

**TOWN OF WORTHINGTON**

**FINANCE COMMITTEE**

**BROADBAND REPORT**

APRIL 6, 2016

## INTRODUCTION

This report was originally intended to provide you with the information that the Finance Committee has gathered in regard to the initiative of bringing broadband service to our Town and to give our recommendations on its various components. Since last year's annual town meeting the Finance Committee has continued to meet on a regular basis both here in town and various other places. We had hoped to be able to address everything in this report to help you make an informed decision at the FY2017 annual town meeting. The Selectboard just recently decided not to present the broadband debt authorization article at annual town meeting but instead decided to include that article at a special town meeting to be held one week later.

We also will not be able to give you up to date information on a number of issues. Some of you may know that in mid-December the Mass Broadband Institute, (the State agency that is charged with overseeing the project and disbursing the State grant) announced that WiredWest and towns that are members of WiredWest would not receive State funds unless certain things (details explained further in this report) were changed by WiredWest. Although there have been talks with both entities since the announcement, there has been no resolution. The Finance Committee had been waiting to include in this report that result but it appears that it is not forthcoming.

In addition to this, at the end of January the State administration put on hold the advancement of the broadband initiative until the whole project can be thoroughly reviewed. At this writing that "pause" is still in effect and it is not known when it will be lifted. It appears that the review is looking more closely on how the network would be designed and built, as well as whether its operation will be sustainable by each town once it is built and whether all the towns can adequately finance the build and its' operation. The Finance Committee welcomes this thorough review, as since the initial announcement back in November of 2014, we thought it was much too simple to just "authorize the debt and it will be built".

As this is all beyond our control, we will not be able to include in this report the various outcomes whatever they may be. We have therefore opted to write this report as we knew the situation to be up to mid-December. Please be aware that some of what is written in this report might become obsolete.

## ROLE OF THE FINANCE COMMITTEE

The Finance Committee is governed by Chapter 39, section 16 of the Massachusetts General Laws which states in part "*finance committees shall consider any or all municipal questions for the purpose of making reports or recommendations to the town.* In addition to the state law Section II of the Town's General Bylaws which state in part: *It shall be the duty of the Finance Committee to consider any and all Town questions of a financial nature and to make*

*recommendations thereon to the voters of the Town. All financial articles proposed for insertion in a Town Meeting warrant shall, prior to the time said warrant is posted, be referred to the Finance Committee for consideration.....* This report is our effort to comply with the above.

In making a recommendation, the Committee can recommend in favor, or against, or in some instances defer to town meeting. A “defer to town” recommendation usually means that if there are two options, both are viable and the town should choose its preference or the Committee feels that the town should make the decision. This report contains various types of recommendations.

## **SCOPE OF REPORT**

The scope of this report focuses on the proposal to bring fiber optic broadband service to our Town. Our comments and recommendations are specifically meant to address this initiative, as the Committee did not review other technologies such as wireless or a wireless fiber hybrid. The Committee also did not investigate the option of doing nothing and what affect that would have on our Town. The Committee feels that its responsibility is to the current specific proposal and those other options should be the purview of a broadband committee.

## **DEBT AUTHORIZATION VOTE DEFERRED TO TOWN MEETING**

As one might easily make a case that the Town absolutely needs broadband service, another can make the case that the cost is too much for taxpayers to shoulder and the rapid pace of technological advances might make a twenty year investment in fiber foolish. With this in mind the Finance Committee “*defers to town meeting*” the decision of whether or not to vote to authorize debt to fund the broadband initiative.

The following assumes that Town Meeting will approve the debt authorization and is the Committee’s attempt to advise and give our recommendations relative to such a vote.

## **FINANCING THE LAST MILE**

Last year the Finance Committee’s inability to provide recommendations on how the town should borrow 1.8 million dollars was due to the fact that we could not identify a viable way to borrow this large amount of money. At a joint meeting of WiredWest and the Mass Broadband Institute (MBI) it was suggested that towns could issue *General Obligation Bonds*. *General Obligation Bonds* are bonds issued by a municipality for purposes allowed by statute that are backed by the full faith and credit of its taxing authority.

Worthington has never issued bonds, as most small towns in this area have not. To issue bonds, the first requirement is that a town must have a *bond rating*; something Worthington does not have and only two towns in the 33 towns in WiredWest do. A municipal **bond rating** is a credit

rating assigned to a municipality to help investors assess the future ability, legal obligation, and willingness of the municipality to make timely debt service payments. Stated otherwise, a rating helps prospective investors determine the level of risk associated with a given fixed-income investment. Rating agencies, such as Moody's and Standard and Poors, use rating systems which designate a letter or a combination of letters and numerals where AAA is the highest rating and C1 is a very low rating.

One requirement for a good rating is the financial disclosure requirement of at least three consecutive annual audits. The last audit that Worthington contracted for was done five years ago for Fiscal Year 2010. This deficiency will need to be addressed along with all of the other requirements needed for a good bond rating. We truly believe that the people giving the presentation were unfamiliar with the small towns in the audience and their suggestions that the towns could "just" issue *General Obligation Bonds* might have been appropriate for towns in the eastern part of the state but surely not for small towns out here in the western hilltowns.

Their next fallback suggestion was that most towns could use the *State Qualified Bond Act* in lieu of seeking a bond rating and issuing *General Obligation Bonds*. State Qualified Bonds is a program, unique to Massachusetts, that can be used by municipalities that have marginal credit ratings, in which the State Treasurer pays the debt service directly from a community's local aid, reinforcing the security of the bond and improving its marketability. The Municipal Finance Oversight Board authorizes issuance of these bonds under Ch. 44A M.G.L. The key to this program is that the community has to have enough scheduled local aid payments coming from the state for the state to intercept to pay the debt service.

The Finance Committee determined early on that the Town would not be eligible for *Qualified Bonds* despite insistence that Worthington and other towns would. For weeks, representatives of WiredWest insisted that the Finance Committee was wrong and that the Town would qualify to use *Qualified Bonds*. On April 9, 2015 we contacted the State Department of Revenue, who administers the program, and asked if they would do a coverage analysis to determine if the Town would be approved for qualified bonds. The answer from Lisa Krzywicki, Director Municipal Databank MDOR was..... "**Basically your analysis is correct there is not sufficient aid to cover the qualified bond, even if we took the existing debt out of the picture.**" A couple of weeks later, a meeting was convened by DOR and the people who were telling towns that they would qualify were informed that indeed, most towns would not be eligible and they were told to cease such activity. Unfortunately, by this time the deed was done, and many towns believed what they were originally told and did not request confirmation from DOR, as we did.

The U.S.D.A. (Rural Farm Development) was also suggested as a source of financing, but because of the lack of funding for this program from Washington, it did not appear to be an option.

In light of all of this, at a joint meeting of the Finance Committee and the Selectboard prior to the FY2016 Annual Town Meeting, the Selectboard suggested that the debt authorization be deferred for a year to fully investigate the above. The Finance Committee concurred and voted

to defer the article until May 2016. Relative to this, MBI had stated that “towns are not required to vote at their 2015 spring town meetings. The MBI is holding funding (from the state grant) for at least two town meeting cycles. Towns should plan to have the funding authorized by the summer of 2016.”

A few days before the ATM, town officials had an initial meeting with a municipal financial adviser. Prior to the meeting, we asked if he could confirm the above financing options and also asked if he could come up with any alternatives. At the meeting, he confirmed our identified finance options and the only suggestion he could offer as an alternative “even though it brought with it inherent risks” was that the Town could look into using a series of one year short term notes. The current state law C.44, S. 17 allows for short term Bond Anticipation Notes (BANS) to be issued yearly for up to five years. The Town could issue a one year short term note each year for five years and then try to find a bank that would issue a ten year note for the balance outstanding.

The obvious problem with this was “interest rate risk”. The Town would be subject to the prevailing interest rate each time it renewed the short term note and had to gamble that it could find a bank after it reached the five year limit that would issue a ten year note. This suggestion would use another vehicle administered by DOR that is called the *State House Note Program*. It is interesting to note, that after our meeting with the financial advisor, the term State House Notes spread like wildfire as the way to finance the projects. There is an effort that is supported by WiredWest to pass legislation that would allow short term borrowing for the life of the statutory term, which in this case is twenty years. It is also interesting to note that WiredWest is now suggesting that it expects to be able to create enough of a profit to be able to start paying towns back for the town’s debt service in exactly five years, which coincidentally corresponds to the current five year BAN limit.

State House Notes, which are debt instruments used by cities, towns, counties and districts and are administered by the Bureau of Accounts of the Massachusetts Dept. of Revenue and certified by the Director of the Bureau. *State House Notes*, are payable annually, and are usually limited to maturities of five years. The notes are attractive, more often to smaller communities, because certification fees are low, neither an official statement nor full disclosure is required, and they are issued in a short period of time. In addition, they do not require a bond rating. The Director may require a preliminary opinion from bond counsel on issues over 500,000.00. As the definition of a note is a short-term loan, typically with a maturity date of a year or less, they are usually short term such as BANS mentioned earlier but can be issued in a series of one year notes usually up to ten years. While the law does not expressly prohibit issues longer than ten years, banks are reluctant to purchase them for a term greater than ten years. Hence, the need to find a bank that “would issue a ten year note” that we mentioned in the previous paragraph. The borrowing vehicle used to borrow for a term greater than ten years is a bond.

Because of the inherent risks associated with using short term notes, the Finance Committee was reluctant to recommend this method of borrowing and we continued discussions with the Town’s financial adviser. We feel that the use of short term notes is a “last resort” option to

borrow. In preparation for our next meeting with the Town's financial adviser the Finance Committee reviewed the Official Statements of four towns that have issued bonds and were relatively the same size as Worthington. An official statement is a document prepared by an issuer of municipal bonds that gives details of the security and financial information for an issue; much like a prospectus for stocks. After the review, we were somewhat surprised in that we felt that Worthington compared favorably with the other towns. We then asked the financial adviser to prepare a draft official statement for Worthington and we reviewed it with him. His preliminary opinion was that Worthington was a good candidate for a bond issue. He went on to comment, however, that he did not think that a number of towns in the unserved broadband area would qualify. He asked that we provide him with the past five years of town balance sheets and Schedule A's and together with the last audited balance sheet, he and his colleagues at UniBank should be able to give a fairly reasonable opinion on the Town's ability to bond.

We recently concluded a meeting with the adviser and after reviewing the town generated balance sheets and related data, he advised that he felt that the Town could issue bonds and could expect a reasonable rate. He also again reviewed the option of the use of short term notes in lieu of bonds. He felt that in spite of interest rate risk they still might be a viable method to borrow. Two advantages over bonds are that they do not require annual audits which bonds will and they have relatively low issuance costs. We also discussed the U.S.D.A. program again and it now seems that they have a broadband loan program. But as we stated earlier, there are issues with the lack of funding for the program and if it is funded (1) will there be enough for towns out here to access it, and (2) will it be available when the Town is ready to borrow in two or three years.

In sum, the Finance Committee presently feels much more comfortable that the Town would have up to three viable options to borrow. We currently feel that the conventional method of "locking in" an interest rate for the total term either through a U.S.D.A loan or a bond is preferable to the short term option but will defer that decision to what the market looks like in three years or so when the Town would be ready to borrow.

## **TAX IMPACT OF THE BORROWING**

To give the reader a sense of how borrowing 1.8 million would affect your tax bill, the following is the estimated impact of doing a conventional borrowing. We are not brave enough to try to estimate what interest rates would be each year for the next twenty years if the Town opts for the short term note method. In all presentations that have been given in the last year, four percent has been used as the estimated interest rate. If the Town borrows 1.8 million long term for eighteen years at four percent, the total yearly debt service (principal and interest) would be 139,662 per year. That would impact the tax rate by .84 cents. The average single family tax bill that has a total taxable value of 235,412 would generate an additional tax of 197.75 a year. To estimate your own impact, you can simply multiply your total taxable value in thousands by the .84 cents.

While the WiredWest plan suggests that after five years of operation it could make enough “profit” to return yearly to its member towns the cost of debt service, it is quick to point out that there is no guarantee. Indeed, a review of the WiredWest business plan, strongly disagrees that WiredWest would generate enough revenue to accomplish this. Therefore, the Finance Committee strongly recommends that taxpayers should assume that they will shoulder the burden of paying the yearly debt service with no offset from WiredWest.

## **METHOD OF NETWORK OPERATION**

The Town will need to choose the method of operating the finished network in regard to who will be the Internet Service Provider (ISP) and who will maintain the network as its Operator. The Finance Committee investigated the following options:

- (1) Remain a member of WiredWest which is a cooperative of Municipal Light Plants (MLP) that is currently comprised of thirty-one towns and will provide the ISP service and system Operation through the cooperative.
- (2) Contract with a private company to do both, in exchange for a long term exclusive agreement with that company. Axia NGNETWORK USA
- (3) Contract with a combination of a private company and a municipality through its MLP by a short term agreement, such as Crocker Communications and Holyoke Gas and Electric Telcom. This method is currently used in the Town of Leverett (the Leverett Model).

## **AXIA MODEL**

In the beginning of July 2015 the Finance Committee met with representatives from Axia NGNetworks USA, the company that currently is the network operator for the Massbroadband 123 network, commonly referred to as the “middle mile”. Axia’s solution to towns was to offer to design and build the network within the town and it would contribute six hundred dollars per premises, towards the cost of construction and the town would fund the rest. In addition, the town would be required to give Axia a twenty year Indefeasible Right of Use (IRU) and in return Axia would operate and maintain the network and would have an exclusive right to provide internet services. While the capital contribution was attractive, the fact that they would design and build the network rather than MBI would prevent the town from receiving a portion of the state grant, that would only be allocated if the town agreed to a regional design built by MBI. In addition, a legal opinion that was circulated by bond counsel, Mintz, Levin seemed to indicate that this IRU would be problematic in the issuance of tax exempt bonds. The Finance Committee chose not to pursue this option any further but the Town might consider another look in the future.

## LEVERETT MODEL

The Town of Leverett chose a method to run their completed network that has received great publicity for its success and the use of both private and municipal entities to run the network. We have posted a number of documents on the Finance Committee's webpage about Leverett and additional information is easy to find by going to MBI's web site as well a visit to the Leverett town web site. The Finance Committee was invited by the Leverett broadband committee to attend one of their meetings last June. They devoted over an hour and one-half of their meeting to explaining what they did and freely gave us an access link to their Dropbox repository and, in addition, they offered to supply us with any additional information that was not there. We were all very impressed with their generosity and willingness to share with us what they have learned in both what to do and what not to do.

The town decided a number of years ago not to wait for MBI to gear up and build networks and also not to join WiredWest for a number of reasons. In particular, people felt that if the town's taxpayers were going to pay for the infrastructure, they should not turn its' ownership over to a regional organization. In 2011, the town of Leverett received a 40,000 planning grant from MBI for initial high speed internet network design. In 2012, voters overwhelmingly approved a debt authorization and debt exclusion to build the network. The town decided that the cost to build the network should be paid through taxation and the cost of maintenance would be paid by subscribers. Construction began in June of 2013 on 39 miles of fiber optics to 800 "drops" that provide 1 gigabit of symmetrical service. They decided to include the cost of the "drops", or the connection to each house in town, as part of the initial build, rather than have home owners pay to connect from the curb to their house. Although it was more expensive, it made it easier for homeowners to sign up for the service, which would help to make the operation sustainable. The network was completed in August of 2015. They did tell us that because MBI is now geared to do the construction, they would have gladly turned that task over to MBI if they were starting today.

Leverett decided to provide fiber to the home (FTTH) rather than fiber to the curb or construct a wireless system or any type of hybrid system. While the FTTH construction costs were initially more expensive, it was decided that in the long run FTTH would be more efficient and provide more long term value.

While Leverett owns the assets, the town contracts out for the operation and maintenance of the network. When selecting the contractors, Leverett insisted that the maintenance operator and service provider have experience. This would include: experience in operating and maintaining a network of comparable size, provide a history of corporate structure and have experience with customer services such as technical support, billing etc., and have a nearby presence and experience with municipal owned systems.

Leverett contracts with Crocker Communications as its Internet Service Provider which handles the internet, phone and customer service. It also contracts with Holyoke Gas and Electric (HG&E) which maintains and monitors the network, connectivity and equipment. Crocker and HG&E were selected for their experience and technical expertise. It was also determined that relatively short term contracts with the Internet Service Provider and Network Operator would give the town flexibility to change if the town was not satisfied, rather than an indefinite term with a cooperative.

The project cost 3.7 million with 2.9 million of it bonded. Because the citizens realized that the network would require a subsidy, the voters approved general obligation bonds as opposed to revenue bonds. Annual debt obligation is 175,000 of the 518,600 annual cost of operation. There is 343,600 budgeted for operating and maintenance costs.

Annual operating and maintenance costs include: depreciation of the fiber plant and electronics, pole rental, insurance, bond fees for poles, bookkeeping, legal, electricity, network operator and ISP, routine maintenance and contingency. The monthly fees for the subscriber are: 1 gigabit Internet only 24.95, phone only 24.95, combination 39.95, Municipal Light Plant fee 49.95. The total monthly subscriber cost for internet, phone and the Municipal Light Plant fee is 89.90.

## **WIREDWEST OPTION**

At first blush this would appear to be the easiest and simplest option to use. However after much scrutiny the Finance Committee learned that it is not. Because this option is much more complicated than the other options and in the opinion of the Finance Committee brings with it a number of detrimental components that could negatively impact the Town, the detail needed to explain the WiredWest option will take more space in this report than the other options. A reader should not view this as an unfair assault against WiredWest but rather the need to explain a much more complicated option.

As early as May 2010, the Town started looking into ways to bring broadband services to Worthington. The following is the first town meeting vote in this regard.

### **TOWN OF WORTHINGTON**

#### **ANNUAL TOWN MEETING – May 1, 2010 – 9:30 A.M.**

***ARTICLE THIRTY SIX:*** *To see if the Town will vote to enter into non-binding immediate discussions with other Western Massachusetts municipalities with the intent of entering an inter-municipal agreement, by and through the Selectboard, pursuant to Chapter 40, Section 4A of the Massachusetts General laws, for the purpose of establishing a universal, open access, financially self-sustaining communication system for the provision of broadband service, including high-speed internet access, telephone and cable television to the residents, businesses and institutions of these municipalities, or take any other action in relation thereto.*

Soon after this the Town joined WiredWest. In the subsequent years WiredWest has done an excellent job in raising the consciousness of the need to bring broadband service to western Massachusetts. They were certainly instrumental in convincing the state of the need for state assistance to help the number of unserved communities. In the beginning, we were told that the costs associated with this would not be a town expense but rather would be borne by the users or subscribers of the service. Therefore as town officials we were not concerned on how this would affect the town budget or taxpayers. It was not until November of 2014 that things dramatically changed.

In regional meetings held in November and December, conducted by MBI and WiredWest, we first learned that towns would have to pay a share of the cost for this service. Approximately forty percent would be paid for by the state and the rest would need to be paid by the member towns and not subscribers. The total estimated cost of construction for Worthington is 2,860,000 and the estimated state grant is 1,070,000 leaving 1,790,000 to be funded by the Town. WiredWest announced that it could not attract funding for the remainder, either through grants or borrowing so therefore it was left up to the towns. This obviously got the attention of the Finance Committee.

Over the next year in addition to trying to determine how the Town would fund its share, the Finance Committee investigated WiredWest and how it proposed to help the member towns in this venture. Up until this point WiredWest served as an advocacy organization that consisted of delegates from each town and was run by a set of organizational bylaws. After the state and member towns fund the network build, WiredWest proposes that it will run it for the member towns. To accomplish this, they proposed to change the organization structure governing bylaws to a Limited Liability Corporation- in essence to start a business. This pivot from advocacy to starting a business that would run the network has caused the Finance Committee some great concerns which we will try to explain in the following paragraphs. The virtues of remaining in WiredWest and belonging to a cooperative are well publicized on WiredWest's web site. We will try to focus on the negative impact issues that we feel should be fully understood in order to make an informed decision. The following are the most important issues:

- Risks associated with the start-up of a new business
- Asset Ownership
- Inability to leave and operate the network in our town
- Cash contribution to the corporation

(1) ***New business start-up risks.*** As with the start-up of any business there are certain inherent risks. There are also specific risks associated with a tele communication business. One can simply google municipal broadband ventures to read about various failures. Also, there is a report titled The Hidden Problems with Government-Owned Networks written by Joseph P. Fuhr, PHD that can be found on the Finance Committee's page by following the link in the next paragraph. It is a challenge to say the least, to start a business such as this that will include up to 31 towns and span over such an immense

geographical area. The business plan has to visualize hundreds of projections, assumptions, and estimates in regard to both revenues and expenses, so that it seems to carry a high risk of getting them all right. Then add the politics of thirty some towns getting along makes things even more complicated. If there was no other alternative then this would have to be tried. But there are other private sector companies that are already doing it successfully, so why gamble with taxpayers' money.

- (2) **Asset Ownership.** The following issues are found in the new proposed LLC Operating Agreement that must be signed by towns to remain in WiredWest. This all-encompassing and constraining agreement can be found on the Finance Committee's page at the following link [http://www.worthington-ma.us/Pages/WorthingtonMA\\_WiredWestinfo/](http://www.worthington-ma.us/Pages/WorthingtonMA_WiredWestinfo/). We urge you to read it to grasp the gravity of it. One key component is that towns are required to turnover ownership of all of the town's broadband assets to WiredWest while the town would still be liable for the payment of the debt that it would have issued to pay for that same asset. Worthington would be giving away the ownership of the entire network that would have cost the town up to two million dollars. The Finance Committee believes that this is simply not acceptable, no matter how WiredWest tries to spin ownership. The state administration currently feels the same.
- (3) **The inability to leave WiredWest and choose another method to run the network in our town.** The agreement states that a town must remain in WiredWest for a minimum of ten years before it can request to leave. At that time a "redemption price" will be calculated of the town's share in the LLC and, if it is a positive number WiredWest will have up to two years to pay the town the redemption price. If the redemption price is equal to zero or a negative number, WiredWest would have no obligation to the town. Having given up the ownership of the asset to WiredWest, once the town leaves it will not own the network. Therefore, we could not run the network within our town as WiredWest will still own it and they can continue to operate it or do with it what they see fit. To give an analogy...this would be like giving the R.H.Conwell school building to the Gateway School District and then leaving Gateway to run our own school without having a school building. Again, this is not acceptable to the Finance Committee.
- (4) **Cash Contribution to the LLC.** By signing the new agreement, the town agrees to turn over to WiredWest the cash we borrowed to build the network instead of to MBI who will be the entity that will actually build it. Normally when a town does a capital project, during construction the town would periodically release cash payments to the entity doing the construction and when the project was completed it would borrow permanently the amount that was actually spent. If the project comes in under budget, the town would only borrow the actual cost. From what we can determine, the WiredWest agreement is requiring that the town agrees to make scheduled payments to WiredWest instead of MBI in the total amount of the current estimated cost of the project, not what is actually spent. Any surplus derived from the actual construction will be used by WiredWest for business start-up costs and not returned to the town. As WiredWest's business plan requires start-up costs for a period of time and there appears to be no other provision to fund these costs, it appears that this is one of the reasons WiredWest wants the cash to flow through them instead of directly to MBI. Whether the proceeds of a long term borrowing authorized pursuant Chapter 44,

Section 8 (8) M.G.L. can be used for business costs is an unsettled legal question which the Finance Committee raised with WiredWest at the WiredWest/Finance Committee public meeting. To date we have not received an answer from WiredWest. It also creates an incentive for WiredWest to try to convince MBI to use a cheaper network design or construction method to create a surplus that would be left with WiredWest to fund these business costs and not used by the town to reduce its actual borrowing.

There are additional issues and concerns but for this writing the above should suffice. While we do not expect that WiredWest will recognize the above concerns of the Worthington Finance Committee but because the same concerns are being raised by the state's review of WiredWest, we hope that WiredWest will agree and change their business plan and agreement. Without such changes, the Finance Committee cannot recommend the WiredWest method.

The Finance Committee believes that there is a need for WiredWest to help towns work together cooperatively in this broadband venture. But we question the need to create a monopolistic business and to propose a LLC agreement that shackles towns together rather than using another method that would promote cooperation.

## **MUNICIPAL LIGHT PLANT BOARD**

Chapter 164 of the Massachusetts General Laws sets out the law governing the Manufacture and Sale of Gas and Electricity. It has over two-hundred and sixty-five sections. Fortunately for the reader of this report, there are only a few that are applicable. Section 34 enables a town to manufacture or distribute gas or electricity or for the operation of a community antenna television system for municipal use or for the use of its inhabitants. Section 36 sets out how a Municipal Light Plant is authorized by town meeting. Section 47E includes the distribution or the operation of a telecommunication system (broadband). And section 47C allows for the creation of a cooperative to carry out the above.

Section 55 states that a town that has established a Municipal Light Plant pursuant to section 36 may elect a **Municipal Light Board** consisting of either three or five members. ***"The Municipal Light Board shall have authority to construct, purchase or lease a gas or electric plant in accordance with the vote of the town and to maintain and operate the same"***. The preceding sentence and how our town created a municipal light board is currently in question.

At the conclusion of the Finance Committee's broadband public meetings, it became obvious to us that townspeople wanted a say in what method of operation the Town would use once the network was completed. Should the Town opt for the cooperative method, continuing to be a member in WiredWest, or should it choose another method such as the "Leverett Model" that enlists the involvement of both an experienced private sector company and a municipality or some other method. Indeed, at one of our meetings the question was asked "who gets to choose?" to which the Finance Committee answered, "Town Meeting" and a member of the Selectboard said "the Municipal Light Board".

With this in mind, an initiative petition was circulated and signed by one-hundred and thirty-

eight registered voters that required the Selectboard to place an article on the next Special Town Meeting warrant that if approved, would require that town meeting would be the entity that would decide the method of operation. The following is the text of that petition:

***“The undersigned registered voters of the Town of Worthington, Massachusetts hereby petition the Selectboard pursuant to C. 39 s.10 M.G.L. to place the following article on the next Special Town Meeting warrant: ARTICLE:***

***WHEREAS as taxpayers and voters in the Town of Worthington we have the right to determine Town affairs;***

***WHEREAS we enjoy the open town meeting form of government;***

***WHEREAS as taxpayers we are being asked to approve up to two million dollars to build a broadband network in our Town;***

***WHEREAS this two million dollars will be borrowed and paid back over twenty years;***

***WHEREAS all present and future taxpayers will be assessed through their taxes for twenty years;***

***WHEREAS as current voters we have the responsibility to protect the rights of future residents of our Town;***

***WHEREAS the need to choose the method and who or what will be the operator of the finished network does not have to be decided until the network is completed;***

***WHEREAS because the completion of the network is estimated to be in up to two to three years;***

***WHEREAS the current options that are available to operate the completed network could substantially change in three years;***

***THEREFORE let it be resolved that a vote of Town Meeting shall determine the method of operation of the completed network after being fully advised by town officials of the various options that are available at that time;***

***THEREFORE let it be further resolved that the Selectboard or the Municipal Light Plant Board and any other board or committee of the Town shall not enter into any contract or agreement that would preclude Town Meeting from making such determination.”***

Initially WiredWest gave instructions to the towns on how to create a Municipal Light Plant and what follows is part of those instructions:

***“... 4. Create your department and its governance. By law, the MLP may be governed by either a group of elected individuals (a Light Plant Board) or the Select Board, itself. Because new WiredWest MLPs will primarily be acting as cooperative members and are unlikely to take significant actions independently, then it is most efficient for the Select Board to govern directly.***

- 1. Establish and name your department. Municipal lighting plant, light plant, light department and similar terms are used interchangeably. In addition, a town may create a name for its light plant such “Telecommunications Department” or “AnyTownTelCo”, which may be advantageous for communication purposes in annual reports and the like. The Select Board should vote to establish and name the new department.**
- 2. Decide to join the WiredWest Cooperative and appoint a manager, delegate and alternate delegate. A manager is required by law to run the MLP. The delegate will serve on the cooperative’s board of directors. We suggest that these be the same person. The MLP’s governing body should explicitly agree to join the cooperative. Use the attached certification to record this decision and these appointments.....”.**

As of this writing, the Selectboard have written to Town Counsel requesting an opinion in regard to a number of issues surrounding past actions of the Town relative to the creation of a Municipal Light Board and a Municipal Light Plant manager. It also requests an opinion relative to the petition as to **“whether town meeting has the legal authority to bind an MLP board, given that it is a separately enabled governance body.”** We have not received an answer in time to include in this report but it certainly should be available to inform you during the discussion of the petitioned article. We do not believe that any of us truly knew and understood all of the implications that came with the creation of a Municipal Light Plant and hope that this petition will bring them to the fore.

Because of the above, we are not sure if the Municipal Light Plant board as it currently stands has the power to sign an agreement with any group or vendor it so chooses regardless of the wishes of the town population. The MLP Board is currently comprised of the members of the Selectboard, we think. One of the members of the Selectboard currently is the town’s representative to WiredWest and also has been appointed by Wired West to serve on its’ Executive Board.

The Finance Committee strongly believes that the current situation is unfavorable and can lead to biased decision making and may not involve the public sentiment in the community. The Finance Committee believes that a separate Municipal Light Board should be formed where its members are elected by the voters of the Town and not appointed by the Selectboard.

The reasons for such formation are:

- A separation of Selectboard and the Municipal Light Plant.
- Formation of a board selected by the voters of the town.
- Involvement of community members who are interested in Broadband.
- Removal of any possible issues on the board due to the current situation where the voters did not fully understand or were not fully informed that their original vote to form an Municipal Light Plant gave all the powers of control and decision making to the Selectboard/Municipal Light Board.

The Finance Committee would like to see this issue be brought up at the Annual Town Meeting and is recommending that the Town establish a Municipal Light Board in which its members are elected by the Town .

## **CURRENT STATUS AND CONCLUSION**

As we mentioned in the introduction, since mid-December the broadband initiative has been on hold. Originally it was caused by MBI's concerns about certain issues with the WiredWest plan and then the state administration's decision to look further into the project. There seems to be little movement on the WiredWest /MBI issue and it is hard to judge how long the state review will take.

The latest on the state review was outlined in a letter dated March 14<sup>th</sup> that was co-authored by Katie Stebbins, Assistant Secretary – Technology Innovation and Entrepreneurship Executive Office of Housing and Economic Development and Elizabeth Copeland, Interim Director Massachusetts Broadband Institute. The following is an excerpt from that letter....

***“Our goal is to develop and execute a strategy that will provide broadband access to the greatest number of residents possible, access available sources of financing, offer the best value for the public investment, leverage outside sources of funding and expertise where possible, and operate sustainably over time. In order to provide effective return on public investment, the Administration wants to ensure affordability and operating sustainability for projects receiving Commonwealth funds.***

***To meet this goal, we are asking MBI to develop policies to ensure that it is reviewing and analyzing all options. This process will include review of technologies, cost projections, and various project design and delivery, governance and operating models. The expected result is a strategic plan for MBI to provide cost effective, financeable and sustainable broadband solutions for Western Massachusetts communities.***

***Specific steps include:***

- ***The MBI is analyzing and developing criteria for approving sustainable operating and governance models;***
- ***The MBI is reviewing available technologies and best practices from the Commonwealth, other states and internationally for broadband access solutions; and***
- ***The MBI is reviewing the plans and options for municipal borrowing and broadband project financing, including the exploration of potential federal loan programs***

***The MBI will continue to proceed with projects where cost effective and sustainable solutions are identified and access to financing is assured, including the broadband extensions program in partially-served cable communities.***

***We appreciate the hard work of local leaders over many years to explore and develop broadband solutions. We will continue to provide you with information about our progress during this review and the strategic planning process.”***

Due to the decision of the state to put the broadband initiative on hold during review and from what we can determine from various sources relative to the time needed to conduct the review, it does not appear that it will be completed in time for our town meeting. Once the review is completed, there will also be time needed for MBI to explain their findings and present a potential new policy to the various towns. In addition to this, the Town will need to know the result of the WiredWest/MBI issue and whether WiredWest towns will be eligible to receive funding from the state grant. In light of this, the information we have reported in the previous pages could all change or drastically change. In addition, because the Selectboard has decided not to present the debt authorization vote at the Annual Town Meeting but rather at a Special Town Meeting on May 14<sup>th</sup> after the annual, it would seem to be appropriate to postpone that Special Town Meeting until all of the above is known. We imagine that you would want the above to be fully explained to you before you make a decision on whether to vote to approve the debt authorization. The only reason to vote on the debt before all the new developments are known, would be to comply with the June 30, 2016 deadline that was previously suggested by MBI. We have heard that because of all of this, MBI has lifted that deadline and we are waiting to hear confirmation of this from MBI.

It has always been the intention of the Finance Committee that this report would serve to inform you of what we have learned over the past year and would prepare you to make your decision on the debt authorization vote. While we hope that this report will inform you of what we have learned, it appears that it will not inform you of the recent developments, which we feel should be known before you vote on the debt authorization.

Respectfully submitted:

Joe Boudreau (Chair)  
Paul Dunlevy  
Alex Lak  
Jeff Manley  
Tom Wisnauckas

# Notes