's Agent future earth removal requests may be forfeited.

The Town of Middleborough's Earth Removal Bylaw - as amended - should be reviewed by the project proponent to ensure that compliance requirements are met.

2. This permit is valid for **three (3) years** and may not be renewed for one (1) year as allowed under the Town's By Law and as reiterated in the Special Conditions.

The permit holder recognizes that the Board of Selectmen desire the project to be completed in the shortest time frame if possible.

3. Hours of operation are limited from Monday through Friday 7:30 A.M. to 4:30 P.M. Earth removal equipment motors, including trucks hauling material to and from the site, are not to be started or run until before 7:30 A.M and after 4:30 pm.

All earth removal shall be done on the days specified in this permit.

4. No operation at the site is allowed on Saturday, Sunday or Town Hall observed holidays, which are as follows:

| | |
|------------------------|------------------|
| New Year's Day | Labor Day |
| Martin Luther King Day | Columbus Day |
| Presidents Day | Veteran's Day |
| Patriots Day | Thanksgiving Day |
| Memorial Day | Christmas Day |
| Independence Day | |

5. All excavated areas not part of the bogs will be topsoiled and planted per the specification on the approved plan or at the direction of the Town's Agent. All top and subsoil shall be stripped from the operation area and stockpiled for use in restoring the area after the removal operation has ceased. A minimum of four inches of topsoil must be put back in place.

6. The permit holder is not permitted to spot excavate to remove better material here and there on the site. The project will be excavated in phases, as provided on the approved plan. Phases shall be planted, prior to excavation of the next phase. The Town's agent may allow partial excavation into the next phase provided that planting is performed during the growing season.

7. Excessive erosion is to be controlled as determined by the Board of Selectmen's Agent - working with the Town's Conservation Commission's Agent. During non construction periods, stockpiled materials may be required to be covered to prevent erosion from the site

8. No refining or screening of material is allowed on the permitted property except the screening of sand and loam to be used for on-site cranberry bogs, gravel for on-site roadways and loam for final on-site grading and seeding.

Any utilized screening plant shall be no larger than 150 to 200 yards per hour.

The permit holder shall provide a written description, time frame and proposed volume of material to be screened for approval by the Town's Agent.

9. Existing tree lines, natural land topography and vegetative buffer zones shall be maintained - as outlined in the plan submitted with the application entitled: Site Plan of Cranberry Bog Expansion - Middleborough, MA, prepared for G. Lopes Construction by G.A.F. Engineering of Wareham, MA dated June 6, 2005. Any tree lines existing along the property lines shall be maintained as shown on the aforementioned plan.

b. Standard Conditions and Site Requirements

1. Standard highway signs warning of heavy trucks entering the street shall be erected as directed by the Town's Agent and be in place prior to commencement of removal operations.
 2. The Board of Selectmen, Conservation Commission, Town Manager or their Agents shall be free to inspect the premises at any time during normal working hours with or without prior notice to the permit holder.
 3. The permit holder shall adhere to all State laws pertaining to covering loads and weight loads.
 4. Any spillage on public ways or private property shall be cleaned up immediately by the permit holder or its agent.
 5. The Board of Selectmen may, following a public hearing, revoke the permit, modify or revise the conditions of the permit and/or impose a fine if they find that the permittee, or any agent of the permittee violates any condition of this permit.
 6. The Town Manager or designee is authorized to act as the Board of Selectmen's Agent in the administration and enforcement of this permit.
 7. All loaded vehicles must be covered to prevent dust and contents from spilling or blowing from the property.
 8. The haul road and loading area must be watered regularly to keep dust from blowing from the property. Gravel may be required to be added to the haul road by the Town's Agent to assist in dust control.
- There shall be paving placed on the driveway for a minimum of fifty (50) feet from the roadway surface down the access roadway.
9. This permit is not transferable, except by vote of the Board of Selectmen. Notice of a pending sale or transfer must be provided to the Board of Selectmen. The Board of Selectmen will hold a public hearing to consider the transfer of this permit to the prospective buyer of the property.
 10. During operations, where the excavation working face will have a depth of more than 15 feet with a slope in excess of 1:1, a fence at least three (3) feet high shall be erected to limit access to that excavation.
 11. No area shall be excavated so as to cause accumulation of freestanding water, except in conjunction with a storage pond for cranberry bogs as shown on the plans. Permanent drainage shall be provided as needed in accordance with good conservation practices. Drainage shall not lead directly into or from streams or ponds, except as specifically approved by the Town's Agents and as allowed by state statute or regulation..

12. No excavation shall be closer than 200 feet to an existing public way unless specifically permitted by the Board of Selectmen at a publicly scheduled hearing. Natural vegetation shall be left and maintained on the undisturbed land for screening and noise reduction purposes.

13. Bog pumps will be powered electrically, or in the alternative, mufflers will be installed on pumps to reduce noise.

14. Gates will be installed on the haul road to prevent unauthorized access to the property.

15. Two by Three foot signs will be erected every 500' along the property line. The signs will display the permit number, the name and phone number of the permit holder's agent and the name and phone number of the Town's Agent, together with the words "NO TRESPASSING-EARTH REMOVAL IN PROGRESS".

16. All trucks hauling from the site must display a sign on the rear of the truck in an area that will be unobstructed and clearly in view displaying the words "TOWN OF MIDDLEBOROUGH **PERMIT No. 2009 - 04.**

17. A copy of this Earth Removal Order of Conditions shall be filed with the Registry of Deeds by the Permit holder as a notice to all that these conditions restrict work on the lot under the permit.

18. A Certificate of Compliance will be issued by the Board of Selectmen when the project is completed. The Certificate of Compliance will operate to release the lot from the conditions of the permit and terminate the permit. The Certificate of Compliance must also be filed with the Registry of Deeds by the permit holder.

19. The approved plan shall be modified to include the general location (no survey required) of any monitoring wells on the site.

20.. No standing trees are to be cut, trimmed or removed from the site, except for those areas shown on the approved plan. Violation shall result in a fine being imposed, in accordance with Earth Removal Bylaw §6, and/or revocation of this Permit.

If any tree needs to be trimmed, cut or removed, prior approval shall be provided by the Town's Agent.

21. No rock crushing is authorized. Any proposed rock crushing may be authorized by the Board of Selectmen following a public hearing on a request for an Earth Removal Permit modification.

22. Excessive noise levels, as determined by the Town's Agent, shall result in onsite equipment modification within one (1) week of notification.

23. De-watering operation plans shall be provided through a modification to the submitted Project Plan for review and acceptance by the Town's Agent.. De-watering may be limited during the Summer months. Siltation barriers will be provided as required by the Town's Agent.

c. Special Conditions

1. Blasting on the site is approved only when a blasting survey is completed for abutters. The Blasting Survey shall consist of a pre blast video of abutter properties. A copy of the video shall be provided to the Town's Agent upon completion of the Blasting Survey.

Application and approval of a blasting permit to the Town Fire Department shall be made prior to any blasting being performed at the site.

2. A conservation restriction shall be placed on the remaining property not utilized as cropland or support land.
3. Quarterly work plans will be prepared and submitted to the Town's Agent for review and approval so that measurable progress can be readily determined.
4. A dewatering system, if required will be outlined in a modified Project Plan, for review and approval by the Town's Agent..
5. Monitoring wells may be required to determine groundwater levels that could impact adjacent residential overburden and bedrock wells.

If neighboring overburden wells are determined to be potentially affected by the dewatering operation, work will cease, monitoring wells shall be installed, and an evaluation made from a qualified hydrologist on the dewatering operation, prior to commencement of work. The Town's Agent shall determine if work will continue at the site - after consultation with the Board of Selectmen during a public meeting.

6. Monitoring well(s) for water levels, if required, are to be measured every seven (7) days, and the results kept in a daily log.
7. An Order of Conditions from the Middleborough Conservation Commission described as DEP File Number 220 - 785 valid until June 5, 2011 is made a part of these conditions.

The Middleborough Order of Conditions will expire prior to the expiration date of this Earth Removal Permit. Notice is given that G. Lopes and Red Dog Cranberry Bog LLC will be required to notify the Middleborough Conservation Commission prior to their Order of Conditions expiration date for an extension as determined by the Conservation Commission.

- 8 A Project Plan that outlines the manner in which this project will be operated will be submitted to the Town's Agent for approval, within twenty one (21) days of Board of Selectmen's approval of this project and made a part of these conditions..
9. Trucks will not idle on Plympton Street at any time.
10. The permit holder will prepare a Farm Plan that meets standards set forth from the United States governments - Natural Resource Conservation District (NCRS) and the Massachusetts Department of Food and Agriculture and provide to the Town's Agent upon project completion.
11. The permit holder will be responsible for maintaining the roadway to no less than present conditions after consultation with the Town's Agent or designee every four (4) months or if conditions warrant, immediate action.

The permit holder will be responsible for providing a video of existing conditions to the Highway Superintendent or designee of existing conditions for up to one hundred (100) feet from the egress in both directions.

As noted in this permit, the driveway shall be paved a minimum of fifty (50) feet from Plympton Street onto the property.

12. Streets and driveway shall be swept regularly.
13. Signage as outlined under b. Standard Conditions (1) and (4), (15) and (16) shall be installed prior to start of work at the site.
14. The Town's Agent and Board of Selectmen's Office shall be provided a cell phone number that can be utilized with a G. Lopes and Red Dog Cranberry LLC representative can be reached to address any issues that occur on the site or with abutters.
15. The permit holder waives all rights to a one (1) year extension of this permit.

d. Inspection Fees and Bonding

Inspection Fees

1. An initial review to confirm compliance with permit conditions and restrictions must be performed by the Board of Selectmen's Agent before the commencement of any earth removal activities.

The fee for this review is **\$ 600.00, due** and payable at the time the permit holder notifies the Board of Selectmen's Agent that all requirements of the permit which must be done prior to commencement of work have been accomplished, and the permit holder is ready for the Agent to perform the initial review.

2. Quarterly reviews must be performed by the Board of Selectmen's Agent every three months following commencement of earth removal work. These reviews will include a field review and plan review to determine on-going compliance with the permit.

- a. The fee for each such review is **\$ 600.00, due** and payable to the Town three months after the commencement of earth removal on the lot and every three months thereafter for the duration of the permitted project.
- b. This report, along with **the Project Plan** will be made available to the public at the Town Manager's Office, upon request.
- c. The Board's Agent will include with the quarterly review a written assessment and update of actual activities and goals that were provided under **the Project Plan**.
- d. The Boards' Agent will determine **if the Project Plan** is meeting the proposed activities and goals. If **the Project Plan** activities and goals are not met for three (3) consecutive quarters, the project permit shall be suspended and a hearing with the Board of Selectmen shall be held to determine if the permit shall be reissued.

Bond Requirements

1. A bond, or acceptable alternative surety, in the amount of **\$50,000.00 will** be required to indemnify the Town for damage to private or Town property and for use by the Town for site closure in the event of abandonment of the project.

G. Lopes Construction, Inc.
Plympton Street (M34, L4315)

Patrick E. Rogers, Chairman
BOARD OF SELECTMEN

Date

Commonwealth of Massachusetts
County of Plymouth

On this ____ day of _____, 2009 before me the undersigned Notary Public,
personally appeared _____, proved to me through
satisfactory evidence of identification which was/were _____, to be
the person whose name is signed on the preceding or attached document, and
acknowledged to me that he/she signed it voluntarily for its stated purpose(s).

Signature of Notary

(Seal)

My commission expires _____

To: Honorable Board of Selectmen

From: Charter Study Committee (CSC)
Chair, Caroline LaCroix
Clerk, Michael Solimini
Lincoln Andrews
Bruce Atwood
Allin Frawley
Neil Rosenthal
Steven Spataro

Re: Report of the Charter Study Committee

Date: October 30, 2009

Appointed by the Board of Selectmen on April 13, 2009, the seven members of the Charter Study Committee (CSC) held their first meeting on Wednesday, April 26, 2009 at the Middleborough Town Hall. Caroline LaCroix was elected Chairperson and Michael Solimini was elected Clerk. Subsequently, the committee held fourteen meetings to review, evaluate and make recommendations as directed by the Board of Selectmen on the following:

- a) Investigate the feasibility of the establishment of a Public Safety Officer to oversee the Fire and Police Departments
- b) Assess the feasibility of the creation of a Water and Sewer Department or a Public Works Commission
- c) Changing to a strong town manager position
- d) Assess the feasibility of establishing an independent, elected Board of Health

Furthermore, the Chairman of the Board of Selectmen requested that the committee present any further recommendations on the charter as well.

The following paragraphs will discuss each of the aforementioned bullet points and will include a recommendation and justification for the recommendation.

A. Establishment of a Public Safety Officer to oversee the Fire and Police Departments

The CSC recommends against creating a public safety officer.

- The committee met with the Police Chief and Fire Chief on May 5 and reviewed and discussed their respective roles and responsibilities and reviewed written material presented and existing charter language.

First, as governed by state statute, each position requires distinct knowledge and specialized training. The Fire Chief serves as the Emergency Management Director and

the Right-to-Know Coordinator and reports to the State Fire Marshall. The Police Chief is responsible for law enforcement within the legal jurisdiction of the Town of Middleborough. Both positions have distinct responsibilities in the field of public safety.

Second, departmental emergency response protocols are different for police and fire and require a thorough understanding of the workings of each organization. Response to a fire is handled differently than response to a bank robbery, and it is unlikely that one public safety professional would possess a thorough understanding of both protocols in order to fulfill the proper emergency response required. Although our research indicated that Lynnfield had a public safety officer position, the population of Lynnfield, as well as the size of the police and fire departments, was much smaller and not comparable.

Third, it is the responsibility of each chief to perform daily departmental oversight and supervision. A public safety officer would have difficulty in devoting attention to both departments equally which would ultimately necessitate a second-in-command for departmental oversight and field operations within each department. Instead of streamlining management, redundancy would result with the additional salaried overlay of management.

B. Creation of a Water and Sewer Department or a Public Works Commission

The CSC recommends against establishing a water and sewer/public works commission.

The committee conducted meetings, telephone interviews, and reviewed the report and recommendations of the Water and Wastewater Feasibility Study Committee. More specifically:

- The committee met with Joe Ciaglo, Town of Middleborough Wastewater Superintendent and Todd Goldman, Assistant Wastewater Superintendent on May 20
- The committee met with former Town Manager Jack Healey on May 20 and Town Manager Charles J. Cristello on multiple meeting dates
- A representative of the committee contacted Dick Tinkham, Water Superintendent
- A telephone interview was conducted on June 10 with Elaine Fiori, Chairman of the Town of Kingston Sewer Commission to review the responsibilities of their elected board
- A committee member contacted Ted Alexias, Selectmen of the Town of Kingston from 1995- 1999 for a selectmen's perspective of a water/sewer commission.
- The committee met with two members of the Water and Wastewater Feasibility Study Committee on August 19 to review the recommendations contained within the Water/Wastewater Feasibility Study report prepared and submitted to the Board of Selectmen in February, 2009 The CSC reviewed the contents of the report and asked questions.

The statute signifies that an independent commission is vested with the responsibility to set water/sewer rates, negotiate collective bargaining agreements, execute inter-municipal agreements, recommend operating and capital budgets and provide policy and directives to municipal employees within the department.

The Town of Middleborough does not need another independent government body to perform these functions, but should rely on the Board of Selectmen as the chief elected body. The Board is empowered with this authority and should continue to execute these functions with input and recommendations from their technical team comprised of the town manager, DPW director, water superintendent and wastewater superintendent and town departments and employees.

The Board of Selectmen has cited time constraints and lack of technical expertise in handling water and sewer matters. However, the CSC recommends that the Board consider re-establishing their priorities in order to handle water/sewer issues. The committee recommends that the Board of Selectmen conduct annual public hearings to set water/sewer rates in an effort to solicit public comment and provide an explanation of the rate setting process prior to enactment. Secondly, it is recommended that the Board of Selectmen meet a minimum of twice per year with the DPW director and water and wastewater superintendents to discuss operational issues as well as compliance with federal and state mandates and permits. Third, the Board, if they deemed necessary, could create an advisory committee of residents with experience in the area of water and sewer matters to aid them in the decision-making process and to initiate grant and (State Revolving Fund) SRF applications. All of these recommendations will provide the Board of Selectmen with a mechanism to address water and sewer priorities in a timely and prudent manner.

C. Strong town manager position

While the committee does not support changing to a strong town manager position, the committee recommends that the duties of the town manager as described within section nineteen of the town charter be amended to add language for the town manager to develop the annual operating budget and five year financial projections. Further, the CSC recommends that the town manager negotiate and administer all collective bargaining agreements entered into by the Town, except for the school department and gas and electric commission employees.

- The committee met with former Town Manager Jack Healey on May 20 and with Town Manager Charles J. Cristello on May 27, August 12 and August 19 to review the role and responsibilities of the town manager as defined by the charter. Each discussed their varied roles and responsibilities, management style and execution of their position. The committee reviewed several municipal charters, which delineated duties of the town manager. Recommended Language for consideration is contained below:

SECTION NINETEEN: The Powers and Duties of the town manager shall include the following:

NEW C: Prepare and submit an annual operating budget to the Board of Selectmen. The proposed budget shall include, but not be limited to: a listing of the funds requested by all boards, committees and officers of the Town; shall be balanced and show both proposed expenditures and anticipated revenues. The Board of Selectmen, after reviewing the proposed budget and making changes it deems appropriate, shall submit its recommended budget to the Finance Committee, for their review and recommendation to town meeting, on or before the twentieth day of January each year.

NEW D: Prepare annually a five year financial forecast of Town revenue, expenditures and general financial condition of the Town. The forecast shall be submitted to the Board of Selectmen who shall make it available to the public.

NEW E: Be responsible for the negotiation, administration and enforcement of collective bargaining agreements and other employment agreements, exclusive of the schools and the gas and electric commission, on behalf of the Board of Selectmen. The town manager is to have the option of engaging labor counsel as he deems necessary. The Board of Selectmen retain the authority to ratify all collective bargaining agreements when deemed acceptable by them.

D. Board of Health

The CSC recommends against creating an independent Board of Health.

The committee reviewed the statute establishing Boards of Health and discussed the advantages/disadvantages of an independent elected board with autonomous authority over policy and permits; regulation and inspection.

Policy, planning, regulatory and budgetary decisions made by such a powerful and virtually unchallengeable board, with its own priorities and with out the comprehensive overview exercised by the Board of Selectmen, could have far reaching impacts on the Town.

Additionally, the committee believes that the overall administration of the department should remain with the Board of Selectmen, town manager/health agent, and health officer and their staffs respectively, rather than with an elected Board of Health.

E. Other recommendations

The committee recommends that the Board of Selectmen consider several other charter changes including:

- Making the position of Town Treasurer and Collector of Taxes appointed and appointing the incumbent Judy McDonald
- Authorizing town meeting to approve intermunicipal agreements
- Removing existing charter language regarding the salary of the town counsel
- Recommend a standing warrant article to approve funding for all collective bargaining agreements

Each topic is addressed specifically in the following paragraphs.

1) Appointment of Town Treasurer and Collector of Taxes

The CSC recommends that the charter be amended to change the position of Town Treasurer and Collector of Taxes from elected to appointed. Secondly, the committee recommends that the incumbent, Judy McDonald, who will be impacted by this transition, be appointed to fill the position as she has performed the duties and carried out the responsibilities of the Town Treasurer and Collector of Taxes for over nineteen years and has been a major asset to this community. The appointment of the incumbent will be included in the charter amendment language to allow the incumbent to serve the duration of the elected term of office.

- The committee met with Treasurer Judy McDonald on July 29 to discuss the position of Town Treasurer and Collector of Taxes and the advantages/disadvantages of changing the position from elected to appointed. The committee also discussed the matter with former Town Manager Jack Healey and Town Manager Charles J. Cristello.

The position of Town Treasurer and Collector of Taxes is one of the few positions established by the charter as an elected position. Since 1920, the duties of this position have grown and require a thorough understanding of municipal finance. Both the former town manager and the current town manager as well as Town Treasurer McDonald, agree that the position should be appointed to allow the Town to have an individual with the requisite skills, experience and education. Secondly, the appointment of this position would be comparable to the other department heads positions, already established by charter for appointment by the Board of Selectmen, including the town manager, town counsel, town clerk, fire chief and police chief.

2) Intermunicipal agreements

The committee recommends that the Board of Selectmen develop a warrant article for Town meeting authorizing town meeting to approve intermunicipal agreements negotiated by the Board of Selectmen.

Town Counsel Dan Murray has informed us, that, since 2008, town meeting approval is no longer required and Boards of Selectmen are solely authorized to approve intermunicipal agreements. The CSC believes the Board of Selectmen should not have the sole authority to sell, encumber or share the Town's assets or resources without town meeting approval. Therefore, the committee recommends that this authority be restored to town meeting, via home rule petition, to allow residents the opportunity to discuss and approve the merits of these important municipal transactions.

3) Salary for Town Counsel

The committee recommends that the charter be amended as follows, the words "who shall be paid such salary as the town votes" be removed from Legal Affairs, Section Seventeen subsection (a).

- The committee met with Town Manager Cristello on October 6 and discussed the salary requirement language within the town charter for the Town Counsel.

The recommendation to remove the existing language from the charter will end the controversy surrounding compensation paid to the Town Counsel position.

4) Recommend a standing warrant article to approve funding for all collective bargaining agreements

Legal counsel has opined that collective bargaining agreements require town meeting approval to fund economic/financial proposals within agreements. Therefore, the CSC recommends that the Board of Selectmen place a standing article on the warrant for each town meeting in which such agreements are to be presented, to enable town meeting members to understand and vote on the financial impact of the bargaining agreements.

Summary

We request that the Board of Selectmen consider extending the appointment of the CSC for six additional months (November 2009 – April, 2010) to allow the committee to work with the town manager and town counsel to develop the warrant articles necessary for submission by the Board of Selectmen to the annual town meeting warrant for spring of 2010.