

MINUTES OF THE REGULAR MONTHLY MEETING OF THE TOWN OF FAIRFIELD  
MAY 20, 2013

The Regular Monthly Meeting of the Town of Fairfield was held on Monday, May 20, 2013 at the Education Center, Kings Highway East, Fairfield, Connecticut.

The meeting was called to order at 8:15 P.M. by Moderator Jeff Steele.

PRESENT: 48                      ABSENT: 2                      VACANCY: 0

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

ABSENT: Stopa, Mirabile

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

Moderator Jeff Steele asked for a moment of silence for those involved in the recent local train crash.

**ITEM NO. 2 ON CALL:** TO CONSIDER AND ACT UPON THE MINUTES OF THE SPECIAL MEETING HELD ON APRIL 22, 2013, THE REGULAR MEETING HELD ON APRIL 22, 2013 & THE ANNUAL BUDGET MEETING HELD ON MAY 6, 2013

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

**ITEM NO. 3 ON CALL:** “RESOLVED, THAT MICHAEL TETREAU, FIRST SELECTMAN OF THE TOWN OF FAIRFIELD, IS EMPOWERED TO EXECUTE AND DELIVER IN THE NAME AND ON BEHALF OF THE TOWN OF FAIRFIELD A CONTRACT WITH THE CONNECTICUT STATE LIBRARY FOR AN HISTORIC DOCUMENTS PRESERVATION GRANT.”

Matt Ambrose, District 5 moved to approve this item, duly seconded.

Town Clerk Betsy Browne summarized the annual Historic Documents Preservation Grant explaining that it will be used to purchase shelving for the upper vault where elections materials and minutes are retained. The purpose of this resolution is so that the First Selectman can complete the paperwork and accept the grant.

Kevin Hoffkins, District 7 asked why land records are not digitized. Ms. Browne explained that the State Statutes dictate that an eye readable copy be available in the vault although the land records are digitized as well as microfilmed.

**VOTE:** The motion to accept the grant contract was unanimously approved by voice vote.

**ITEM NO. 4 ON CALL:** “RESOLVED, THAT FUNDS BE TRANSFERRED FROM AN INCREASE IN GRANT REVENUE IN THE AMOUNT OF \$10,946.67 TO COVER THE COST OF THE UPGRADE OF THE MARINE SEWAGE DISPOSAL FACILITY AT SOUTH BENSON MARINA; AND FURTHER RESOLVED, THAT THE FIRST SELECTMAN IS AUTHORIZED TO MAKE, EXECUTE, AND APPROVE ON BEHALF OF THE TOWN OF FAIRFIELD, ANY AND ALL CONTRACTS OR AMENDMENTS THEREOF WITH THE CONNECTICUT DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION.”

Amy Mezzoff, District 4 moved to approve this item, duly seconded.

Supt. of Public Works Scott Bartlett stated that the current pumping system is 15 years old and asked that the \$10,946.67 grant be accepted.

**VOTE:** Motion to accept the \$10,946.67 grant for the sewage disposal facility was approved by unanimous voice vote.

**ITEM NO. 5 ON CALL:** TO HEAR, CONSIDER AND ACT ON TWO REDISTRICTING ORDINANCES -- ONE PROPOSED AND SUBMITTED BY EACH PARTY REPRESENTED ON THE REDISTRICTING COMMITTEE -- IN ORDER TO ADOPT ONE FINAL REAPPORTIONMENT PLAN AS REQUIRED BY SECTION §9-169 OF THE CONNECTICUT GENERAL STATUTE. IF THEY ARE TO BE CONSIDERED BY THE BODY AT THE MAY 20 MEETING, BOTH PLANS MUST BE SUBMITTED (WITH MAPS) TO THE TOWN CLERK BY 3:00 PM ON WEDNESDAY, MAY 15 FOR POSTING ON THE TOWN WEBSITE.

Moderator Jeff Steele explained that after he researched extensively the statutory obligation to get this plan done by June 1, 2013, he allowed for two ordinances, one proposed and submitted by each party represented on the redistricting committee. One plan was received. This course of action was opposed by the town attorney based on a few words. The language in the Charter is vague. The word “proposed” according to the dictionary means to recommend, put forward for consideration. Since there is no provision for a tie breaker like there is in the state legislature he put this forward not for political reasons but because he wants to avoid both Charter and statutory violations.

Hal Schwartz, District 7 raised a point of order that the motion on the floor was in violation of the Charter since SOTS and the town attorney have said this has to come from the committee and asked that the item be removed from the call and the town attorney’s opinion be read into the record.

Town Attorney Stanton Lesser read the following opinion dated May 15, 2013

It has come to my attention that the RTM has on its agenda a resolution for redistricting by which each political party shall submit a redistricting plan and the body shall adopt one of them. It is the opinion of the undersigned that this resolution violates the pertinent provisions of our Town Charter and is therefore illegal, and any such ordinance will be null and of no effect.

As I have stated before, “[t]he Charter is the fountainhead of municipal powers. It originates and defines the powers of government and the methods of governance...” *State ex. Rel. Raslavsky v. Bonvouloir*, 167 Conn. 357, 362 (1974).

A Charter of a city must be construed, if possible, so as reasonably to promote its ultimate purpose. (citation omitted). In order to arrive at the intent of the framers of the Charter, it is proper to consider the objects sought to accomplish, and the practical situation they were attempting to provide for. *Arminio v. Butler*, 183 Conn. 211, 218, (1981)

With these principals in mind, we examine the pertinent provisions of the Charter, as currently existing and as it stood before the 2006 Charter Revision.

**Charter as Amended in 1997**

§ 2.6. Procedures for RTM elections.

A. Districts and basis of representation.

(1) The voting districts of the Town, including the number of districts, for the election of RTM members shall be as established by ordinance adopted by the RTM.

(2) After completion of the census of the United States and after any reapportionment of the State General Assembly Districts affecting the Town, voting districts of the Town shall be established such that the population deviation from the largest to the smallest voting district shall not exceed 10%. The redistricting ordinance adopted by the RTM shall provide for an equal number of members from each district, and, to the extent practicable within the constraints of this Charter and State General Assembly redistricting, shall provide for districts that are located in only one State General Assembly District.

(3) The RTM shall consist of not more than 56 members.

**Charter as Amended in 2006**

§ 2.6. Procedures for RTM elections.

A. Districts and basis of representation.

(1) The voting districts of the Town, including the number of districts, for the election of RTM members shall be as established by ordinance adopted by the RTM.

(2) After completion of the census of the United States and after any reapportionment of the State General Assembly Districts affecting the Town, voting districts of the Town shall be established **by an ordinance proposed by a committee of the RTM composed of an equal number of members from each party** such that the population deviation from the largest to the smallest voting district shall not exceed 10%. The redistricting ordinance adopted by the RTM shall provide for an equal number of members from each district, and, to the extent practicable within the constraints of this Charter and State General Assembly redistricting, shall provide for districts that are located in only one State General Assembly District. (Emphasis Added)

As can be seen, the provisions are identical, except that the revision of 2006 inserted the following language: "by an ordinance proposed by a committee of the RTM composed of an equal number of members from each party".

The Charter Revision Commission was required to give a report when it made its recommendations, and in its Report, the Commission made the following comments regarding the revision to this section: "As there is no procedure for redistricting specified in the current Charter and there is neither a town ordinance nor state statute setting out any procedure, the Commission recommended changing §2.6.A (2) for the purpose of establishing such a procedure **and to do it in a way that will be fair to members of both political parties.**" (Emphasis added)

It is clear, therefore, that the Commission was concerned about the majority on the RTM imposing its will on the minority. It therefore adopted a provision which required the members of each party to compromise, and to listen to the wishes of the other party.

"[i]f the Charter points out a particular way in which any act is to be done or in which an officer is to be elected, then, unless these forms are pursued in the doing of any act or in the electing of the officer, the act or the election is not lawful." *Bateson v. Weddle*, 306 Conn. 1, 14 (2012)

The purpose of this Charter provision is to allow the RTM to be redistricted in a way that is fair to members of both political parties or, put another way, it prevents the majority from imposing its will on the minority in an unfair way. It forces the two parties to compromise, and to listen to the other side.

It is therefore my opinion that the only ordinance which may be voted on by the RTM is one which is submitted by the RTM Redistricting Committee. Further, if the Committee proposes an ordinance, it may not be amended by the body, but simply submitted to a yes or no vote. If the body does not approve the plan, it would simply go back to the committee for more work.

Attorney Lesser further said he spoke with Ted Bromley at SOTS and asked if they would intervene in any manner to which he replied SOTS will not intervene. He asked if the ordinance is a violation of the town Charter what are the consequences. Mr. Bromley replied that if implementation takes place the RTM action can be called into question, any person can challenge the population data and the registrars of voters should follow the advice of the municipal attorney.

Moderator Steele said that although he respects both Mr. Schwartz and Attorney Lesser the item will proceed as action has to be taken.

**MOTION:** Chris Brogan, District 6 moved to appeal the ruling of the chair, duly seconded

Mr. Brogan said under the Charter the town attorney is responsible for interpretation of the Charter. This can lead to litigation moving forward with a cloud of uncertainty and he asked that the Body uphold the town attorney's opinion.

Kevin Hoffkins, District 7 said there is no tie breaker in the committee and this was brought to the floor. He asked for justification as to why this came to the floor.

Moderator Steele stated that this had been debated for 15 months and 20 meetings; he didn't care what plan was proposed but wanted the Body to take action.

Mr. Hoffkins said there is potential for litigation if the Charter is violated. It says "...shall be established by an ordinance proposed by the committee". He doesn't see how another conclusion can be drawn as this is not proposed by the committee.

Attorney Lesser said he sees litigation either way. The Charter is clear; we have to do this by June 1<sup>st</sup>, but you don't violate the Charter. The registrars might not implement it. Go back to the committee, see reason and get this done.

Sheila Marmion, District 6 said the idea of going back to the committee bears consideration. An arbitrator can be brought in and look at the plans without bias as this is not fair.

Ed Bateson, District 3 said fair is a tough concept. The redistricting committee is not working the way it is structured. He encouraged this to go forward tonight as a way to move the business of the Body forward. There is nothing in the rules to consider a disinterested party.

Attorney Lesser indicated the only requirement is that it comes from the committee. If they want to they can bring in a third party as there is nothing that says they can't.

John Mitola, District 2 stated we will be going down a slippery slope if we decide not to go by the opinion of the town attorney. He can't recall a time when a political body has refused to follow the advice of the town attorney. It's hard not to get a plan when you meet in September then don't meet again until February. It is not supposed to be easy but it is important to interpret the right way to talk about the process. In September there was a vote to go in a 10-5 direction. The Republicans decided not to go in that direction and suddenly changed their minds. He would be more than willing to go forward with an arbitrator.

Ann Stamler, District 5 asked if the motion on the floor is amendable to which Moderator Steele replied it is not.

Julie Gottlieb, District 6 stated that one party will have a distinct advantage which is why the 2006 change was done with no tiebreaker. There is an opportunity to continue; to do this could be illegal and can damage future actions by the RTM.

Kathy Braun District 8 asked how we can have a Charter provision that does not work.

Moderator Steele replied that a lot is unclear in the Charter, but a Charter revision would be necessary. It is easy when there are an odd number of people on a body. It worked in Hartford because the independent arbitrator was the 9<sup>th</sup> vote.

Josh Garskof, District 5 said he would support an arbitrator since there's no resolution.

Tom McCarthy, District 8 said he would not give up his vote to an arbitrator and disagreed that we are in violation.

Ken Lee, District 10 said the Charter Revision Commission report said since there was no provision for redistricting to do it in a way that would be fair to both parties. The equal number of people is to be fair to both parties.

Allen Marks, District 8 said he is in support of the appeal. It is the committee's job to compromise and make this fair.

Joe Palmer, District 4 explained that the Republicans came up with 8 districts with 5 members while the Democrats were holding at 10 with 5. It was suggested that we go to 9 districts with 5 members and went so far as to draw maps - this would have ended a year ago. It was declined and there has not been any compromise from the Democrats 20 meetings later.

Marc Patten, District 7 said a subcommittee with an odd number of members argues back and forth takes a vote and brings it back to the full Body. If a committee takes a vote in September then nothing happens until 5 months later the rules were ignored. There was a 4-2 vote on 2 10/5 plans.

Heather Dean, District 4 asked the registrars of voters if they had seen the plan.

Roger Autuori, Republican ROV said he saw the district lines. Ms. Dean asked if he approved of them to which Mr. Autuori replied that he does not approve one way or the other he just implements it.

Ms Dean said a couple great ideas should be considered.

Michael Herley, District 1 explained that independents make up the majority of voters in town, not Democrats or Republicans. It was appropriate for the Moderator to bring this to the Body like he did.

Ann Stamler, District 5 acknowledged how difficult this must be for the Moderator and appreciates how difficult this situation is. She asked the Democratic ROV how many other towns have redistricted.

Matt Wagner, Democratic ROV replied of the 25 Towns that had to redistrict 9 had not.

Mr. Autuori stated that Shelton just last week took 4 minutes to approve their plan.

Ms Stamler said should this appeal fail she anticipates a discussion without violating the Charter.

Moderator Steele stated that it has been a hard process and not a question of personal motives or plans. It is an interpretation issue. He referred to the Charter Section 2.6 F(7), Section G(6), Section G(9), Section 12.6 and Section 13.2F. It specifies in many locations that a vote needs to take place. It is not illegal in terms of an arbitrator, but it would take the decision out of this Body. We need to submit a plan, sell it, and present it. Our districts are currently in violation of the 10% rule.

**VOTE:** The motion to sustain the position of the chair was approved with 27 in favor and 21 opposed.

**IN FAVOR:** Becker, Herley, Lipp, Meyer, Sundman, P. Ambrose, Jennings, Steele, Varian, Bateson, Conley, Ference, Mackenzie, McCullough, DeMartino, Hug, Mezoff, Palmer, Braun, Kery, McCarthy, Domeika, Felner, Jacob, Pontrelli, Ryan, Way

**OPPOSED:** Mitola, Dean, Ambrose, Garskof, McAleese, Smey, Stamler, Brogan, Campbell, Gottlieb, Marmion, Wolk, Hochberg, Hoffkins, Newman, Patten, Schwartz, Marks, Abercrombie, Hannum, Lee

Selectman Cristin McCarthy Vahey said we need to listen to each other and come to a compromise. Perhaps special legislation can be explored.

Joe Palmer, District 4 explained the plan will make it easier to improve communications, information flow, and coordination in all facets. It streamlines elections with cheaper costs, centralized polling locations and ensures five representatives that voters are accustomed to.

Kevin Hoffkins, District 7 said he is opposed to reducing the number of districts as he does not think it is good for the town. Our government works because we make it work.

Jay Wolk, District 6 said he still has not heard a good answer as to why we want to change. If it's not broken, why fix it.

Josh Garskof, District 5 this plan is gerrymandering by a majority party. There are 5 Republican and 3 Democratic districts. Procedures are being bypassed

Ed Bateson, District 3 said that the separation between Republicans and Democrats is minimal. When the unaffiliated voters are factored into the equation it is more than fair.

Mr. Garskof noted there have been many single digit recounts in RTM elections.

Tom McCarthy, District 8 said the 8 district plan is driven by the 3 state rep districts. 40 members are more visible, more accountable and more engaged making a better Body to serve the town.

**MOTION:** Ann Stamler, District 5, moved to amend the first paragraph of the resolution as follows: To hear and consider two redistricting ordinances - one proposed and submitted by each party represented on the Redistricting Committee, duly seconded.

Ms. Stamler explained this would remove the issue of violating the Town Charter from the RTM discussion by default, there is only one plan.

Ed. Bateson, District 3 said although he sees the intent of the amendment, he cannot support it as he wants to see the Body act tonight.

John Mitola, District 2 spoke in favor of the amendment.

Dana Kery, District 8 said everyone is opposed to change but in 1993 we had 14 districts with 56 members and then went to 10 districts with 50 members. This is a reasonable reduction and significantly less than going from 14 to 10 districts. It enables the members to still communicate with constituents.

**VOTE:** The motion to amend the resolution failed with 21 in favor and 27 opposed.

**IN FAVOR:** Mitola, Dean, Ambrose, Garskof, McAleese, Smey, Stamler, Brogan, Campbell, Gottlieb, Marmion, Wolk, Hochberg, Hoffkins, Newman, Patten, Schwartz, Marks, Abercrombie, Hannum, Lee

**OPPOSED:** Becker, Herley, Lipp, Meyer, Sundman, P. Ambrose, Jennings, Steele, Varian, Bateson, Conley, Ference, Mackenzie, McCullough, DeMartino, Hug, Mezzoff, Palmer, Braun, Kery, McCarthy, Domeika, Felner, Jacob, Pontrelli, Ryan, Way

Heather Dean, District 4 asked the Registrars if the current plan meets the State Statute and Town Charter requirements.

ROV Roger Autuori commented that the state does not care what we do with local districts other than the June 1st date and advised to look to the town attorney and Town Charter for guidance. There is no enforcement, per the Secretary of the State.

ROV Matt Waggner referred to an email he sent that if passed, it will not be in effect in time (14 days are needed), based on census data the plan deviates from the state election (divided blocks), and some parcels do not show up in any district.

Ms. Dean stated that we do not need to be in a rush. We are about process.

Hal Schwartz, District 7 said the Democratic ROV is uncomfortable implementing the plan based on the town attorney's ruling. He asked Mr. Autuori if he would implement the plan if it is a violation of the Charter.

Mr. Autuori said he would wait for a ruling from the court.

Selectman Vahey said there is currently only one plan that 21 people are not comfortable with, but there are a number of options on the table including 10/4, 8/5 and 9/5 that there can be agreement on.

John Mitola, District 2 said we should avoid court since we are better than that. We can go back to the committee and come up with a settlement where everyone is unhappy.

Marc Patten, District 7 said he would be agreeable to 10/4 as a compromise.

Ken Lee, District 10 explained he had no problem with 40 members but rather with 8 districts since this should be about neighborhoods not districts. District 10 would go from the marina all the way to Hulls Farm Rd.

Julie Gottlieb, District 6 said our goal tonight is to improve effectiveness. It is best when we know what's going on at a neighborhood level and feels there is more visibility with more districts.

Ann Stamler, District 5 said last April the committee asked for 4 8-district maps – 2 by the Republicans and 2 by the Democrats. 2 complied with the 10% rule. She asked why they were not being used.

David Becker, District 1 explained the Republican ROV draws the maps without using computer driven software. The Democrat ROV uses the computer software. There should be more equal footing.

Ms. Stamler asked who drew up the plan that is before the RTM tonight.

Mr. Becker responded that members of the committee went to Hartford to work with the software up there.

Ann Stamler said that she believes change is good if it achieves a purpose. She does not see a compelling reason to change.

Allen Marks, District 8 asked the ROVs how many registered voters are in town. Mr. Waggner responded approximately 37,400. Mr. Autuori responded 36,867 as of today. Mr. Marks asked why there were a total of 39,697 on the map.

David Becker, District 1 explained the discrepancy is in active vs. inactive voter counts. The figures are from one year ago when the plan was drawn. It is ultimately based on population numbers. The number of voters changes.

Mr. Marks asked Mr. Waggner what the structural problems with the map are.

Mr. Waggner said the original map was correct numerically and followed the census numbers. They take existing census blocks and split them in half. The map is then drawn and incorrectly translated into text.

Mr. Marks said the plan before us is incorrect, the structure is incorrect and the plan is weighted with 5 Republican and 3 Democrat districts which is anything but fair.

**MOTION:** Joe DeMartino, District 4 moved the question in order to give the public a chance to speak, duly seconded.

At 10:45 PM Hal Schwartz, District 7, called for a 5 minute caucus.

At 10:50 PM Moderator Steele called the meeting back to order.

**WITHDRAWAL:** Joe DeMartino withdrew his previous motion, duly seconded.

**MOTION:** At 10:55 Michael Herley, District 1 moved to suspend Rule 36 in order to convene past 11:00 and to take up new business after 11:30, duly seconded and carried with 44 in favor and 3 opposed (Smey, Newman, Patten). (Abercrombie was not present to vote.)

**MOTION:** Joe DeMartino, District 4 moved to allow public comment, duly seconded and carried with 45 in favor and 2 opposed (Wolk, Newman.) (Abercrombie was not present to vote.)

Speaking in opposition to the process by which this plan was brought forward was Judy Ewing. Speaking in favor of voting on the plan tonight were Alexa Mullady and Jamie Millington.

**MOTION:** Hal Schwartz, District 7 moved the question, duly seconded and carried with 44 in favor and 3 opposed (Becker, Campbell, Marks.) (Abercrombie was not present to vote.)

**VOTE:** The motion to approve a redistricting plan with 8 districts and 5 members in each district was approved with 27 in favor and 20 opposed. (Abercrombie was not present to vote.)

**IN FAVOR:** Becker, Herley, Lipp, Meyer, Sundman, P. Ambrose, Jennings, Steele, Varian, Bateson, Conley, Ference, Mackenzie, McCullough, DeMartino, Hug, Mezoff, Palmer, Braun, Kery, McCarthy, Domeika, Felner, Jacob, Pontrelli, Ryan, Way

**OPPOSED:** Mitola, Dean, Ambrose, Garskof, McAleese, Smey, Stamler, Brogan, Campbell, Gottlieb, Marmion, Wolk, Hochberg, Hoffkins, Newman, Patten, Schwartz, Marks, Hannum, Lee

**ADJOURNMENT:**

There being no further business and upon motion made, duly seconded, and carried unanimously, the meeting adjourned at 11:15 P.M.

Respectfully Submitted,

Elizabeth P. Browne  
Town Clerk

Recorded By: Kyle Fournier