

**MINUTES OF THE REGULAR MONTHLY MEETING OF THE TOWN OF FAIRFIELD
JULY 26, 2010**

The Regular Monthly Meeting of the Town of Fairfield was held on Monday, July 26, 2010, at the Education Center, 501 Kings Highway East, Fairfield, Connecticut.

The meeting was called to order at 8:20 P.M. by Moderator Jeffrey Steele.

PRESENT: 36 ABSENT: 14 VACANCY: 0

PRESENT: Becker, Herley, Richmond, Ambrose, A. Harrison, Steele, Stewart, Varian, Bateson, Conley, Ference, McCullough, Santalesa, DeMartino, Hug, Palmer, Gall, Garskof, Stamler, Brogan, Vahey, Cullen, Hoffkins, Llewellyn, Lynch, Braun, Kelly, McCarthy, Takami, Dillon, Felner, McGinty, Millington, Farnen, Mears, Way

ABSENT: Challinor, Sundman, R. Parker, S. Parker, McAleese, Smey, Kupchick, Luciano, Marmion, Schwartz, Hoffmann, Mirabile, E. Harrison, Rubino

ITEM NO. 1 ON CALL: PLEDGE OF ALLEGIANCE AND A MOMENT OF SILENCE

The Moderator introduced Fairfield Warde High School Valedictorian Mary Schulman to lead the Body in the Pledge of Allegiance and Moment of Silence. The Moderator also mentioned Fairfield Ludlowe Valedictorian Luke Carter who was not able to attend this evening. The Moderator asked those present to keep in their thoughts the late Grace Dickman, the wife of former State Rep Carl Dickman; and Bridgeport Firefighters Michael Baik and Lt. Steven Velazquez, both of whom died this week in the line of duty.

The Moderator reminded members to inform the Town Clerk if they leave before adjournment.

ITEM NO. 2 ON CALL: TO CONSIDER AND ACT UPON THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 28, 2010

Upon motion made, duly seconded and carried unanimously, the minutes of the previous meeting were approved as distributed.

ITEM NO. 3 ON CALL: TO HEAR A REPORT FROM THE FIRST SELECTMAN ON THE FAIRFIELD THIRD TRAIN STATION AND METRO CENTER PARKING AND SITE INFRASTRUCTURE PROJECT

First Selectman Ken Flatto reported that the construction contract in the amount of \$20,173,000 had been awarded.

Kathy Braun, District 8, asked if the Conservation Department had been restored to oversee the project.

Mr. Flatto said that the conservation permitting process is under the purview of the Conservation Commission, not of the RTM.

MOTION: Jamie Millington, District 9, moved to take Item 10 on the agenda out of order, duly seconded and carried unanimously.

ITEM NO. 10 ON CALL: RESOLVED, THAT THE EXECUTION OF A QUIT CLAIM DEED AND THE ASSOCIATED AGREEMENT REGARDING CERTAIN PROPERTY ADJACENT TO 2316 POST ROAD BE, AND HEREBY IS, APPROVED

The Moderator advised that this item had been referred back to Legislation & Administration by the RTM at the previous meeting for further recommendations due to pending litigation.

L&A Chairman Ed Bateson said that the attorneys involved in the adjacent properties had been in discussion to settle their differences and the L&A Committee was going to recommend postponing this item for a few months. This evening it was made known that a settlement could not be reached and therefore, the L&A Committee has no recommendation.

Mark McGinty, District 9, spoke in favor of the resolution, calling it a win/win/win situation. The Town would receive \$50,000 for the parcel, indemnity in the lawsuit and the owners would pay taxes on it.

Josh Garskof, District 5, said that we do not have enough information to vote on this item at this time.

Ed Bateson, District 3, reminded the Body that this item had been referred to all standing committees last month.

Mr. Millington advised that all the parties involved are present this evening so that any questions could be answered.

Carolyn Richmond, District 1, asked if anyone else had asked to purchase this property from the Town.

Tom McCarthy, District 8, asked for the terms of indemnification being offered by the purchasers.

Town Attorney Richard Saxl deferred to Atty. Alan Spirer who represents Martels Restaurant.

Atty. Spirer said that his clients will defend the Town's interest in the lawsuit at no cost to the Town.

MOTION: Mr. McCarthy moved to amend the resolution by adding, after "quit claim deed," the following phrase, "to hold harmless and indemnify the Town of Fairfield with respect to any pending legal action commenced as a result of the approval of this item," duly seconded.

Kathy Braun, District 8, asked that the lawsuit be explained.

Atty. Spirer explained that Invest II is the contract purchaser of the Exide property and claims that the property under discussion is a former town road that has been abandoned so that they own up to the center of the road and Martels owns the other side. Martels intends to clear any claim of property from the Town by paying \$50,000 for the property.

VOTE: The motion to amend the resolution by adding the indemnification clause was approved with 35 in favor, 1 abstention (Garskof).

Ann Stamler, District 5, asked the Town Attorney if he felt that this resolution was in the best interest of the Town.

Town Atty. Saxl said that he felt it was the Town's duty to get the involved parties together to reach a resolution. Holding this item in abeyance will not help anybody.

Ms. Stamler asked that the other party be heard from.

Atty. Joel Green, who represents Invest II, said that this item has been involved in litigation for several years. If the property is determined to be a public road, the Town may not sell the property but abandon it. The lawsuit asks Superior Court to determine ownership of the property. The Town must ask itself what the property is worth. He wondered how this agreement came to pass. Exide and Invest II would pay more for this property. He also noted

that in accordance with §8-24 of the General Statutes, TPZ must review such a property transfer and make a recommendation to the RTM.

Ms. Braun asked if Invest has a right to bid on the property, since it is only in contract to purchase Exide.

Atty. Green said that Invest II has as much right to offer to purchase the property as any other entity who wishes to purchase property from the Town. Nobody has ever paid taxes on this property. If it is a town road, there is a process in place for abandoning it.

First Selectman Flatto said that there is a dispute over whether the property is a road at all and there has been no substantive discussion over the consideration being offered for the property.

Atty. Spierer noted that upon approval of the resolution, the Town is disposing of the disputed claim, not disposing of the property. The agreement would get the Town out of the pending litigation.

Board of Finance Chairman Tom Flynn noted that the Town is not currently collecting taxes on this property.

Atty. George Lindardos who represents 2316 Post Road LLC, the owner of Martels Restaurant, said that he has determined this is not a town road after eleven months of diligent research. He did an heir search dating back to 1840 and has acquired any interest heirs may have in the property. There is no conveyance of the property in the land records and the Town does not maintain the road. There is a sewer hookup on the property and the owners intend to convey a sewer easement to the Town.

Atty. Green urged the Body to deny the contract and put the rights to purchase the property up for sale at a public auction for a fair price. He noted that in 1951, the RTM abandoned half of the road and the claim of rights to the property are disputed. This has not been a fair and open process and other entities are willing to pay more than \$50,000.

Mr. Bateson asked if it is a town road or a public right of way.

Town Atty. Saxl said that in his opinion it is a town road. It does not require a §8-24 referral.

Mr. Bateson asked if there are processes in place.

Atty. Saxl said that the purchaser of the property did not wish to avail himself of §8-24.

Peter Ambrose, District 2, asked what is in the best interest of the Town.

Atty. Saxl said that this is a complicated issue involving a disputed claim. We need to maximize the value of the land. He asked that a §8-24 hearing be done but Atty. Lindardos did not want it.

Mr. Millington asked what would have the least amount of cost to the taxpayers and minimize our exposure to a lawsuit.

First Selectman Flatto said that the Board of Selectmen took discussion of this item as far as it wanted. Both sides have honorable intentions.

Mr. Millington asked what would happen if Martels lost half of their parking lot.

Atty. Spierer said that it would be a substantial detriment to the property. He said he intends to defend the litigation vigorously.

Mr. Millington said approval of this item supports small business and offers the least cost to the taxpayers. He urged the Body to vote in favor.

MOTION: Mr. McGinty moved the question, duly seconded and carried with 25 in favor, 11 opposed (Varian, Conley, Bateson, Garskof, Gall, Stamler, Vahey, Cullen, McCarthy, Dillon, Mears)

VOTE: The resolution to quit claim property adjacent to 2316 Post Road, as amended, was approved with 23 in favor, 12 opposed and 1 abstention.

IN FAVOR: Herley, Richmond, Ambrose, A. Harrison, Stewart, Varian, DeMartino, Hug, Palmer, Gall, Stamler, Brogan, Llewellyn, Braun, Kelly, McCarthy, Takami, Felner, McGinty, Millington, Farnen, Mears, Way

OPPOSED: Becker, Steele, Bateson, Conley, Ference, McCullough, Santalesa, Vahey, Cullen, Hoffkins, Lynch, Dillon

ABSTAINED: Garskof

CONSENT CALENDAR

The Moderator reported that Items 5 and 6 were eligible for the Consent Calendar.

VOTE: Items 5 and 6 were approved by unanimous voice vote.

ITEM NO. 4 ON CALL: REAPPOINTMENT OF GEORGE F. LACOVARA TO THE ETHICS COMMISSION

The Moderator moved this item as distributed with the Call, duly seconded.

**See Committee Reports Attached Hereto and Made a Part Hereof.

VOTE: The reappointment of Dr. Lacovara to the Ethics Commission was approved with 30 in favor, 6 opposed (Becker, Herley, A. Harrison, Bateson, DeMartino, Braun).

ITEM NO. 5 ON CALL: APPOINTMENT OF DEBORAH ZIEFF TO ETHICS COMMISSION

This item was on the Consent Calendar. Ms. Zieff was present.

ITEM NO. 6 ON CALL: REAPPOINTMENTS OF DONALD C. DIMARTINO; JAMES PESCI; WILLIAM SAPONE; AND RICHARD SPECIALE TO THE TOWN FACILITIES COMMISSION

This item was on the Consent Calendar.

ITEM NO. 7 ON CALL: RESOLVED, THAT A CERTAIN CONTRACT NEGOTIATED BY AND BETWEEN THE TOWN OF FAIRFIELD AND THE UNITED PUBLIC SERVICE EMPLOYEES UNION (UPSEU) UNIT #222 (TOWN HALL EMPLOYEES) CONCERNING CONDITIONS OF EMPLOYMENT FOR THE PERIOD ENDING JUNE 30, 2010 BE, AND HEREBY IS, AMENDED, IN THE MANNER DESCRIBED IN THE ATTACHED MEMORANDUM OF AGREEMENT SO AS TO MAKE THE CONTRACT EFFECTIVE THROUGH JUNE 30, 2013 AND TO INCORPORATE CERTAIN OTHER CHANGES REGARDING WAGES, HOURS AND OTHER MATTERS

The Moderator moved this item as distributed with the Call, duly seconded.

**See Committee Reports Attached Hereto and Made a Part Hereof.

Ed Bateson, District 3, said he is not in favor of this contract. He is opposed to the long-term liabilities of post-retirement benefit costs and said that the Town should be moving toward defined-contribution packages.

Carolyn Richmond, District 1, said that we are in unusually uncertain times and she is opposed to making a multi-year contract commitment which we might not be able to afford. She agreed that we need to look toward defined-benefit packages.

Peter Ambrose, District 2, concurred with the previous speakers regarding post retirement benefits. He said the administration had been put on notice by the RTM several months ago before contract negotiations. He is not satisfied with the result.

Tom McCarthy, District 8, said it was known previously that post-retirement benefits would be an issue. Corporations addressed this issue 15 years ago. Defined benefits are long overdue. He asked who made the decision not to address moving toward contributions.

Town Attorney Richard Saxl introduced Atty. Donald Houston, outside counsel for the Town to handle contract negotiations.

Atty. Houston said that the decision had been made to make the proposals for a 403B plan, the equivalent of the 401K for the public sector, but the negotiating team was unable to get the union to agree. Stronger post employment agreements had been sought after but an agreement could not be reached.

Mr. McCarthy asked if discussion about defined contribution packages for new employees was on the table, since it could be introduced in binding arbitration if it was.

Atty. Houston said that arguably, it could be introduced in binding arbitration.

William Llewellyn, District 7, said that employee costs have gone from \$22 million to \$36 million in ten years. He asked if anyone is looking down the road.

Atty. Houston said that if the contract is rejected it would be in arbitration. If the RTM rejects the contract, defined benefits would not necessarily be discussed. It is not up to the RTM to decide what will be brought up in arbitration.

Mr. Bateson asked if defined contributions were discussed in negotiations, would it be able to be opened by an arbiter.

Atty. Houston said that it would depend on what issues the Town wants to bring in. It would be up to the First Selectman and the negotiating committee.

Cristin McCarthy Vahey, District 6, asked if other towns have defined contribution plans.

Atty. Houston said that the great majority of other municipalities have a standard pension plan. A shift is starting toward defined contribution plans for new employees on a limited scale.

Ms. Vahey said that this is a serious issue and that people are frustrated and upset. We should continue to address this issue and she intends to approve the contract tonight.

Tim Lynch, District 7, asked how important a defined benefit plan is as we move forward.

Board of Finance Chair Tom Flynn said that a study has not been conducted to see what impact a 401K would have. The Board of Finance implemented several steps to move forward with a proposal for a study. There is no complete financial analysis over a 30 year obligation.

First Selectman Flatto said that bargaining is incremental and that the Town chose to use outside counsel in order to take a more far-reaching approach. Proposals must be prioritized. This would have the least cost impact over 50 years. The benefits for town employees are higher because historically the pay has been less. That is beginning to change. We are not adding costs; these are existing benefits. We were asked to seek changes for new employees, not the current employees.

David Becker, District 1, said that we need to look at long-term solutions. The Board of Finance study was not conducted about whether there would be cost savings.

Joe DeMartino, District 4, said that it is a conflict of interest that the Board of Finance is not involved.

First Selectman Flatto said that state statutes give the chief administrative officer of the municipality the right to negotiate contracts. He reminded the Body that this year he requested outside help.

Board of Finance member Rob Bellitto said that he did not serve on this particular negotiating team but the concerns of the Board of Finance were discussed, such as pension and OPEB liabilities and short- and long-term goals. He would like to have seen the study over whether 401K is cheaper than a pension but it was not done.

Mr. DeMartino asked how many employees would take advantage of the voluntary 401K program.

First Selectman Flatto said that addressing pension obligation costs are high on the list of priorities. It will be the major focus of discussions for every contract over the next decade. We are not adding new employees at present since there is a hiring freeze.

Tom McCarthy, District 8, said that nobody is talking about taking benefits away that were already earned. But we need to address costs for new employees.

Ann Stamler, District 5, said she agrees about concerns for future obligations. We can not assure that new employees would turn down the 401K plan option. She asked what will happen if the RTM votes against the contract.

Atty. Houston said that we would go back to negotiating as long as we are within the 30 days in which the contract must be approved. The last best offer for each disputed issue will go into interest arbitration.

MOTION: Alexis Harrison, District 2, moved the question, duly seconded and carried with 28 in favor, 8 opposed (Becker, Conley, Palmer, Garskof, Brogan, Vahey, Cullen, Mears)

VOTE: The resolution to approve the THEA contract failed with 10 in favor, 25 opposed and 1 abstention.

IN FAVOR: Herley, McCullough, Hug, Garskof, Stamler, Brogan, Vahey, Cullen, Hoffkins, Way

OPPOSED: Becker, Richmond, Ambrose, A. Harrison, Steele, Stewart, Varian, Bateson, Ference, Santalesa, DeMartino, Palmer, Gall, Llewellyn, Lynch, Braun, Kelly, McCarthy, Takami, Dillon, Felner, McGinty, Millington, Farnen, Mears

ABSTENTION: Conley

MOTION: Tim Lynch, District 7, moved to suspend the rules in order to discuss items after 11:00 P.M. and to take up new business after 11:30 P.M., duly seconded and carried with 34 in favor, 2 opposed (DeMartino, Mears).

ITEM NO. 8 ON CALL: RESOLVED, THAT A CERTAIN CONTRACT NEGOTIATED BY AND BETWEEN THE TOWN OF FAIRFIELD AND THE FAIRFIELD FIRE UNION, LOCAL 1426, CONCERNING CONDITIONS OF EMPLOYMENT FOR THE PERIOD ENDING JUNE 30, 2010 BE, AND HEREBY IS, AMENDED, IN THE MANNER DESCRIBED IN THE ATTACHED MEMORANDUM OF AGREEMENT SO AS TO MAKE THE CONTRACT EFFECTIVE THROUGH JUNE 30, 2013 AND TO INCORPORATE CERTAIN OTHER CHANGES REGARDING WAGES, HOURS AND OTHER MATTERS

The Moderator moved this item as distributed with the Call, duly seconded.

**See Committee Reports Attached Hereto and Made a Part Hereof.

Mr. Bateson said that language regarding additional dependents was unclear.

First Selectman Flatto said that under the new contract, new dependents would not be covered after retirement applies to new employees.

Art Hug, District 4, said that historically, Firefighters have been the leader in negotiations among town employees. He pointed out that neither side is happy about concessions made. This is a reasonable contract and he urged approval.

Joe DeMartino, District 4, said that although the Town is grateful for the hard work the firefighters do, we need to be fiscally responsible.

Bill Llewellyn, District 7, said that this contract will cost more down the road due to retirees' benefits.

David Becker, District 1, said that we are not attacking a particular group of town employees; we are looking at town employees as a whole. He said he is upset with the way the administration handled negotiations. We need to be concerned about whether the town is looking into taking a long-term approach.

Board of Finance member Ken Brachfeld urged denial of the contract because of the long-term uncertain liabilities under the pension and insurance benefits.

Fire Chief Richard Felner said that the contract is fair and he urged support.

Firefighter Union President Bob Smith said that as a taxpayer he understands we are facing difficult times. The Union has been proactive and has tried to address the concerns of the Body.

Lou Zuckerman, Curtis Terrace, urged the Body to vote no.

Joe Gall, District 5, spoke in support of the firefighters and said he would not be standing here this evening if it had not been for them.

MOTION: Ms. Stamler moved to waive the re-reading of the item, duly seconded and carried unanimously.

VOTE: The resolution to approve the Firefighters' contract failed with 12 in favor, 22 opposed and 2 abstentions.

IN FAVOR: Herley, Conley, McCullough, Hug, Gall, Garskof, Stamler, Brogan, Vahey, Cullen, Hoffkins, Way

OPPOSED: Becker, Richmond, Ambrose, A. Harrison, Steele, Stewart, Varian, Bateson, Santalesa, DeMartino, Palmer, Llewellyn, Braun, Kelly, McCarthy, Takami, Dillon, Felner, McGinty, Millington, Farnen, Mears

ABSTENTION: Ference, Lynch

ITEM NO. 9 ON CALL: TO HEAR, CONSIDER AND ACT UPON AN AMENDMENT TO ARTICLE II (SOLAR ENERGY), CHAPTER 95 OF THE FAIRFIELD TOWN CODE ENTITLED, "TAXATION," AS SPONSORED BY JEFF STEELE, DISTRICT 2; CHAD STEWART, DISTRICT 2; JOSHUA GARSKOF, DISTRICT 5; AND DAVID CULLEN, DISTRICT 7. A COPY OF THE PROPOSED ORDINANCE, AS AMENDED, IS ATTACHED

The Moderator moved this item as distributed with the Call, duly seconded.

**See Committee Reports Attached Hereto and Made a Part Hereof.

Jeff Steele, District 2, called the ordinance a win/win for the Town and taxpayers.

MOTION: Mr. McGinty moved the question, duly seconded and carried with 34 in favor, 2 opposed (Becker, Mears).

VOTE: The amendment to the taxation ordinance regarding solar energy was approved by unanimous voice vote.

ADJOURNMENT

There being no further business and upon motion made, duly seconded and carried unanimously, the meeting was adjourned at 11:05 P.M.

Respectfully submitted,

Elizabeth P. Browne
Town Clerk

Recorded by: Ann Roche