



The Commonwealth of Massachusetts  
Office of the Inspector General

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October 13, 2010

Ms. M. Jane Donahue  
Chairman  
Wareham Board of Selectmen  
54 Marion Road  
Wareham, MA 02571

Dear Chairman Donahue :

In January, 2009 the Wareham Board of Selectmen requested that the Office of the Inspector General conduct an investigation into allegations of possible wrongdoing by the Maintenance Director of the Wareham Municipal Maintenance Department (WMMD). The allegations against the Maintenance Director were contained in an anonymous letter that had been received by the Board of Selectmen.

The letter's first allegation involved a complaint that WMMD employees, equipment and materials were improperly used on Wareham (Town) street paving jobs that had been won by T.L. Edwards (TLE), a private contractor, through a competitive bidding process. The letter suggested that the use of WMMD employees, equipment and materials was inappropriate because the paving contract required the work performed by WMMD workers to be done by the contractor. The letter claimed that the Maintenance Director ordered this work to be done by his employees, using Town equipment and materials to benefit the private contractor.

The letter's second allegation involved a claim that the Maintenance Director gave permission to two private citizens to enter upon WMMD property and remove multiple large truck loads of stored scrap metal over a period of several days. The letter suggested that these individuals sold the

scrap metal that they took and kept the cash that they received from the sale. The letter further indicated that the scrap metal taken had a value of “thousands of dollars.”

A third allegation involved a claim that the Maintenance Director gave permission to a private individual to take several truck loads of wood from the WMMD property for personal use. Further, it was alleged that WMMD workers assisted this person in removing the wood from the WMMD property.

A fourth allegation involved a claim that the Maintenance Director gave a private contractor dozens of valuable drainage risers to be used on a water line installation in the Town. The allegation claimed that the contractor did not pay the WMMD for the risers.

The Inspector General ordered an investigation to determine the validity of these allegations. The investigation included a review of relevant paving contract bid documents, contractor invoices and other relevant records. Moreover, interviews were conducted with numerous WMMD employees, current and former Town Officials, other potential witnesses, and the Maintenance Director. During the review of paving contract records and invoices evidence of an inappropriate price escalation for bituminous concrete was discovered.

### **Investigative Findings**

1. WMMD workers performed certain tasks regarding the repaving of Town roads by T. L. Edwards (TLE), a private paving contractor, that were not covered by the terms of the contract between the Town and TLE. These tasks were appropriate and involved such things as picking up and laying down hay bales at the job locations. TLE did not bill the Town for this work.
2. WMMD workers performed certain tasks regarding the repaving of Town roads by TLE that were covered by the contract between the Town and TLE. These tasks included the break up and removal of sidewalks and the cutting of private driveways.<sup>1</sup> This work

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<sup>1</sup> Cutting private driveways often occurs when a municipal entity repaves public streets in residential neighborhoods. It involves removing small portions of private driveways, resurfacing the area removed

performed by WMMD workers was inappropriate and should have been performed by TLE as required by the contract. TLE did not bill the Town for the work done by WMMD employees.

3. The contract between the Town and TLE required that bid prices offered by the winning bidder be fixed for the term of the contract. Nonetheless, a review of TLE invoices disclosed that TLE inappropriately raised the price for bituminous concrete in the second and third years of the contract and because of poor contract administration, the Town paid TLE over \$39,000.00 more than it should have for TLE's repaving work in 2007 and 2008.
4. The Maintenance Director, without any documentation indicating the value of the scrap metal, authorized two private individuals to enter upon WMMD property and remove several truck loads of accumulated scrap metal in the summer of 2008 without compensating the Town for the material removed. The Maintenance Director advised that he permitted this to happen in order to save the Town removal costs. Taxpayers are unable to determine whether this barter arrangement accrued to their benefit because the WMMD did not estimate the value of the scrap metal prior to its removal.
5. The Maintenance Director authorized a private individual to enter upon WMMD property and remove several truck loads of accumulated wood with the assistance of a WMMD employee. The private individual did not compensate the WMMD for the wood removed. The Maintenance Director advised that he believed that this was appropriate because he was trying to clean up the area. Once again, taxpayers are unable to determine whether this action accrued to their benefit because no effort was made to determine the value of the wood removed.
6. The Maintenance Director authorized Tiffany Construction Company, a private contractor, to borrow several drainage risers and catch basins owned by the WMMD for use on a construction job in the Town. The Maintenance Director advised that Tiffany later provided replacements for the borrowed items. He also provided

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and connecting them with the newly paved public streets. This ensures that there is a smooth connection between the private driveways and the newly repaved public streets.

paperwork as evidence that the replacement of the borrowed items actually occurred.

## **Investigative Details**

### **Review of Relevant Paving Bid/Contract Documents and Invoices – Discovery of Inappropriate Price Increase**

The review of relevant paving bid documents disclosed that the Town issued an Invitation For Bid (IFB) in the Spring of 2006 and solicited sealed bids from paving contractors for “Bituminous Concrete Laid in Place And Sidewalks Laid in Place to be used for Town Roads and Sidewalks on an as need (sic) basis commencing May 1, 2006 through April 30, 2007.” The IFB included options for two one year renewal periods. The option to renew was to be within the sole discretion of the Town. The IFB informed potential bidders that sealed bids must be submitted to the Town on April 13, 2006.

This paving contract was subsequently awarded to a paving company located in Avon, Massachusetts by the name of T. L. Edwards Inc. (TLE). TLE submitted the low bid in the amount of \$1,003,550.00. The paving contract was signed by the President of TLE on April 13, 2006. The contract specifically stated “Quoted prices are guaranteed to be fixed for the term of this contract.”

TLE’s winning bid which became part of the overall contract with the Town was broken down into several sub categories. Three of the sub categories involved Class One Bituminous Concrete with a total estimated quantity of 11,000 tons. The bid price offered by TLE and accepted by the Town for Class One Bituminous Concrete was \$52.00 per ton. As mentioned above, the contract between the parties makes absolutely clear that prices quoted by the vendor are guaranteed to be fixed for the term of the contract, i.e. for the first year plus the two option renewal years.

Nevertheless, a review of invoices submitted by TLE over the life of the contract disclosed that TLE did not adhere to its contract obligations in this regard. Instead, TLE submitted invoices to the Town for payment that involved higher unit prices per ton for Class One Bituminous Concrete. Moreover, the WMMD ignored the express requirements of the contract and

permitted payment of the TLE invoices at the higher unit prices for Bituminous Concrete without objection.

For example, TLE submitted an invoice to the WMMD on 7/11/08 pertaining to its paving work on East Boulevard in Wareham. The invoice shows that TLE laid down 1022 tons of Bituminous Concrete on East Boulevard at a unit price of \$65.90 per ton instead of the contract price of \$52.00 per ton. The acquiescence of the WMMD to this inappropriate price increase by TLE cost the Town \$14,206.00 in taxpayer funds.

Similarly, TLE submitted an invoice for payment to the WMMD on 7/11/08 for paving performed on Kendrick Road in Wareham. Once again TLE billed the Town for laying down 614.95 tons of Bituminous Concrete at \$65.90 per ton instead of \$52.00 per ton as required by the contract. By paying this inflated invoice, the WMMD cost the taxpayers of Wareham over \$8,500.00 dollars.

TLE submitted an invoice for payment to the WMMD on 7/11/08 for paving work performed on Old Ferring Hill Road in Wareham. TLE billed the Town for laying down 342.46 tons of Bituminous Concrete at \$65.90 per ton instead of \$52.00 per ton. Once again, payment by the WMMD of this inflated invoice cost Wareham taxpayers over \$4,700.00 dollars.

TLE submitted an invoice to the WMMD for paving work done on Narrows Road in Wareham on 10/3/07. The invoice showed that TLE laid down 491.78 tons of Bituminous Concrete at \$56.91 per ton instead of the fixed contract price of \$52.00 per ton. The decision by the WMMD to pay this inflated invoice cost Wareham taxpayers over \$2,400.00. Likewise, on 7/16/07, TLE submitted an invoice to the WMMD for paving work done on "TOWN ROADS." Included in the invoice was a charge for laying down 1726.34 tons of Bituminous Concrete at \$56.91 per ton instead of the mandated contract price of \$52.00 per ton. Payment of this inflated bill by the WMMD cost the Wareham taxpayers \$8,476.00.

On 10/31/07 TLE submitted an invoice to the WMMD for Bituminous Concrete resurfacing on Narrows Road in Wareham. The bill disclosed that TLE laid down 122.77 tons of Bituminous Concrete for sidewalk resurfacing at a price per ton of \$99.91. This bill is also problematic because the fixed contract price for this item for the length of the contract was \$95.00 per ton.

TLE cumulative overcharges on the above described invoices amounted to over \$39,000.00 in taxpayer funds that were improperly paid by the WMMD to TLE.

The improper nature of these overcharges is underscored by the fact that on June 26, 2007, the Acting Town Administrator sent a letter to the President of TLE, in which he exercised the first of two contract options set forth in the original paving contract between the Town and TLE which was initiated in April, 2006. This letter made it abundantly clear to the President of TLE that the amount obligated for the Town to pay TLE for the first option year was \$1,003,550.00. This was the identical number of TLE's winning bid in 2006. No additional price increases were authorized. All parties knew that the original bid prices were to remain unchanged. This letter was returned to the Town with the TLE President's signature contained thereon.

WMMD records reviewed by this office also contain a letter from the WMMD Maintenance Director to the Town Administrator, dated 5/19/2008. In this letter, the Maintenance Director recommended that the Town exercise its second contract option and award a third contract year to TLE for the paving of Town roads. Once again the amount specified by the Maintenance Director in the letter for payment to TLE in the third year of the contract was \$1,003,550.00. It is clear from a review of these documents that all parties understood that the prices bid by TLE in 2006 were expected to remain the same throughout the life of the contract. As mentioned above, the original contract language makes this abundantly clear as well.

The records provided to this office by the WMMD also contain a letter from a representative of TLE to the WMMD Maintenance Director, dated July 1, 2008. The letter is entitled, "Liquid Asphalt Escalation." The letter informs the Maintenance Director that "The Bituminous Concrete Industry is currently being hit with increased operating costs across the board, fuel, insurance cost, workman's comp, and liquid asphalt. At this time T.L. Edwards, Inc. will be increasing our bituminous concrete bid items by \$8.99 per ton." This letter is evidence of direct knowledge by the WMMD Maintenance Director that TLE was attempting to unilaterally alter the specific contract language that it accepted in April 2006. Instead of rejecting this self serving attempt by TLE to change the contract, the Maintenance Director simply acquiesced and in the process failed to properly represent the interests of the taxpayers of Wareham.

The contract between the Town and TLE contained no price escalation clause. As mentioned above, prices bid and agreed upon in the contract were specifically fixed for the duration of the contract, i.e. one year, with two additional years at the option of the Town.

Officials from the Massachusetts Department of Transportation (MASSDOT) have informed this office that a new law instituted in 2008 requires price escalation clauses to be included in contracts funded in whole or in part by Chapter 90 funds. Nonetheless, an MASSDOT official has stated unequivocally that a contract involving Chapter 90 funds that was issued in 2006 would in no way be governed by the new law.

The Maintenance Director was interviewed concerning his knowledge of the TLE price increases reflected in WMMD documents reviewed by this office. The Maintenance Director was informed that TLE's winning bid number in 2006 was \$1,003,550.00. He was reminded that the contract between the Town and TLE called for renewal options for two additional one year periods. It was pointed out to the Maintenance Director that the contract between the Town and TLE explicitly stated on page 6 that "Quoted prices are guaranteed to be fixed for the term of this contract." The Maintenance Director was informed that, in fact, documents reviewed by this office for 2007 and 2008 pertaining to the Town's decision to exercise its option years for the contract with TLE, show that the agreed upon price for the years 2007 and 2008 would be the same as it was in 2006, namely \$1,003,550.00.

The Maintenance Director was asked for an explanation regarding the escalating prices that the WMMD allowed TLE to charge for bituminous concrete. The Maintenance Director advised that sometime after TLE was awarded the paving contract by the Town in 2006, he had a conversation with the [now former] Town Purchasing Agent or the [now former] Town Administrator, about the rising costs of concrete. He stated that either one or the other informed the Maintenance Director that it was okay for TLE's billing to reflect the higher cost of bituminous concrete.

The Maintenance Director was shown a document obtained from the WMMD, dated July 1, 2008, submitted to the Maintenance Director by an employee of TLE. In the document, TLE informed the Maintenance Director that it would be raising its unit price for bituminous concrete by the amount of \$8.99 per ton because of, "increased operating costs across the board, fuel, insurance cost, workman's comp, and liquid asphalt." The

Maintenance Director stated that a TLE employee came to see him on 7/1/08 and asked him to approve a price increase and he did so.

On 6/21/10, the former Wareham Town Administrator was interviewed and advised that he has no recollection of having a conversation with the Maintenance Director or the Town Purchasing Agent about obtaining his approval for TLE to be paid at a higher price for bituminous concrete than the paving contract would allow.

On 6/22/10 the former Wareham Purchasing Agent was interviewed and advised that she has no recollection of talking to the Maintenance Director about the need to approve a price increase for TLE regarding bituminous concrete. She further advised that no such approval for a price increase could have occurred unless there was a written change order in the file that showed a specific authorization for the increase from her or the Town Administrator. She was informed that this office reviewed all the documents pertaining to the 2006 TLE/Wareham paving contract provided by the Town and no written authorization for a price increase signed by her or the former Town Administrator was found. She stated unequivocally that in the absence of a written authorization for a price increase signed by her or the Town Administrator, no price increase for bituminous concrete was ever approved.

**Allegation One—WMMD Employees, Equipment, and Materials Were Improperly Used To Assist a Private Contractor in Performing a Town Issued Street Paving Contract**

The anonymous letter to the Town Board of Selectmen alleged with substantial specificity that the Maintenance Director ordered WMMD workers to place hay bales, remove gravel and perform other work associated with street paving work being done by T.L. Edwards (TLE), a private contractor under contract with the Town. Moreover it was alleged that Town vehicles and equipment were used by the WMMD workers in order to carry out the orders received from the Maintenance Director. The letter claimed that this work was inappropriate and was required by the contract to be performed by the contractor.

## **Contract Review**

A review of the contract between the Town and TLE disclosed only a few instances where the Town was required to do anything pertaining to the agreed upon paving work. First, the contract obligated the Town to do “all clearing and grubbing, drainage, resetting signs and mailboxes, furnish police as required and warning signs.” Second, the Town was required by the contract to clean up and stockpile excess asphalt dug up and removed by TLE during the initial paving process. The contract authorized the use of Town trucks for this cleanup process. Third, the contract called for the excavation of existing pavement by the contractor to a depth of 12 inches and that “new base material [was] to be provided by the Municipal Maintenance Department.”

## **Interview of WMMD Employees**

Interviews were conducted with numerous WMMD employees concerning allegation one. These interviews disclosed that in 2008 TLE repaved East Boulevard in Wareham. Prior to the repaving process, numerous WMMD employees were instructed by the Maintenance Director to pickup hay bales from another town for this job, bring them to the job site and drive them into the ground with stakes to protect adjacent land from potential damage. Moreover, during the repaving process numerous WMMD employees cleaned up and removed existing asphalt that had been dug up by the contractor. Town trucks and equipment were used to accomplish this work.

These interviews also revealed that several WMMD employees were involved in removing between 50 and 75 feet of sidewalk from East Boulevard. Town equipment, including trucks, a backhoe and jackhammers were used to remove the sidewalk. Several WMMD employees were also involved in cutting private driveways on the East Boulevard paving job and removing the debris with Town trucks and equipment. WMMD employees were also involved in cutting driveways on several other street paving jobs performed by private contractors during the past five years.

## **Interview of the Maintenance Director**

The WMMD Maintenance Director was interviewed concerning the specifics contained in allegation one on March 26, 2010. He confirmed that WMMD employees were instructed by him to perform work on the TLE

East Boulevard paving job in 2008. He stated that the work performed by WMMD employees on this particular job was multi faceted and involved several different kinds of work.

He advised that WMMD employees picked up, delivered and laid down hay bales for this job. The Maintenance Director explained that hay bales were required based upon an Order of Conditions issued by the Town Conservation Commission for erosion control. He advised that this work was not required to be done by TLE pursuant to the paving contract. This office reviewed the TLE invoices submitted to the Town for payment on the East Boulevard paving work and observed that no invoice was submitted by TLE for this work. The paving contract did not require the winning bidder to perform this work either.

The Maintenance Director advised that he ordered WMMD employees to pickup and remove existing asphalt that had been dug up by TLE in the repaving process on East Boulevard. He advised that this WMMD work was required by the contract between the Town and TLE. He advised that this was done as a cost saving measure for the Town. Moreover, the WMMD uses pulverized asphalt on the gravel roads in the Town and maintains piles of it at the WMMD facility. The contract between the Town and TLE specifically required this work to be done by the Town. TLE did not bill the Town for this work.

The Maintenance Director advised that on the East Boulevard paving job, he instructed WMMD workers to remove approximately 50 to 75 feet of concrete located on the side of the road, including a section of sidewalk. He acknowledged that the contract between TLE and the Town required this work to be done by TLE. Nonetheless, he made the decision to have WMMD employees perform this work as a cost saving measure for the Town. TLE did not invoice the Town for this work.

The Maintenance Director advised that WMMD employees did cut some private driveways in connection with TLE's East Boulevard paving work in 2008. He stated that this is common practice when private contractors perform paving jobs in the Town. He acknowledged that the contract between the Town and TLE called for TLE to do this work but he decided to have his own workers handle this assignment in order to save the Town money. He stated that TLE did not bill the Town for this work.

## Inspector General Analysis

When a public entity initiates a bidding competition by soliciting sealed bids from private contractors, the bidding process must adhere strictly to principles of fair and open competition. All bidders must be able to trust that the public entity has created a stable, consistent and unchanging playing field wherein all bidders are treated equally. This means that the bidding documents must not be altered during the bidding process<sup>2</sup> or after the contract has been awarded in the absence of extraordinary unforeseen circumstances. The terms of the Invitation to Bid (IFB) must make clear the kind of circumstances which would justify change orders of any material nature. Given these fundamental principles, this office believes that the Maintenance Director's decision to authorize his employees to perform certain jobs required by the paving contract to be performed by TLE was inappropriate.

For example, several WMMD employees were involved in cutting up and removing 50 to 75 feet of concrete sidewalk from East Boulevard in 2008. Town equipment was used to accomplish this task. The Maintenance Director confirmed that he instructed WMMD employees to perform this work. The contract terms clearly required this work to be performed by the winning bidder. In fact, the IFB required each bidder to furnish a unit bid price and an overall price to perform this work. The price provided by TLE became part of its final bid.

Likewise, several WMMD employees advised that they were involved in cutting private driveways on East Boulevard during TLE's repaving work and removing debris with Town trucks and equipment. This kind of work by Town employees was repeated on several other Town roads repaved by TLE. The Maintenance Director confirmed that he instructed his employees to perform this work, notwithstanding the fact that the paving contract required this work to be performed by the winning bidder. In fact, the IFB required all bidders to submit a unit price and a total price estimate for "Bit. Conc. Sidewalk and Driveway Apron resurfaced" which included cutting private driveways and removing the debris. The final bid submitted by TLE for the entire contract included its price for this category of work.

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<sup>2</sup> The awarding authority may alter the bid specifications by means of an addendum, if necessary, before the bid opening, as long as all potential bidders are notified of the change within a reasonable time before the bid opening date and time.

The Maintenance Director defended his decision to use Town employees to perform work required by the contract to be performed by TLE and indicated that he did so as a cost saving measure to the Town. This explanation, even if valid, does not justify the decision to do so. Decisions of this nature can alter the level playing field that all bidders thought they were bidding on. The final bids of all bidders in this matter included prices furnished for work to be performed in the areas involving sidewalk removal and private driveway cuts. Ultimately, some of the work required by the contract to be performed by TLE was removed from the playing field by the Maintenance Director after the contract was awarded to the low bidder. In general, any bidder who suspects that they will not be required to perform all of the work called for by the IFB can bid low in those particular areas. This can become a strategic advantage to certain bidders. If the bids turn out to be close, those offering lower prices in certain bid categories could swing the bid award in their favor.

This investigation developed no evidence that the Maintenance Director informed TLE of his intention to instruct WMMD employees to perform this work. However, the practice is nonetheless inappropriate because particular vendors who have performed work for particular public entities in the past or those who become aware of past public practices can unfairly rely on this knowledge to submit low bids on certain portions of IFB's. They can do this, having strong reason to believe that in the end, they won't be required to perform all of the work that they bid on. This type of knowledge is prejudicial to competition and is manifestly unfair to other unknowing bidders who erroneously believe that they are operating on a level playing field. Once a contract is awarded, the terms of the contract and the agreed upon scope of work should be carefully adhered to in the absence of extraordinary circumstances.

**Allegation Two-The Maintenance Director Permitted Two Persons to enter WMMD Property and Remove Scrap Metal that could have been sold by the WMMD for cash**

It was alleged in the anonymous letter to the Board of Selectmen that the Maintenance Director authorized two individuals to enter WMMD property and remove aluminum, steel, copper and brass (scrap metal) from a huge scrap metal pile located in the rear of the WMMD Maintenance Building. It was suggested that this scrap metal had monetary value and should have been sold by the WMMD for the benefit of the Town.

## **Interviews of WMMD Employees**

One WMMD worker advised during interview that in or around June 2008 there was a large pile of scrap metal located to the rear of the WMMD property. He advised that two individuals were allowed by the Maintenance Director to enter the WMMD property and remove scrap metal from the pile. The men would arrive at the WMMD location during regular work hours and stay after hours to remove scrap metal from the pile. They removed the metal with the assistance of a small excavator, a ten wheel truck and a pickup truck. This equipment belonged to the men and not the WMMD. He advised that it took the men a couple of weeks to remove the scrap metal. They removed four ten wheel truck loads of scrap metal and several full pickup trucks of scrap metal during this time frame.

This employee did not know what the two men did with the scrap metal they removed but suggested that they probably went to a junk yard to sell it. The employee did not know the value of the materials removed by the men but did offer a comparison to estimate its value. He advised that WMMD workers removed two or three truck loads of scrap metal from the Town Water Treatment Plant recently and sold it at a local junk yard for \$10,000.00. He advised that this money went to the Town. The employee stated that the Maintenance Director is friends with the two men who removed the scrap metal.

A second WMMD employee advised that in the summer of 2008 he observed a particular individual take scrap metal from the pile behind the WMMD office about ten times. He saw this person at the scrap pile using a pickup truck, a six wheel truck and a backhoe removing scrap metal. A third WMMD employee observed two men at the scrap metal pile using a loader to place scrap metal into a ten wheel truck in the summer of 2008.

A fourth WMMD employee advised that a particular individual was in and out of the scrap metal pile at the WMMD facility for about a month in 2008. He observed this person loading material from the pile into his pickup truck. He further observed that the pickup truck was full of scrap metal when it was leaving the WMMD location. On one occasion, this employee stated that the Maintenance Director instructed a WMMD employee to unlock the WMMD gate and allow the person to go back to the scrap metal pile. Other WMMD employees offered similar observations to what is described above. None of the employees interviewed knew what the men did with the scrap

metal they removed but several suggested that they believed it was sold at a junk yard for cash.

### **Interview of the Maintenance Director**

The Maintenance Director was interviewed concerning the scrap metal issue and advised that his employees pick up numerous amounts of scrap metal during their work and place it into a large pile behind the WMMD building. He described the pile as a large pile of junk. He advised that he was approached by an individual who offered to get rid of the materials in the pile at no cost to the Town. He advised that he obtained permission from the [former] Acting Town Administrator to authorize the private individual to take scrap metal from this pile. The Maintenance Director believed that the scrap metal pile was not pleasant to look at and it would be good to get rid of it. He stated that the alternative was for the Town to remove the material itself to a landfill in Bourne and pay them to take it. He stated that the person he authorized to remove the junk metal was assisted by a second person in the job of removing the materials. He advised that they probably tried to sell the metal but he did not know where.

On 7/29/10, this office interviewed current Wareham Treasurer-Tax Collector and former Acting Town Administrator. The Treasurer-Tax Collector advised that he has no recollection of the Maintenance Director approaching him when he was Acting Town Administrator to seek permission to allow private parties to take scrap metal from the WMMD premises. Nonetheless, he stated that this could very well have happened and he just can't recall the situation.

Obviously from the interviews conducted by this office, there is a difference of opinion regarding the value of the scrap metal removed from the WMMD by private individuals with the permission of the Maintenance Director. One WMMD employee suggested that the removed materials may have had a value of several thousands of dollars. Conversely, the Maintenance Director described the scrap metal in the pile as junk and indicated that the Town would have to pay a landfill to accept the materials from the pile.

This office has obtained a copy of a Wareham Police Department report concerning this issue. The report reveals that a Wareham Police Detective identified and interviewed one of the men involved in taking scrap metal from the WMMD. The man informed the Detective that over a two week

period he and several friends removed a large amount of scrap metal that had been collected by WMMD workers and transported it to a New Bedford scrap metal recycler. The man informed the Detective that he was paid approximately \$400.00 from the recycler for the scrap metal.

### **Inspector General Analysis**

The appearance of impropriety regarding this matter, shared by many WMMD workers, could have been avoided. It is clear that the scrap metal collected by the WMMD had monetary value. The Maintenance Director should have contacted local junk yards and other similar facilities to obtain estimates of how valuable the materials were. Once the estimates were obtained, the Maintenance Director should have determined how much it would cost the WMMD in employee wages to remove the metal and transport it to the junk yard. If the cost of removal was less than the high quote estimate, he should have followed through with the sale.

It should be noted here that the Maintenance Director stated during interview that the WMMD would have to pay a facility to accept the scrap metal. If this is accurate, it would appear that it would not be cost effective for the WMMD employees to remove the materials. If the situation was not cost effective, a written contract should have been initiated between the private individuals and the WMMD specifically authorizing removal of the materials at no cost to the Town. The existence of a written contract, coupled with the cost/benefit process described above would have eliminated the rampant suspicion of impropriety that permeated the ranks of the WMMD workers.

### **Allegation Three-The Maintenance Director Allowed an Individual to Take Wood Belonging to the WMMD for Personal Use**

The anonymous letter to the Town Board of Selectmen alleged that the Maintenance Director allowed a private citizen to take several ten wheel truck loads of seasoned wood from the WMMD property. The letter also alleged that he ordered WMMD workers to load the wood onto the citizen's truck with WMMD equipment.

## **Interviews of WMMD Employees**

This office conducted interviews with several WMMD employees pertaining to the firewood removal issue. One employee advised that a private citizen took a large amount of wood from the WMMD compound in the spring of 2008. The employee advised that another WMMD employee assisted the private citizen in loading the wood onto the private citizen's ten wheel truck. He advised that this same WMMD employee approached the Maintenance Director on behalf of the private citizen and asked him for permission to allow the private citizen to take the wood. The employee estimated that the private citizen took between six and eight truck loads of wood from the WMMD property.

A second WMMD employee informed this office that WMMD employees cut down trees for the Town which resulted in a large pile of wood being stored on the WMMD lot. He advised that in the summer or fall of 2008, a private citizen came to the WMMD lot and removed the wood. The private citizen removed the wood with the assistance of a WMMD worker. The removal of the wood took two or three days to complete. The employee advised that the private citizen who took the wood was an employee of a friend of the Maintenance Director.

A third WMMD employee advised that a private citizen needed firewood and that the WMMD had accumulated a large amount of firewood at its facility. This employee asked the Maintenance Director for permission to allow the private citizen to take the firewood. The Maintenance Director granted the request and the private citizen subsequently removed eight truck loads of firewood from the WMMD property in his ten wheel truck. The employee advised that he loaded the firewood into the truck with a Town loader.

### **Interview of the Maintenance Director**

The Maintenance Director was interviewed regarding this issue and advised that WMMD employees pick up a lot of wood during the course of their duties from fallen trees and branches. This wood is stored in back of the WMMD building. He advised that one of his workers approached him and asked him for permission to give some of this wood to a particular individual. He advised that he thought this was a good idea because he was trying to clean up that area on the WMMD property. He gave the okay to

his employee and the private citizen showed up and began taking the wood with the employee's assistance.

This office has obtained a copy of a Wareham Police Department letter from the former Chief of Police to the Interim Town Administrator, dated April 6, 2009, which comments on the taking of the wood. The letter reveals that a private individual offered to remove wood that had been dumped by WMMD employees and the public. The report stated that the wood was not considered "seasoned wood" because most of it was imbedded with dirt and debris. The report stated that allowing the private person to remove it served as a cost saving measure for the Town.

### **Inspector General Analysis**

Once again, the appearance of impropriety regarding this matter, shared by many WMMD workers, could have been avoided. The letter delivered to the Board of Selectmen stated that the wood in question was seasoned wood and suggested that it had monetary value. The Wareham Police Department report indicated that the wood was not seasoned wood because it was imbedded with dirt and debris. Clearly there was a difference of opinion regarding whether the wood in question had monetary value. The Maintenance Director should have contacted local vendors to obtain estimates of how valuable the wood was. Once the estimates were obtained, the Maintenance Director should have determined how much it would cost the WMMD in employee wages to remove the wood and transport it to an appropriate location. If the cost of removal was less than the high quote estimate, he should have followed through with the sale.

In the event that the wood was determined to be of little or no value, the Maintenance Director should have permitted the private individual to remove the wood at his own expense, i.e. without the assistance of WMMD workers and equipment. This action, coupled with a short explanation to employees about the rationale for the decision, would have eliminated the rampant suspicion of impropriety that permeated the ranks of the WMMD workers.

**Allegation Four-The Maintenance Director Gave a Private Contractor Dozens of Drainage Risers for use on a Water Line Installation Project for the Wareham Fire and Water District without Charge**

The anonymous letter to the Town Board of Selectmen alleged that the Maintenance Director had given numerous drainage risers without charge to Tiffany Construction Company (Tiffany), a private contractor who was working on a water line installation project for the Wareham Fire and Water District. The letter claimed that the risers given away by the Maintenance Director to Tiffany were worth thousands of dollars. Risers are sometimes used in road paving projects to insure that the height of existing sewers is sufficient to meet the height of new pavement added during construction.

During interviews conducted by this office with WMMD employees, it was confirmed that Tiffany performed a water main project for the Wareham Fire and Water District on Ferring Hill, Blackmore Pond and Hollow Tree roads. This office was informed that Tiffany needed risers to properly complete its work. Tiffany's employees came to the WMMD looking to obtain the required risers. According to a WMMD employee, the Tiffany employees obtained roughly 100 risers from the WMMD for the job Tiffany was doing for the Wareham Fire and Water District. The WMMD employee stated that these risers were worth approximately \$100.00 each. The WMMD employee advised that the Maintenance Director gave Tiffany permission to take the needed risers. The employee advised that Tiffany did return some of the risers provided by the WMMD because they were not needed. The employee stated that all of the risers actually used on this project by Tiffany came from the WMMD.

The Maintenance Director was interviewed and recalled the situation involving Tiffany doing a job for the Wareham Fire and Water District (WFWD). Tiffany needed risers during the job and approached the WMMD for permission to borrow the needed risers. The Maintenance Director advised that he allowed Tiffany to borrow the risers and after the job was completed, Tiffany replaced the number borrowed from the WMMD. He advised that a WMMD Administrative Assistant kept a written record of the number of risers borrowed by Tiffany to insure that Tiffany replaced the risers they used. He could not recall the actual number of risers involved in this matter.

The WMMD Administrative Assistant was interviewed by this office regarding the borrowed items. She produced a memorandum that she created and maintained that pertained to this issue. After reviewing the memorandum, she advised that the owner of Tiffany and a Tiffany engineer picked up 50 risers/catch basins from the WMMD between 7/22/08 and 8/19/08. She advised further that Tiffany returned 50 risers/catch basins to the WMMD between 7/24/08 and 1/30/09. She advised that these items were returned by the Tiffany owner.

### **Conclusions and Recommendations**

As mentioned earlier in this letter, this office believes that the Maintenance Director for the WMMD acted improperly in approving over \$39,000.00 dollars in contractor invoices that were not authorized by the terms of the contract between the Town and the private contractor. Moreover, the Maintenance Director's decision to order WMMD workers to perform work that should have been performed by the contractor pursuant to the express terms of the contract between the Town and the contractor was inappropriate and in violation of the principles of fair and open competition. The Maintenance Director's decision to permit private individuals to enter WMMD property and remove without charge scrap metal and wood belonging to the WMMD was likewise imprudent because it created reasonable suspicion among WMMD employees concerning the integrity of the decision maker and the process. In order to obviate future problems of a similar nature this office makes the following recommendations:

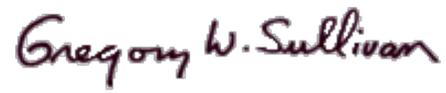
1. In the future, all WMMD contracts must be strictly adhered to regarding agreed upon prices for the entire duration of the contract.
2. In the event that price increases are anticipated before the contract is agreed to and signed by the parties, an appropriate price adjustment clause should be inserted into the contract language which makes clear the exact circumstances in which a price increase will be allowed.
3. According to Massachusetts Department of Transportation (MASSDOT) officials, pursuant to Chapter 303 of the Acts of 2008, asphalt contracts funded by Chapter 90 money must contain price adjustment clauses. WMMD employees involved in contracting for future road paving services should contact MASSDOT officials for

guidance on how to include appropriate price adjustment clauses in asphalt contracts covered by the 2008 law.

4. The Town should consult with their Legal Counsel to ascertain whether it is appropriate for the Town to seek reimbursement from TLE for the over \$39,000.00 that was paid to TLE in violation of the paving contract.
5. In the future, the WMMD should require contractors to fulfill all required aspects of contracts that they have been awarded. Under normal circumstances, the WMMD should not perform work that is required by the contract to be done by the contractor.
6. All Town employees involved in purchasing supplies, services, and seeking bids for vertical or horizontal construction should receive appropriate training in fundamental purchasing procedures, laws and regulations such as that which is offered by this office's Massachusetts Certified Public Purchasing Official (MCPPO) Program. Additionally the office will be offering in the near future, an online training, Bidding Basics; M.G.L. c. 30B on our website, [www.mass.gov/ig](http://www.mass.gov/ig). The training schedule and other pertinent information is available through our website or by calling 617-722-8800.
7. Town officials, including the Maintenance Director, are urged to consider the impact of their decisions upon the employees that work for them in terms of the appearance of impropriety that those decisions may have. When appearance of impropriety issues are foreseen, it is suggested that clear explanations for what is occurring be made.
8. Town officials, including the Maintenance Director should seek written approval from appropriate superiors for any decisions that may reasonably be expected to lead to controversy later on.
9. In the future, prior to disposing of scrap metal and other recyclable or compostable materials, the WMMD Maintenance Director should attempt to obtain the market value of those materials and ensure that

the Town receives adequate compensation for them.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive style with a large initial 'G' and a distinct 'S'.

Gregory W. Sullivan  
Inspector General