

**MINUTES OF THE REGULAR MONTHLY MEETING OF THE TOWN OF FAIRFIELD  
JANUARY 23, 2012**

The Regular Monthly Meeting of the Town of Fairfield was held on Monday, January 23, 2012, at the Education Center, Kings Highway East, Fairfield, Connecticut.

The meeting was called to order at 8:10 P.M. by Moderator Jeff Steele.

PRESENT: 47                      ABSENT: 3                      VACANCY: 0

PRESENT: Becker, Herley, Meyer, Richmond, Sundman, Ambrose, Mitola, Steele, Varian, Bateson, Conley, Ference, Mackenzie, McCullough, Dean, DeMartino, Hug, Mezoff, Palmer, Garskof, McAleese, Smey, Stamler, Brogan, Campbell, Gottlieb, Marmion, Wolk, Hochberg, Hoffkins, Newman, Patten, Schwartz, Braun, Kery, Marks, McCarthy, Domeika, Felner, Jacob, Mirabile, Pontrelli, Hannum, Lee, Ryan, Way, Weber

ABSENT: Stewart, Gall, Stopa

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

The Moderator introduced Employee of the Year Holly Lanese to lead the Body in the Pledge of Allegiance and a Moment of Silence.

**ITEM NO. 2 ON CALL:            STATE OF THE TOWN ADDRESS BY THE FIRST SELECTMAN**

First Selectman Mike Tetreau delivered an address on the State of the Town (attached).

**ITEM NO. 3 ON CALL:            REPORT ON LEASES OF TOWN BUILDINGS**

The annual lease report from Asst. Town Attorney Eileen Kennelly was distributed with the Call.

David Becker, District 1, asked who was past due on their payments including those holding long-term leases.

Atty. Kennelly said they are working on the past due accounts which include American Legion, FMFCU and Old Post Tavern. The Fairfield Theatre Co. is past due on their payments for the last quarter of the last year and the first quarter of this year totaling \$5,400.

Chief Fiscal Officer Paul Hiller said they are working on a payment program with Old Post Tavern. Fairfield Theatre Co. made a payment within the last ten days, but they are delinquent back to 6/30/2011. It's \$2 per admission or the property taxes which are \$40,000.

Dana Kery, District 8, asked if the \$5 per square foot for A Child's Garden is fair market rent. Atty. Kennelly said they have not been paying the same amount for the duration of the lease, but she will follow up on that.

Nick Mirabile, District 9, asked if a consistent amount per square foot is charged for patio space. Atty. Kennelly said the space Centro occupies is larger but less intense than the space occupied by Old Post Tavern.

Mr. Mirabile indicated it would be preferable to charge consistent rates rather than being so subjective. He asked that the price per square foot be on the annual report.

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Selectman Jim Walsh asked that the lease for A Child's Garden be reviewed especially since they are in competition with other businesses in town. The BOE is looking to lease space at \$13 per s.f. while they are getting a discounted rate of \$5 per s.f.

Selectman Cristin Vahey asked if the discrepancy with the patio space is because of the stone wall at Old Post Tavern. Atty. Kennelly stated that since the area is not accessible to the public they have been charged a winter rate.

**ITEM NO. 4 ON CALL: TO HEAR A REPORT FROM THE BLIGHT OFFICER CONCERNING CONDEMNATION AND BLIGHT**

The blight report from Blight Officer Jim Gilleran was distributed with the Call.

Mr. Gilleran explained there are 22 pending complaints. \$180,000 in fines were collected over a five-year period which should have been \$500,000. He cannot overrule the Probate Court or insurance companies. He has secured some assistance through Social Services and Community Development to help the elderly. He strongly suggested funding the ordinance.

Jeff Steele, District 2, asked where the fines have gone. Mr. Gilleran answered the general fund, but \$8,000 from a foreclosure was used to clean up the property. Before the blight ordinance went into effect, the Condemnation Board asked for \$10,000 if a house were falling down and was a menace to public safety. Mr. Steele asked if Town resources would be used to clean up a property. Mr. Gilleran indicated they would be if they were available otherwise outside contractors would be utilized.

First Selectman Tetreau agreed that some portion of the fines should be used but suggested different levels of fines rather than \$100 per day.

Nick Mirabile, District 9, asked what percentage of complaints are resolved in a reasonable amount of time. Mr. Gilleran indicated 30%. Mr. Mirabile asked if funds are available through CDBG. Mr. Gilleran said they have gotten dumpsters through them, but they need to determine what legal right the Town has to dispose of people's property.

Jay Wolk, District 6, asked about the status of the former IGA. Mr. Gilleran said he receives consistent complaints, but Walgreen's has supplied a dumpster and did some painting. The building is dilapidated and a letter will be sent explaining they will be fined \$100 per day.

Sheila Marmion, District 6, asked if the school on Tuller Rd is an historic property. Mr. Gilleran explained that it is over 100 years old but a portion has been demolished.

David Becker, District 1, asked if the prior Board of Selectmen's decision to substantially reduce fines on a couple properties could be reversed. Mr. Gilleran said one has a payment plan established and another was a foreclosure sale.

First Selectman Tetreau indicted that the fines should be reviewed for people who do not have the means to pay them.

**ITEM NO. 5 ON CALL: REPORT FROM FIRST SELECTMAN ON THE METRO CENTER**

First Selectman Michael Tetreau distributed a report (attached).

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Kathy Braun, District 8, asked the status of the contaminated soil removal. First Selectman Tetreau said they are awaiting approval from a site in New Jersey.

Ms. Braun asked if the plastic membrane is installed. Mr. Barnhart responded affirmatively. Mr. Tetreau indicated that Mr. Barnhart, Redniss & Mead and Lararo are walking the property while going through the remediation checklist.

Ms. Braun asked if the site monitoring reports would be returned to Conservation which were removed from there and filed with TPZ by the former first selectman. Mr. Tetreau said he would follow up with the Conservation Commission. Ms. Braun asked if the Town's Conservation Department would be restored as overseer of the project. Mr. Tetreau replied that he is not prepared to at this time and the Conservation Commission has not asked him to do so.

Ed Bateson, District 3, asked if the supplemental agreement with DOT for \$300-\$400k is a new grant. First Selectman Tetreau said it is "new" money because there was no solid commitment.

Mr. Bateson urged the Board of Selectmen to be cautious in securing the \$500,000 letter of credit from Black Rock Realty as there may be strings attached in building the train depot.

Selectman Jim Walsh asked if the \$3 million had been received yet. First Selectman Tetreau indicated it would be approximately 90 days after the paperwork is filed. Mr. Walsh asked if \$900k is still estimated for the removal of contaminated soil to New Jersey. Mr. Tetreau replied affirmatively.

Selectman Walsh asked the status of the transfer of the south side land/shortfall of 1,500 spaces. Mr. Tetreau said that is in negotiations. They are looking at the cab and bus spaces as well. Mr. Walsh asked if there is a plan as to what the spaces would be used for such as employee or municipal parking. Mr. Tetreau said they will ask the merchants for their input.

Mr. Walsh asked if there have been discussions with the developer regarding bathrooms at this site. Mr. Tetreau said the developer will not build a spec building; he is waiting to get 80% signed leases. The parking deck is a key component for him. When the approval comes from New Jersey the soil will be removed. The site in Pennsylvania did not pan out.

Jeff Steele, District 2, asked if there won't be bathrooms for another two years. First Selectman Tetreau said CONNDOT is not building stations with bathrooms nor will they give up land for it. The question was asked of the Commissioner and he said no.

Mr. Bateson urged the Board of Selectmen to get tougher with CONNDOT as well as the developer.

**ITEM NO. 6 ON CALL:** REPORT REGARDING THE SUPPLEMENTAL REPORT OF SPECIAL COUNSEL CONCERNING METRO CENTER CONTRACTS.

Attorney Richard Vitarelli distributed his report.

Kathy Braun, District 8, asked if there is an issue with the State as well. Atty. Vitarelli indicated that the State had done its due diligence particularly asking for confirmation that the Charter requirements were satisfied. This was confirmed in the 7-15-2010 letter from Atty. Saxl to Atty. Denise Rodosevich regarding the binding letter agreement.

Ms. Braun asked if we had any recourse against anyone. First Selectman Tetreau explained that this report is in response to whether the binding letter agreement is void. Those agreements are enforceable.

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Ms. Braun asked who has replaced the town attorney. Mr. Tetreau said Atty. Saxl no longer has any Town files. Other attorneys are handling the Town cases.

Atty. Vitarelli said looking at Ken Flatto the binding agreement was entered into without the proper authority or “ultra vires” wherein he exceeded his authority. There are potential claims of malpractice against Atty. Saxl. Any liability for Black Rock Realty was outside the scope of their work.

Ed Bateson, District 3, asked how McCarter & English were given access to emails. Atty. Vitarelli looked at a range of emails among the parties.

Mr. Bateson asked if there was anyone else in an elected position in Town involved in the misrepresentation. First Selectman Tetreau explained he gave the names and date range to the IT dept and in turn received a CD which was not filtered.

Mr. Bateson said charter revision could help close the loop holes, but if department heads see something wrong they should contact members of the RTM as they are residents first, not politicians.

Peter Ambrose, District 2, disagreed that charter revision would help when elected officials commit fraud. This Body spends valuable time at these meetings and this should not be swept under the rug when ethical violations have been committed.

Jay Wolk, District 6, said the accomplishments outweigh the mistakes and we should focus on the positive not the negative.

**MOTION:** Mr. Becker moved to suspend the rules in order to start new business after 11:00 P.M., and to act upon items after 11:30 P.M., duly seconded.

**VOTE:** The motion to suspend the rules was approved with 46 in favor and 1 opposed (Weber).

Michael Herley, District 1, said he has been extremely troubled by the never-ending revelations about the management and oversight of the Metro Center project. It has categorically undermined the public’s trust in Town government. Based on the facts of the situation, he does not believe it would be fruitful to pursue legal remedies against Ken Flatto or Dick Saxl because the estimated expenses to do so would exceed what might be recoverable and there is no guarantee the Town would prevail in such a case, nor should they be given a free pass by the RTM. Accountability and assurances are needed as we move forward. He asked for a non-binding resolution that Ken Flatto and Dick Saxl should not be allowed to serve on any Fairfield governmental body or committee in the future and a binding resolution that the charter be reviewed by an independent Blue Ribbon Commission formed by the First Selectman to ensure the necessary safeguards are in place to prevent this from happening again.

**MOTION:** David Becker, District 1, moved that the following Sense of the Body resolution regarding the implied admonishment and censure of Kenneth Flatto and Richard Saxl be approved, duly seconded.

WHEREAS, On December 30, 2011 Attorney Richard Vitarelli (Special Counsel) of the law firm of McCarter & English, upon direction from the Board of Selectmen, issued a supplemental report of Special Counsel concerning Metro Center Contracts; and

WHEREAS, Special Counsel reported on newly disclosed information regarding representations made to the State of Connecticut by former Town Attorney Richard Saxl on July 15, 2010 whereby Mr. Saxl represented to the State of Connecticut that certain documents relevant to the Metro Center Contracts, specifically the Binding Letter of

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Agreement were reviewed and discussed with the Town, specifically the Representative Town Meeting on May 24, 2010; and

WHEREAS, Special Counsel stated that former Town Attorney Saxl's representation to the State of Connecticut was not true and in fact no Town Boards, specifically the Representative Town Meeting never reviewed, discussed nor debated the Binding Letter of Agreement; and

WHEREAS, Concurrent to the issuance of former Town Attorney Saxl's representation to the State of Connecticut former First Selectman Kenneth Flatto stated to Special Counsel that he was aware of Town Attorney Saxl's false representation to the State on or about July 15, 2010; and

WHEREAS, Mr. Flatto and Mr. Saxl mutually acknowledged that the State of Connecticut was specifically relying on the Town Attorney's representation that Town Bodies were aware of the Binding Letter of Agreement and said Town Bodies did not object to it; and

WHEREAS, Mr. Flatto and Mr. Saxl knowingly failed to recant the false representations made to the State of Connecticut; and

WHEREAS, It is the intent of the Representative Town Meeting body that former First Selectman Flatto and Town Attorney Saxl should not be permitted to serve on any Fairfield governmental body or committee in the future.

NOW THEREFORE BE IT RESOLVED, That The Members of this Fairfield Representative Town Meeting hereby imply the act of admonishment and censure towards former Town Attorney Richard Saxl's actions in failing to dutifully advise this Body of the occurrence of the aforementioned misrepresentation to the State of Connecticut; and

BE IT FINALLY RESOLVED, That the Members of this Fairfield Representative Town Meeting hereby imply the act of admonishment and censure towards former First Selectman Kenneth Flatto for his failure to recant the misrepresentation made to the State of Connecticut and for failure to dutifully and conscientiously act as an ex-officio member of this Body.

At 10:45 p.m., the Minority Leader called for a caucus. The meeting resumed at 11 p.m.

Kevin Hoffkins, District 7, explained how he had sent a letter to the editor in June expressing his disappointment in how things were done, but this has gone on far too long. There has been an independent audit, attorneys have investigated and we receive monthly reports. He felt tonight should be the last time this should be discussed by voting down the resolution and moving on.

Ken Lee, District 10, said he was appalled by the deception, but we live in a democracy the foundation of which is fair representation and due process. It's not proper to go about it this way.

David Becker, District 1, said that since June members of this Body have heard from constituents asking what will be done about Saxl and Flatto. The attorneys have advised us not to pursue legal action, but this resolution makes a statement that we don't do this in Fairfield. They told the state of Connecticut that the RTM approved the binding letter agreement. The public is looking to the RTM to do something.

Gaylord Meyer, District 1, said she was raised to be accountable and found Flatto's and Saxl's behavior to be unacceptable. She said he lied and withheld information and that's not OK with her.

Ed Bateson, District 3, said this is a form of closure. He said he feels bad for Selectman Walsh and former Selectman Steeneck. He asked for support of the resolution.

Jay Wolk, District 6, said they are not condoning what they did, but there was no embezzlement, nothing was stolen, and they worked hard to get the train station. They are not throwing this under the rug.

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Chris Brogan, District 6, said he is outraged as others for the violation of trust, but it's a fundamental right of fairness to be heard.

Carol Way, District 10, said they had every opportunity to let the RTM know what had been done. They knew about the letter, but they never shared it or apologized. The letter was discovered by another attorney that we had to pay for. It is a non-binding resolution but it tells the town this is not acceptable.

Josh Garskof, District 5, said that although we are all upset he cannot vote on this without processing it.

**MOTION:** Tom McCarthy moved the question, duly seconded.

**VOTE:** The motion to move the question was approved by voice vote with 43 in favor and 3 opposed (Becker, Mezoff, Mitola).

**VOTE:** The motion to approve an implied admonishment and censure Sense of the Body resolution failed with 25 in favor, 12 opposed and 9 abstentions. (Mr. Demartino was not present to vote).

**IN FAVOR:** Becker, Herley, Meyer, Richmond, Sundman, Ambrose, Steele, Varian, Bateson, Ference, Mackenzie, McCullough, Hug, Mezoff, Palmer, Braun, Kery, McCarthy, Domeika, Felner, Jacob, Mirabile, Pontrelli, Ryan, Way

**OPPOSED:** Mitola, Dean, Garskof, Smey, Brogan, Marmion, Wolk, Hochberg, Hoffkins, Patten, Schwartz, Weber

**ABSTAINED:** Conley, McAleese, Stamler, Campbell, Gottlieb, Newman, Marks, Hannum, Lee

**ITEM NO. 7 ON CALL:** TO CONSIDER AND ACT UPON THE MINUTES OF THE REGULAR MEETING HELD DECEMBER 19, 2011

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

**ITEM NO. 8 ON CALL:** REAPPOINTMENT OF ROBERT W. MALARKEY TO THE EMPLOYEES RETIREMENT BOARD

**VOTE:** Mr. Malarkey's reappointment to the Employees' Retirement Board was approved with 36 in favor, 3 opposed (Meyer, Dean, Jacob) and 7 abstentions (Richmond, Bateson, McCullough, Mezoff, Kery, McCarthy, Pontrelli).

**ITEM NO. 9 ON CALL:** RESOLVED, THAT FIRST SELECTMAN MICHAEL TETREAU BE, AND HEREBY IS, AUTHORIZED TO SIGN THE AGREEMENT ENTITLED, 'AGREEMENT BETWEEN THE STATE OF CONNECTICUT AND THE TOWN OF FAIRFIELD FOR THE CONSTRUCTION, INSPECTION AND MAINTENANCE FOR THE REPLACEMENT OF THE MERRITT STREET BRIDGE (BRIDGE NO. 04957) OVER HORSE TAVERN BROOK UTILIZING FEDERAL FUNDS FROM THE HIGHWAY BRIDGE PROGRAM,' AND FURTHER RESOLVED, THAT THE BOND APPROPRIATION ENTITLED, 'A RESOLUTION APPROPRIATING \$961,400 FOR COSTS OF CONSTRUCTING THE MERRITT STREET BRIDGE AND AUTHORIZING THE ISSUANCE OF BONDS IN THE PRINCIPAL AMOUNT OF \$961,400 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.

Public Works Director Richard White gave an overview of the project. The bridge was built in 1930, partially rebuilt in 1957 and has received a poor rating from the DOT bridge inspectors. The \$700,000 requested in 2006 for construction was too low for design, permits and easements. The design was recently completed and DOT forwarded the funding agreement providing for 80% federal funding for the \$1,661,400 construction cost leaving the local share of 20% or \$332,280. The grant is reimbursable so the total construction cost must be appropriated and reimbursements submitted. The total request is \$1,661,400 less the \$700,000 prior appropriation leaving \$961,400.

If approved, the bid would go out in February and construction, including intersection improvements, would commence in June for 12 months.

Tom Conley, District 3, asked if sidewalks are included. Mr. White indicated that although there is room, sidewalks were not included.

Ann Stamler, District 5, asked who prepared the erroneous estimate and why it was so far off. Mr. White explained it was very preliminary in nature and was done by an outside engineer. Although he acted on the preliminary plan it was held up because of the permitting process. There have been four years of work on this with much more detail that the DOT based the funding agreement on.

Ms. Stamler asked if we must rebuild or close the bridge. Mr. White said the DOT has an excellent bridge inspection program, but when a bridge reaches this point you are taking a risk if there's a big storm with a lot of erosion.

Ed Bateson, District 3, expressed his concern over the reimbursements because of what has transpired with the overages on the Harbor Road Bridge project.

First Selectman Tetreau said any amount over the approved authorization would have to come back to the BOS, BOF and RTM for approval. The Harbor Road project had many levels of complexity and the State changed the rules midstream.

Carol Pontrelli, District 4, asked if there was any change in the grant obligation. Mr. White said if the bids come in higher than the \$1.6 million then we would need a supplemental agreement. Ms. Pontrelli asked if there is a requirement that all correspondence to the Town of Fairfield go to other officials other than the first selectman.

First Selectman Tetreau said if there's a material change it would come to the BOS, but if it's a change in rebar the public works director signs off on it, not the first selectman.

Ellen Jacobs, District 9, asked in light of all the bonding that has been approved recently must this project be done right now. First Selectman Tetreau said we are authorizing to spend up to \$1.6 million, but we are not spending that full amount. Through the recent refinancing of bonds, we saw a significant drop in the debt service numbers.

Mr. White said if we only repair and replace portions of this bridge then we are throwing good money after bad. It has exceeded its useful life.

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Tom Conley, District 3, indicated his opposition to the project since sidewalks are not included. He had asked for sidewalks in the Mill Plain and Harbor Road bridge projects as well.

Dana Kery, District 8, asked if there was a school nearby.

Selectman Cristin Vahey stated that Unquowa School is closest, but there is a sidewalk on one side of a portion of the street.

Jeff Melaragno, Black Rock Tpke, said he would like to see better estimates for projects so departments do not have to return for more money.

**VOTE:** The bonding resolution for \$961,400 for the construction of the Merritt St. Bridge was approved by voice vote with 39 in favor, 4 opposed (Meyer, Bateson, Conley, Braun) and 3 abstentions (McCullough, Pontrelli, Jacob).

**ITEM NO. 10 ON CALL:** TO ESTABLISH A SPECIAL COMMITTEE TO REVIEW ARTICLE III OF CHAPTER 95, TAX RELIEF FOR THE ELDERLY AND DISABLED HOMEOWNERS IN ACCORDANCE WITH §95-15.4 OF THE CODE OF THE TOWN OF FAIRFIELD

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

Hal Schwartz, District 7, stated the ordinance sunsets in December. He urged support of the special committee.

Peter Ambrose, District 2, agreed with Mr. Schwartz as our seniors need assistance.

**VOTE:** The motion to establish the special elderly tax relief committee was approved by unanimous voice vote (Mr. Demartino was not present).

**ITEM NO. 11 ON CALL:** TO ESTABLISH A COMMITTEE ON REDISTRICTING, IN ACCORDANCE WITH §2.6 A.(2) OF THE TOWN CHARTER

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

**VOTE:** The motion to establish the redistricting committee was approved by unanimous voice vote (Mr. Demartino was not present).

**OTHER BUSINESS**

The Moderator announced the February committee meetings will be held on the 13<sup>th</sup> & 15<sup>th</sup> due to school vacation. The Roberts Rules seminar will be held on Jan. 28<sup>th</sup> at 10 am at the Library.

**ADJOURNMENT**

There being no further business and upon motion made, duly seconded and carried unanimously, the meeting was adjourned at 12:10 AM.

Respectfully submitted,

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Elizabeth P. Browne  
Town Clerk