

**MINUTES OF THE REGULAR MONTHLY MEETING OF THE TOWN OF FAIRFIELD
OCTOBER 24, 2011**

The Regular Monthly Meeting of the Town of Fairfield was held on Monday, October 24, 2011, at Osborn Hill Elementary School, Fairfield, Connecticut.

The meeting was called to order at 8:00 P.M. by Moderator Jeff Steele.

PRESENT: 41 ABSENT: 9 VACANCY: 0

PRESENT: Becker, Challinor, Herley, Richmond, Ambrose, Jones, Steele, Varian, Bateson, Conley, Ference, McCullough, Santalesa, DeMartino, Hug, Palmer, Garskof, McAleese, Smey, Stamler, Brogan, DeSanctis, Dyer, Marmion, Vahey, Hochberg, Hoffkins, Llewellyn, Schwartz, Braun, Harrison, Hoffmann, McCarthy, Takami, Dillon, Felner, McGinty, Millington, Mirabile, Cafferelli, Mears

ABSENT: Sundman, Stewart, Farnen, R. Parker, S. Parker, Gall, Lynch, Rubino, Way

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

The Moderator acknowledged those members of the Body who were not running for reelection in November, and asked those present to keep in their thoughts the memory of long-time Zoning Board of Appeals Chairman Robert J. Brennan, Jr., who passed away this week.

ITEM NO. 2 ON CALL: APPROVAL OF MINUTES

Upon motion made, duly seconded and carried unanimously, the minutes of the previous meeting held on September 26, 2011 were approved as submitted.

MOTION: Jamie Millington, District 9, moved to suspend the rules in order to take item 8 out of order, duly seconded and carried unanimously.

ITEM NO. 8 ON CALL: RESOLVED, THAT THE BOND APPROPRIATION ENTITLED, 'A RESOLUTION APPROPRIATING \$901,467 TO FUND A ROOF WARRANTY EXTENSION PROGRAM AT SHERMAN, NORTH STRATFIELD, OSBORN HILL, RIVERFIELD, AND HOLLAND HILL ELEMENTARY SCHOOLS AND AUTHORIZING THE ISSUANCE OF BONDS TO FINANCE SUCH APPROPRIATION,' CONSISTING OF THREE PAGES, A COPY OF WHICH IS ATTACHED HERETO, BE, AND HEREBY IS, APPROVED

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

**See Committee Reports Attached Hereto

Mr. Millington asked why the Town Facilities Commission recommended against this proposal.

TFC Chairman Al Kelly said that several members have expertise in roofing projects, and that this is an extraordinary amount of money to spend, instead of repairing a roof when it becomes necessary. The contractor drives the cost in this proposal.

Kathy Braun, District 8, said that she does not see this as an emergency situation. She asked if the price of a new roof is \$26 per square foot.

Mr. Kelly said that in a worst-case scenario, the price is approximately \$26.50 per square foot.

MOTION: Tom McCarthy, District 8, moved to postpone this item until the next regularly scheduled meeting, duly seconded.

Mr. McCarthy said that there are two groups of experts who disagree about the necessity of this project. An analysis should be conducted about whether the warranty is worth it.

Hal Schwartz, District 7, said that this is our last meeting of the term and we should make a decision. He does not support postponing this item.

Ed Bateson, District 3, spoke in favor of postponing because a decision made tonight would not be an informed decision. The TFC made excellent valid points.

Josh Garskof, District 5, said that postponing this item may not get us anywhere. We have asked for analyses on other requests that were postponed and have not received answers.

Cristin McCarthy Vahey, District 6, asked what the process would be to get better numbers.

Mr. Kelly said that the TFC wants to go up on the roofs and get an estimate on what needs to be repaired.

Ms. Vahey said that she is not sure she can support postponing this item.

Patti Dyer, District 6, said that the Board of Education requested this bond package and that all questions were directed to the TFC who rendered an opinion. She asked why it is necessary for them to go up on the roofs.

Superintendent of Schools David Title said that Tecta, the contractor, intends to go up on the roofs and make the recommendation on necessary repairs.

Ms. Dyer said that we need to define a process. She asked if the TFC can provide additional information without spending money.

Mr. Kelly said that the commission members could offer opinions, but an expert evaluation could not be made without funding.

Ms. Dyer said that she is opposed to postponing this item and said it should be voted on tonight.

Michael Mears, District 10, spoke against postponing this item.

Carolyn Richmond, District 1, said that the figure given in the request is the maximum, upper ceiling number, and that is not the way we want to see the numbers.

Nick Mirabile, District 9, said that we are looking at spending \$1 million to buy a warranty because the warranty has expired, yet the figure is 16 percent of the replacement cost for North Stratfield alone, instead of a two year extension. He said he has enough information to vote on this now and it should not be postponed.

Liz Hoffmann, District 8, asked why this request was not in the Board of Education's capital improvement budget.

Dr. Title said that this was approved by the Board of Ed in March and it had been postponed several times. It is included in the long range facilities plan.

Ms. Hoffmann said that it should have been in the budget. She said she agreed with Mr. Mirabile. Residents are concerned about their taxes and we should vote on this tonight.

Mary McCullough, District 3, asked what portions of the roofs we are replacing. She asked if any of the roofs are leaking and how much it would cost to get a better indication of the work that needs to be done.

Dr. Title said that all of the roofs are leaking. The roof portfolio and cost summary documents were distributed.

Ms. McCullough said that only funding to get a better estimate should be approved.

Fiscal Officer Paul Hiller pointed out that the Board of Finance determines the method of financing and that the RTM cannot pull out a portion of funds to be used. There is no method for changing the resolution.

Ms. McCullough said that the item should not be postponed; we should vote yes or no tonight.

Joe Palmer, District 4, said that preventative maintenance programs are successful. We have one proposal before us, which the TFC says may not be the best way. It is reasonable to postpone this item for a month.

Ms. Vahey asked if Dr. Title could get better figures without spending funds.

Dr. Title said that funding would be necessary. The scope of the project is outlined in the packet.

Mr. McCarthy said that he supports the warranty if it is a good deal. We do not know if it is a good deal, so it should be postponed.

VOTE: The motion to postpone the bonding resolution for a roof warranty extension program was approved with 23 in favor, 17 opposed (Mr. Llewellyn was not present to vote).

IN FAVOR: Becker, Challinor, Herley, Richmond, Ambrose, Jones, Steele, Bateson, Ference, Hug, Palmer, Garskof, DeSanctis, Vahey, Hoffkins, Braun, Harrison, McCarthy, Takami, Felner, McGinty, Millington, Cafferelli

OPPOSED: Varian, Conley, McCullough, Santalesa, DeMartino, McAleese, Smey, Stamler, Brogan, Dyer, Marmion, Hochberg, Schwartz, Hoffmann, Dillon, Mirabile, Mears

MOTION: Mr. Millington moved to suspend the rules in order to take items numbered 4 and 5 out of order, duly seconded and carried with 33 in favor, 7 opposed (McCullough, Stamler, Vahey, Dyer, Hochberg, Hoffkins, Schwartz) (Mr. Llewellyn was not present to vote).

ITEM NO. 4 ON CALL: REPORT FROM THE JOINT RETIREMENT INVESTMENT BOARD

Mr. Bateson asked if the \$1 million that Pequot owes us is retrievable.

Fiscal Officer Paul Hiller said that the Pequot Capital Hedge Fund in Wilton disbanded in 2009. We have received ninety percent of the money back but the reporting has been sporadic. We should see the full liquidation of funds by the end of the fiscal year.

Michael Mears, District 10, asked if the mortgages are agency or non-agency.

Mr. Hiller said that he is not sure because the holdings are not being divulged. We are receiving payments three or four times a year.

Mr. Mears asked about gaps in controls that do not conform to investment guidelines.

Mr. Hiller said that the guidelines were done in 2009 by Valuation Associates, which was taken over by Callum Associates. Callum would be making updated recommendations.

Chris Brogan, District 6, asked if a summary report of potential conflicts of interest would be made available.

Mr. Hiller said that all 15 members of the Joint Retirement Board have signed affidavits.

ITEM NO. 5 ON CALL: REPORT FROM THE DIRECTOR OF PUBLIC WORKS ON THE
STATUS OF THE FUEL TANK REMOVAL PROJECT AT FIRE
STATION #1, REEF ROAD

Fiscal Officer Paul Hiller reported that funds left over from a tank removal project at Firehouse #5 were used to begin the project of removal of a tank at Station #1 that has been leaking. He said there is a major leak in the diesel fuel tank. The estimate is higher than the current appropriation and will require additional funding. The short term intent is to expense this in the DPW budget and then come back for an appropriation at a future date.

ITEM NO. 3 ON CALL: REPORT FROM THE FIRST SELECTMAN ON THE METRO CENTER
PROJECT

First Selectman Michael Tetreau distributed a report (attached). He reported that the station opening date has been pushed back to December 1. There are fewer parking spaces than originally thought because taxis, buses and handicap spaces took more room.

Mike Herley, District 1, asked how many parking permits would be sold. The Parking Authority oversells by one and half permits at the downtown station. Losing 200 parking spaces is a net loss of 600 permits.

Mr. Tetreau said he would look into how many permits the state intends to sell.

Mr. Bateson indicated that page 13 of the report notes there was a caveat that we had to finish the project by October 31 and now it said we will finish on November 13. He asked if the grant is in jeopardy.

Mr. Tetreau said that the October 31 date refers to one project of finishing the parking lot.

Mr. Bateson asked about the utility easement, to which Mr. Tetreau replied we are facilitating the easement.

David Becker, District 1, asked if there is a breakout of how close we are to \$3 million, because it was \$2 to \$3 million.

Mr. Tetreau said that he sat down with the State and discussed specific activities and we are being reimbursed at 100 percent.

Kathy Braun, District 8, asked if the grant agreement is being disputed.

Mr. Tetreau replied no, that it is the same as in August.

Selectman Jim Walsh asked if construction would be complete by November 13.

Mr. Tetreau said that Guerrero would not be done by November 13.

Mr. Walsh asked if a penalty would be incurred, to which Mr. Tetreau responded no.

Mr. Walsh asked if there were any negotiations with Blackrock Realty.

Mr. Tetreau said the Town is not part of the negotiations.

Atty. Vitarelli from McCarter and English gave a report on his firm's legal analysis of the 2010 agreements signed by former First Selectman Ken Flatto.

Mr. Bateson asked if anything was discussed in Monday's Board of Selectmen Executive Session relating to tonight's discussion, to which Mr. Tetreau replied no.

Mr. Bateson said that Town Attorney Richard Saxl made a very strong statement at the Board of Selectmen meeting during which he had asked if the Board is authorized to enter into the agreement. He said he made a blatant misrepresentation by saying that the state attorney general was aware of the agreement. He asked if there is a video record of that meeting.

Atty. Vitarelli said FairTV recorded the meeting in question. He said that the agreements were ratified by the non-action of the town boards at the time. Since town boards did not try to override the agreements at the time they were signed, the agreements are effective. They cannot be invalidated because they are now valid.

Mr. Bateson asked if there is something the RTM needs to do to waive the agreement.

Atty. Vitarelli said that he was not asked to look at that.

Mr. Bateson asked if Atty. Saxl was included in any discussions related to this topic.

Mr. Tetreau said that Atty. Saxl is currently involved in 170 tax appeals and is transitioning out.

Mr. Bateson asked about earlier versions of the report. The RTM asked for this legal analysis and should be allowed to see the first version, noting that this is the fourth.

Mr. Tetreau said that this analysis was initiated by the Board of Selectmen.

Mr. Bateson said that the RTM is entitled to see the first report, not the version seen through the First Selectman's eyes.

Atty. Vitarelli said that this issue had been addressed at the Board of Selectmen meeting. He reached his own conclusions and only facts were verified.

Mr. Bateson said he just wants to see the first version.

MOTION: Peter Ambrose, District 2, moved to suspend the rules in order to convene past 11:00 P.M. and take up new business after 11:30 P.M., duly seconded and carried unanimously.

Ms. Braun asked if we will receive the earlier drafts of the report.

Atty. Vitarelli said that the drafts are privileged and the First Selectman is asking the assistant town attorney for an opinion on whether they can be released.

Ms. Braun asked which assistant town attorney is addressing the question, to which Mr. Tetreau replied Eileen Kennelly.

Ms. Braun asked who the Town Attorney is, to which Mr. Tetreau replied there is currently a vacancy.

Ms. Braun asked if there is a written opinion as to whether the drafts are privileged.

Mr. Tetreau said there is a written opinion and he will e-mail it tomorrow.

Ms. Braun asked if McCarter English were requested to not supply the legal analysis until after the additional appropriation was requested and approved when they were hired.

Mr. Tetreau said that both attorneys were hired expeditiously in July. We needed to hire a firm that had never been hired by the Town previously. He did not ask them to delay their reports, and both attorneys worked independently.

Ms. Braun said that the RTM voted to approve the additional bond resolution because we were told it was an emergency. Tonight we heard that the train station will not open until December.

Mr. Tetreau said we were going to run out of money.

Atty. Vitarelli said that he received documents in July. There was an urgency to get the first issue resolved. He tried to include as much background information as possible. There are numerous exhibits and facts had to be verified.

Joe DeMartino, District 4, said that the former town attorney was relieved of his duties because his credibility was impaired. He is concerned about the fact that he is handling the tax appeals.

Mr. Tetreau said that it is a comfort to the taxpayers to have continuity while the transition is taking place, and it is cost-effective to allow Mr. Saxl to finish the open cases.

Mr. DeMartino asked if that is more important than credibility. He asked if Mr. Saxl is receiving \$30,000 per month.

Mr. Tetreau said that that was roughly September's bill.

Richard Santalesa, District 3, referred to the "misquotations" mentioned on page 12. He asked if they were inadvertent.

Atty. Vitarelli said that Mr. Flatto had misquoted the 2003 resolution.

Liz Hoffmann, District 8, asked how long it is anticipated that Mr. Saxl would be receiving \$30,000.

Mr. Tetreau said that it stopped on September 30.

Ms. Hoffmann asked if Mr. Saxl was off the payroll.

Mr. Tetreau said that he did not say that.

Ms. Hoffmann asked when he would be off the payroll.

Mr. Tetreau said he would be off by the end of the year.

Ms. Hoffmann stated that she feels personal outrage that the taxpayers were exposed to millions of dollars in expenditures and yet Mr. Saxl is still making \$30,000.

Mr. Tetreau said he would not be making that level of income.

Ms. Hoffmann said that our exposure could be limited by not paying Mr. Saxl as much as we have to date.

Selectman Jim Walsh said that the TPZ Chairman sent him an e-mail from Atty. Saxl stating that he would still be handling the land use cases.

Mr. Tetreau said that as far as he knows, he is not.

Mr. Walsh said that at the May 5, 2010 Board of Selectmen meeting, Atty. Saxl said that the attorney general's office reviewed the agreement and he relied on his opinion.

Atty. Vitarelli said that Mr. Saxl had stated that the attorney general approved the process. The attorney general signed approval as to the form, but no opinion letter was rendered.

Mr. Walsh said that an October 12, 2011 e-mail stated that previous versions of the report were privileged between attorney and client. He asked if Mr. Vitarelli agreed, to which Mr. Vitarelli said he did.

Mr. Walsh read from the Charter which states that executive authority of the Town is the Board of Selectmen. There is nothing listed in the powers of the First Selectman that gives him attorney/client privilege, and that power rests with the Board of Selectmen.

Atty. Vitarelli said that he would consider Selectman Walsh's position.

Mr. Walsh asked what the problem in waiving privilege in this matter is.

Atty. Vitarelli said that the Freedom of Information Act protects preliminary drafts. The final document is what the final analysis is based on.

Mr. Walsh said that the municipality can waive FOIA and there is no problem in public transparency, unless there is a litigation matter involved. He said he is concerned about what changes were made between the draft and the final report.

Kevin Hoffkins, District 7, asked who Mr. Vitarelli perceives to be his client, to which Mr. Vitarelli replied the Town of Fairfield.

Mr. Hoffkins asked if there is anything in the report that is not Mr. Vitarelli's full and complete opinion, to which Mr. Vitarelli replied that the conclusions reached are McCarter/English's.

Mr. Hoffkins stated that in that case, there is no need to review any other drafts.

David Becker, District 1, asked if Mr. Vitarelli is independent counsel or some form of town attorney.

Mr. Vitarelli said that he is being asked questions about a report. A town attorney is a specific appointment by the First Selectman to handle town matters. He was hired to do the scope of the report.

Mr. Becker asked how we are getting legal questions answered for general legal information.

Mr. Tetreau said 90 percent of questions can be handled by Asst. Town Atty. Kennelly. If there is something beyond her expertise, we will get a legal resource outside the town.

ITEM NO. 6 ON CALL: RESOLVED, THAT IN ACCORDANCE WITH A REQUEST FROM THE TOWN PLAN AND ZONING COMMISSION, THE DONATION OF CERTAIN PROPERTY ON THE CORNER OF KINGS HIGHWAY EAST AND VERMONT AVENUE FROM HH EAST PARCEL LLC CONTAINING .26 ACRES, MORE OR LESS, BE, AND HEREBY IS, ACCEPTED

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

**See Committee Reports Attached Hereto

MOTION: Josh Garskof, District 5, moved to postpone this item, duly seconded.

Mr. Garskof said that this request should not be rejected and that we should ask for additional testing.

Sheila Marmion, District 6, asked if the realty company was asked if it was willing to do the additional testing.

Asst. Town Attorney Eileen Kennelly said that he would ask them if they were willing.

Ms. Marmion said that in that case, she agrees with the motion to postpone.

Michael Mears, District 10, said that this property is toxic and we do not want it.

VOTE: The motion to postpone this item was approved with 28 in favor, 2 opposed (McCullough, Mears) (Mr. DeSanctis, Ms. Dillon, Mr. Cafferelli, Mr. Challinor, Ms. Smey, Ms. Harrison, Mr. Millington, Mr. McGinty, Mr. DeMartino, Mr. Varian and Ms. Hoffmann were not present to vote).

ITEM NO. 7 ON CALL: RESOLVED, THAT, IN ACCORDANCE WITH A REQUEST FROM THE DIRECTOR OF HEALTH, FUNDS BE, AND HEREBY ARE, TRANSFERRED FROM AN INCREASE IN GRANT REVENUE IN THE AMOUNT OF \$55,655 PER YEAR FOR EACH OF THREE YEARS, FOR A TOTAL OF \$166,965, TO COVER THE COST OF FAIRFIELD'S CONTINUED PLANNING IN PREPAREDNESS FOR, AND RESPONSE TO, BIOTERRORISM, PANDEMIC INFLUENZA AND OTHER PUBLIC HEALTH EMERGENCIES

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

MOTION: Ann Stamler, District 5, moved to waive the reading of this item into the record, duly seconded and carried unanimously.

MOTION: Ms. Stamler moved to waive the reading of committee minutes, duly seconded and carried unanimously.

**See Committee Reports Attached Hereto

**RTM MINUTES
OCTOBER 24, 2011**

Page 9 of 9

MOTION: Ms. Stamler moved to waive the rereading of this item into the record, duly seconded and carried unanimously.

VOTE: The motion to approve the bioterrorism planning grant 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 12:00 A.M.

Respectfully submitted,

Elizabeth P. Browne
Town Clerk

Recorded by: Ann Roche