

**BOARD OF FINANCE  
MINUTES OF SPECIAL MEETING  
June 29, 2011**

The Special Meeting of the Board of Finance was held on Wednesday, June 29, 2011 at 5:00 p.m. in Seminar Room 300, Board of Education Administrative Offices, 501 Kings Highway East, Fairfield, CT.

**MEMBERS PRESENT**

Robert Bellitto Jr., Ken Brachfeld, James Brown, Thomas Flynn, Kevin Kiley, Mary LeClerc

**MEMBERS ABSENT**

Christopher DeWitt, Robert Stone

**ALSO PRESENT**

Paul Hiller, Chief Fiscal Officer and Clerk of the Board of Finance

Interim First Selectman Michael Tetreau

Selectmen Sherri Steeneck and James Walsh

Former First Selectman Ken Flatto

Caitlin Bosse, Controller, Town of Fairfield

Roger Autuori, Registrar of Voters, Town of Fairfield

Stanley Gorzelany, Tax Collector, Town of Fairfield

Frank Cleary, Bond Counsel, Town of Fairfield

Joseph Centofani, Kostin, Ruffkess & Company, LLC

**ACTION TAKEN:**

1. Approved to establish independent agreed upon audit procedures of the Metro Center project, such audit to be conducted by the Town's outside auditors and prepare a report by the end of July 2011 to the Board of Finance subcommittee, such work to cost an amount not to exceed \$20,000, to be paid from Contingency funds budgeted for fiscal year ending June 30, 2011.
2. Approved to establish a subcommittee of the Board of Finance to manage this process from inception to date consisting of Mr. Kiley, Mr. Brachfeld, and Mrs. LeClerc.

Chairman Flynn called the meeting to order at 5:15 p.m.

**AGENDA**

1. To discuss the current status of the Fairfield Metro Center Project and to establish the requirements for necessary information to be delivered to the Board of Finance and other approving bodies prior to consideration of an anticipated appropriation for the completion of financing for the Project.

Chairman Flynn reported that about 43 hours ago, Fairfield learned of a shortfall in this project amounting to between \$2M - \$6M. Chairman Flynn stated that there are some transparency concerns, among others, concerning this project, but the reason for this meeting is a process concern. Chairman Flynn stated that, in his opinion, this project needs an independent third party to review all of the financials from this project and produce a report to the Board of Finance, through a BOF subcommittee, for this purpose.

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Chairman Flynn asked all Board members, including the members of the Board of Selectmen, who are ex-officio members of the Board of Finance, to please present their requests of items to be included in the proposed financial review report along with any questions they may have on this project. The following requests and/or questions were presented from the Board members:

James Walsh

- Please include details pertaining to the legal services paid to Town Attorney Richard Saxl for this project.
- Please identify any funds that were used for other projects.
- Please include an encumbered column be in any reports or worksheets prepared pertaining to the project.
  - Mr. Kiley suggested showing columns as Spent to Date, Encumbered/Accrued, and To Be Done.
- Is there an early completion bonus clause in the contract for Guerra Construction Company, and if so, how much could it be?
  - Mr. Tetreau stated that there is an early completion bonus in the contract and it is based not on substantial completion but on post punch list.
  - Mr. Tetreau also informed the Board that this is a unit based contract so the Town is not paying overtime costs for the contractor whose employees are working a 6 day week. Mr. Tetreau also noted that the downside to a unit based contract is if the number of units change, the Town is required to pay for the extra units, such as the many extra cubic yards of possibly contaminated soil.
- Does the vendor have an opportunity to accuse the Town of delaying completion of the project in order to avoid paying the bonus to the vendor?
- It is imperative to get a construction manager on board immediately in order to bring this project to completion as smoothly as possible.
- Who is monitoring this project?
  - Mr. Tetreau and Mr. Flatto stated that Mark Barnhart has been monitoring this project along with STV Engineering, which is the firm hired through the Purchasing Department to keep track of what was happening. Mr. Flatto stated that STV did get a little behind in their reports but there were weekly construction meetings held with Mr. Barnhart.
- Why was there never a project manager assigned to this very large project?
- Was there any analysis done before any changes were made to the agreement last April?
  - Mr. Flatto stated that the State required that an analysis be done and Mr. Flatto stated that he checked the analysis himself with Town Attorney Saxl. Mr. Flatto also reported that the State told him not to discuss the details with anyone including the CFO. Mr. Flatto stated that the State requested that the First Selectman and the Town Attorney be the only Town employees to see and know the details of the revised contract. Mr. Flatto also stated that Town Attorney Saxl advised him that attorney/client privilege covered the State's request.
- If the soil needs to be removed would the Town need to pay to have the soil removed or would the Town receive payment from the person removing the soil?

Christopher DeWitt – in his absence, Mr. Bellitto, Jr. presented his list of concerns to the Board.

- What have contractors done and what is still remaining to be done on this project by the contractors?
- Please provide an estimate of overrun basis.

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- Can any of the Town departments offset some of these extra costs by doing some of the work?

Kevin Kiley

- Are there any escrow fees involved in this project?  
Mr. Tetreau replied that the Conservation Department is still holding \$800,000 in escrow fees.  
Mr. Tetreau also reported that this project is reimbursed by the State in the same manner as the school projects have been reimbursed.
- How soon can the BOF get an update on all vendor payments through May and June?  
Mr. Hiller informed the Board that a payment of \$2.8M was made last week to Guerra Construction for May.  
Mr. Tetreau stated that the figures are in for the month of May and should be available as soon as Mark Barnhart is back from his vacation.
- Since the timeline is essential to the completion of the project, is there any way to speed up the timeline for any necessary reports?  
Mr. Tetreau stated that he will look into the possibility that controls can be documented immediately.

Robert Bellitto, Jr.

- What is the effect of overruns on the Town's bond rating with the rating agencies?  
Mr. Hiller reported that he has a meeting set up with the Town's Financial Advisor and this subject will be discussed at that time.  
Mr. Tetreau stated that the rating agencies look at the entire debt load of the Town, not just one project, in developing their rating.
- What effect will this problem have on the Capital Plan and the waterfall?
- What would the outcome be if this appropriation is rejected by the Town bodies?
- What would the costs be for hiring a construction manager and what are the responsibilities of such a person?
- Please include a legal opinion from the Town Attorney on the soil issue to be discussed in a BOF Private Executive Session.

Mary LeClerc

- Please include a summary of what changed from the original approval by the BOF until now.
- Please document what has changed from the original budget until now?
- Are there any outstanding bills in addition to what was presented by Mr. Tetreau in his power point presentation on Monday evening?
- What is the status of the Black Rock Realty (BRR) foreclosure?  
Mr. Flatto informed the Board that the bank has given BRR full release from the foreclosure.
- What are the options to scale back the project if costs go over \$28M as stated in the minutes of the Board of Finance June 1, 2010 meeting?
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James Brown

- What is the status of the Town's share of the parking fees for the new train station?  
Mr. Tetreau stated that the original agreement was that the State would be paid for the costs of operating the station, the Town would receive \$300,000 per year for 20 years (to repay the \$6M the Town put into this project), and the State would receive any remaining

parking fees. Mr. Tetreau stated that the revised agreement from April 2010 now has the Town as the last entity to receive any of the parking fee income, if there is any available.

- Are there outstanding invoices and or work that cannot be paid if this appropriation is not passed?
- What are the operating costs for the Fairfield Parking Authority at the downtown station?  
Mr. Flatto stated that perma estimates can probably be developed from the Fairfield Parking Authority data.
- Please include a list of soil removal options.  
Mr. Tetreau stated that the estimates range from \$0 to \$2M. Mr. Tetreau stated that if the soil can remain on the site, the cost could be negligible. Mr. Tetreau reported that, at present, there is 12,500 cubic yards of contaminated soil on site.  
State Senator John McKinney informed the Boards that he has spoken to the DEP about possible solutions to the soil issue. Senator McKinney reported that the DEP has a list of sites that are looking for fill and some of the problem soil from this project may be allowable to be used in those sites. Senator McKinney said he would call the DEP tomorrow and follow-up with Mr. Tetreau and provide Mr. Tetreau with any updated information he may receive.

Thomas Flynn

- Mr. Flynn requested that a perma P&L regarding parking revenue be developed from the Fairfield Parking Authority Data.
- What form of reports were provided by STV Engineering at weekly or any other meetings?  
Mr. Flatto stated that STV provided all financial reports to the State and Mr. Barnhart.

Chairman Flynn informed the Boards that former First Selectman Ken Flatto was asked to come to this meeting to help answer questions concerning this project.

Mr. Flatto stated that the rating agencies see this project as a huge benefit to this town's growth and they are looking forward to its completion. Mr. Flatto distributed a history of the project over the last 10 years that he put together for the Boards. Mr. Flatto stated that the Town is a junior financial player in this transaction. Mr. Flatto also stated that he had no information 2 months ago on this problem and the overage and he stated that the project was \$2M under budget this past winter. Mr. Flatto reported that Mr. Barnhart had made him aware of a small amount of contaminated soil on the site just before he resigned as First Selectman, but at that time, Mr. Flatto was under the impression that the amount was minor in scope. Mr. Flatto also reported that, in early April, he was made aware that the project only had \$300K in underage remaining due to the discovery of the contaminated soil. Mr. Flatto also reported that Guerra Construction, at that time, could not state of the \$300K was enough to cover the remaining costs for the contaminated soil problems.

Mr. Bellitto, Jr. expressed his concern that the Town Attorney interpreted the State's reference to attorney/client privilege as only the First Selectman could be privy to the relevant facts with the complete omission of the Chief Financial Officer.

Mr. Kiley asked why the Town Attorney and the Assistant Town Attorney are not present at this meeting.

Mr. Hiller reported that Attorney Saxl had a prior commitment.

Mr. Tetreau stated that he will make sure the Town Attorney and the Assistant Town Attorney are present at all future meetings.

Chairman Flynn stated that apparently mitigation steps were not taken and a full review of the project by an independent third party source needs to be done.

2. To discuss and act upon the retention of an Independent Auditor to conduct a review of the accounting and financing of the Fairfield Metro Center Project since inception.

Chairman Flynn stated that he would like to have the review contain the following information:

1. a complete flow of funds from inception until today
2. level and timing of expenditures to date including a list of vendors and payments to date to the vendors
3. payments made in accordance with the Bond Resolution and reaffirm the current funding status of the project through May 2011 with June 2011 commentary
4. internal reporting structure
5. recommend controls or reporting improvements

Chairman Flynn also requested that Mr. Centofani share the reports directly with the BOF subcommittee and the subcommittee will, in turn, share all of the reports with the BOS and the RTM. Chairman Flynn reported that the BOF subcommittee will consist of Mr. Kiley, Mr. Brachfeld, and Mrs. LeClerc.

Mr. Brachfeld asked if this work could be accomplished in a timely fashion. Mr. Tetreau stated that it would probably take most of the month of July to gather all of the information needed and therefore he would expect a completion date of late July.

Mr. Kiley asked Mr. Centofani to please get the diligence list to the Town as soon as possible for the report.

Mr. Hiller stated that Mrs. Gardiner and Mrs. Nolfi from the Finance Department would be available to assist with this effort.

Chairman Flynn discussed the timing details with the Boards. Chairman Flynn noted that the appropriation needs to be taken from the FY 2010-2011 funds and it is his hope to have the appropriation by July 7<sup>th</sup>. Chairman Flynn stated that the BOF can make the motion for the appropriation without waiting for the BOS to initiate it and pass it on to the BOF. Chairman Flynn stated that there has been a precedent set for this in the past so there is no issue with the appropriation being initiated in this manner.

#### PUBLIC COMMENT

Roger Autuori 1310 Melville Avenue, Fairfield

- What escrow funds are still available?

George Bisacca 472 Old Mill Road, Fairfield

- There should be a separate audit as to State/town and Town/developer portions
- The closing statement between the Town and the developer states that the developer has the responsibility for capping the soil, the Town is not responsible for that portion.

Ms. Cassidy 8 Memory Lane, Fairfield

- There is a difference between a construction manager and a project manager and she has heard both terms mentioned to night so she urges the Boards to define which one is needed.
- A performance bonus can be paid either at substantial completion or at post punch list.
- There is software available for project reporting that is very useful.

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Kristen McCarthy-Vahey RTM

- Thanked the Boards for their rapid response to this situation and the RTM will work closely with all the other boards to see this to completion.

James Basery 691 Fairfield Beach Road, Fairfield

- Is the Town responsible for cost overruns?

Pamela Iacono 68 Phyfe Road, Fairfield

- Thanked the Board for taking over this situation.
- She expressed her concern that due to this issue, the BOF might need to delay capital projects.

**Mr. Flynn moved and Mr. Bellitto, Jr. seconded to establish independent agreed upon audit procedures of the Metro Center project, such audit to be conducted by the Town's outside auditors and prepare a report by the end of July 2011 to the Board of Finance subcommittee, such work to cost an amount not to exceed \$20,000, to be paid from Contingency funds budgeted for fiscal year ending June 30, 2011.**

**Motion passed unanimously.**

**Mr. Flynn moved and Mr. Bellitto, Jr. seconded to establish a subcommittee of the Board of Finance to manage this process from inception to date consisting of Mr. Kiley, Mr. Brachfeld, and Mrs. LeClerc.**

**Motion passed unanimously.**

The meeting was adjourned at 7:45 p.m.