

**SPECIAL BOARD OF SELECTMEN MEETING
MINUTES
NOVEMBER 22, 2011 - 6:00 P.M.
SELECTMEN'S CONFERENCE ROOM - TOWN HALL**

CALL TO ORDER: The First Selectman called the special meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE: The Pledge was recited by all present.

PRESENT: William R. Davidson, First Selectman; Howard Lasser, Selectman; Members of the Press & Public; Virginia Giovanniello, Recording Secretary.

ABSENT: Steve O'Reilly, Selectman

FERRY PROPERTY: Mr. Davidson stated that perhaps the Board of Selectmen at their next regularly scheduled meeting on 12/5 would make a decision whether to pursue the purchase of the 22 acre piece of property across the street from the Burr Farm that is being offered to the Town as Open Space. He stated that the Selectmen have previously walked the property, and they thought this would be a very positive acquisition to the Town.

WATER POLLUTION CONTROL AUTHORITY MOTION: Howard Lasser made motion that the Selectmen accept as in compliance with the Town Charter a Resolution passed by the Water Pollution Control Authority at its meeting on November 16, 2011, relating to the Authority agreeing to accept the non-cash liability of \$485,000, seconded by William Davidson. Motion carried by majority. [WPCA 11-16-11 Motion attached].

Mr. Lasser reviewed the history from the original agreement with the WPCA in 2004 regarding the construction of the High School sewer line and the action taken for funding the sewer line.

Mr. Lasser made motion that the Selectmen enter into the record the 11/21/11 letter from Town Attorney Neil Marcus to the Water Pollution Control Authority, acknowledgment by the Town's Auditor that this action is a balance sheet adjustment, and the 2/23/09 letter from Town Attorney Francis Collin's to First Selectman Robert Silvaggi, and that the transaction conforms and is in compliance with the Town Charter, seconded by William Davidson. Motion carried by majority.

ADJOURN: Howard Lasser made motion to adjourn at 6:30 p.m., seconded by William Davidson. Motion carried by majority.

William R. Davidson
First Selectman

Howard Lasser
Selectman

Steve O'Reilly
Selectman

and 4 of the application cover letter dated 11/15/11; 2) that prior to any discharge, a copy of the certification be faxed to the office for the staff to approve and then give authorization to discharge; 3) the fee be calculated at \$250.00 per discharge to cover the cost of treatment and inspections; and 4) if there are any issues, that the staff has the authority to decline discharge approval. The motion was seconded by L. Trojanowski-Marconi and passed unanimously. Bills will be sent to Norbert E. Mitchell, Inc. after the project is complete. Mr. Hankins will submit the latest monitoring well samples to the office.

6. Accountant Report/Banking

- a. Selectman Proposal – First Selectmen Davidson appeared to request the Authority’s assistance in meeting a budget shortfall on the high school building project. Mr. Davidson requested action by the Authority tonight so that litigation with the general contractor and two subcontractors could be avoided.

First Selectmen Davidson began by presenting the history of the Authority’s original agreement (see minutes May 26, 2004) to fund approximately \$600,000 of the estimated \$1,200,000 cost of the high school sewer project, which sum was to be recovered from the Town through the levy of a benefit assessment. The sum transferred to the Town to help meet the cost of providing the sewer line to the high school was never expended for the project and was returned to the Authority in 2009 (See minutes of August 26, 2009 and December 16, 2009). The apparent non-use of these funds could be attributed to clerical error by a clerk in the Comptroller’s office as bills to construct the sewer line were not charged against the WPCA moneys held as a separate fund. Mr. Davidson asked the Authority to transfer funds to the Town in the spirit of the Authority’s original agreement to allow the Town to close out the project without necessity of seeking an appropriation of additional funds. Mr. Davidson then turned the floor over to Mr. Wahlberg to explain how this might be accomplished.

Mr. Wahlberg explained that the Selectmen were requesting the Authority to absorb on its books in the current fiscal year a liability in the amount of \$485,000. This liability would be recorded on the Authority’s books as a “due to Town” and on the Town’s books as a “due from Authority”. He further proposed that the Authority’s “liability” would be satisfied by an assessment of \$485,000 in the 2013 fiscal year and “cleared” on the Authority’s and Town’s books on July 1, 2012 (in the 2013 fiscal year). The Selectmen’s budget would include a line item of \$485,000 to “satisfy” the assessment. Mr. Wahlberg explained that the entries on the books of the Authority would be offsetting, and that the transaction would be an entirely non-cash transaction.

Concerns were raised by both Attorney Sienkiewicz and by accountant/auditor Sandra Welwood that the proposed transaction violated the Charter’s budget making process and generally accepted accounting principles. Attorney Sienkiewicz questioned how the proposed “assessment” might be made, since a benefit assessment would require the expenditure of Authority funds and notice and public hearing. He also noted that the \$485,000 line item in the FY 2013 might be revised out during the budget making process, and was uncertain where that might leave the Authority. The attorney’s suggestion that the goals of the Selectmen might be accomplished through a cash loan to the Town, payable in the next fiscal year, or by some other cash transaction was rejected by the Selectmen given the absence of an appropriation authorizing the Town to expend the funds. Attorney Sienkiewicz noted that questions had been raised by the Board of Finance or its members as to the legality of the original transaction and the obligation of

the Town to repay or refund monies advanced by the Authority. The Selectmen noted that former Town Attorney Fran Collins had issued a legal ruling indicating that the prior transaction was proper and that the Authority had the power to levy an assessment. The Selectmen urged the Authority to assume the liability as proposed and indicated that they had no objection to the Authority's action being contingent upon approval as to legality and conformance with generally accepted accounting principles by the Town Attorney and Town Auditor.

After much discussion, the matter was temporarily tabled to allow for the framing of a proposed resolution. Two draft resolutions were proposed. One proposal by the First Selectmen and Comptroller that would now involve a cash transfer to the Town in the amount of \$485,000. The second proposal was crafted by Mr. Sienkiewicz and Ms. Welwood to reflect their understanding of the original proposal as verbalized. Upon the presentation of the proposed resolutions, Mr. Kurtz recused himself from further discussion as a newly elected member of the Board of Finance and Tulio Lopez became a voting member.

The question of whether the Authority should require Board of Finance approval of the proposed transaction was discussed. The First Selectmen asserted that it was the Treasurer, not the Board of Finance that had jurisdiction under the Charter, but that if the Board of Finance had jurisdiction, that question could be decided by the Town Attorney. Atty. Sienkiewicz urged Board of Finance approval whether or not they had legal jurisdiction, particularly since the Board of Finance had questioned the prior transaction. At the request of the First Selectmen, the language of the Sienkiewicz/Welwood draft proposal was modified to eliminate the requirement for approval by the Board of Finance unless deemed necessary by Town Attorney.

Following discussion, and in the spirit of cooperation with the First Selectmen's request, the following resolution was made by T. Lopez, seconded by P. Donohue and adopted by a vote of 5-0 (with P. Kurtz abstaining). **“Subject to the prior written approval directed to the Water Pollution Control Authority of the Board of Selectmen, the Treasurer, the Town Attorney as to compliance with the Town Charter and the Town Auditor as to compliance with generally accepted accounting principles for governmental entities, the Authority agrees that it shall accept a non-cash liability (due-to Town) in the amount of \$485,000 on its books in FY2012, representing a portion of the capital cost of the sewer serving the Brookfield High School to be offset by a non-cash assessment (due-from Town) in the amount of \$485,000 on its books on July 1, 2012 (FY2013). The Town Attorney must opine that the Board of Finance approval is not required.”**

- a. YTD financials through October – S. Welwood handed out her monthly report and briefly answered questions from the Commission.
- b. Federal Road North Re-Assessments – Atty. Sienkiewicz reviewed the proposed Resolution and the different schedules associated with the Federal Road North Re-Assessments. He recommended that any properties that have delinquent balances have the credits be applied towards the delinquent interest and payments first, rather than lowering the principal. A Public Hearing will be held January 11, 2012 regarding the Federal Road North Re-Assessments.

7. Engineer Comments/Project Update

- a. Old New Milford Road Sewer Extension Project – J. Pisco reported that all the piping is in. The gravity line was pressure tested and passed, but the Delmar Drive line was

pressure tested, and failed. It needs to be dug up to determine where the leak is. Mr. Will stated that all of Earthmover's equipment has been moved off site, and they have not followed through with their promises to fix it.

- b. Sandy Lane Sewer Extension Project – Mr. Pisco reported that this project is complete and Sandy Lane Village is flowing. Many of the applications submitted this evening are part of this line. Once the final costs are known, a Public Hearing will be held to assess each property. Sandy Lane has not abandoned their old system, which needs to be done so that the area can be restored.
- c. Caldor Pump Station Grinder – J. Pisco reported that two bids were received: Kovacs Construction Corp. at \$273,060.00 and Eventus Construction Co., Inc. at \$445,986.00. He handed out a picture of the grinder currently in use at the Route 133 Pump Station to illustrate to the Commission how the Caldor grinder will be installed. Chairman Malwitz stated that the total project cost should come in around \$290,000, and adding the driveway will bring it to \$310,000. **A motion was made by L. Trojanowski-Marconi to award the Caldor Pump Station Grinder Project to the apparent low bidder, Kovacs Construction Corp., in the amount of \$273,060, which includes Alternate 1 & Alternate 2. The motion was seconded by P. Donohue and passed unanimously. A motion was made by L. Trojanowski-Marconi to authorize the Chairman to execute the contract with Kovacs Construction Corp. in the amount of \$273,060, with the total expenditure of the project totaling no more than \$310,000. The motion was seconded by P. Kurtz and passed unanimously.**

J. Jove left the meeting at 11:00 p.m., and T. Lopez became a voting member.

- d. Dean Road/Pocono Road Sanitary Sewer Extension – A letter has been drafted to send to the Dean Road/Pocono Road properties announcing the informational public hearing to be held on January 11, 2012.
- e. High Meadow/Ledgewood/Newbury Crossing Project – J. Pisco and T. Lopez attended the Wetlands Meeting on 11/14/11, and Mr. Lopez stated that the application was well received. A site walk has been scheduled for 12/3/11.
- f. Other Engineering Matters - None

8. Legal Matters

- a. Delinquencies/Collections – Atty. Sienkiewicz stated that a Levy & Sale was held on 11/10/11, and ten (10) minutes after the sale, the bank called and it was redeemed.
- b. Permanent Maintenance Agreement Update – Atty. Sienkiewicz has nothing new to report on Permanent Maintenance Agreement's.
- c. Other Legal Matters - None

- 9. Chief of Maintenance Report** – Mr. Will gave a verbal report in Mr. Prinz's absence. He stated that there was no serious damage (to WPCA buildings or equipment) caused by the 10/29/11 snow storm, and the mobile generator came in handy where there were power outages. The new WPCA truck arrived today and the invoice is on the voucher list for approval. Mr. Will is working on the purchase of an Uninterruptable Power Supply (UPS) for the Waidelich pump station. Mr. Pisco recommends purchasing a second mobile generator because the current one may not be enough if there are several pump stations down simultaneously.

10. Other WPCA Business

- a. Insurance Review – Mr. Lopez reported that his previous recommendations were put on hold due to the election, but those are now behind us. He found that Risk Management

HERBERT L. COHEN
(1928-1983)

November 21, 2011

AUSTIN K. WOLF
RICHARD L. ALBRECHT
JONATHAN S. BOWMAN
IRVING J. KERN
STEWART I. EDELSTEIN
NEIL R. MARCUS
G. KENNETH BERNHARD
DAVID L. GROGINS
GRETA E. SOLOMON
ROBIN A. KAHN
RICHARD SLAVIN
DANIEL S. NAGEL
RICHARD J. DI MARCO
DAVID B. ZABEL
MARK A. KIRSCH
DAVID M. LEVINE
JOSEPH G. WALSH
DAVID A. BALL
JOCELYN B. HURWITZ
STUART M. KATZ
MONTE E. FRANK
PATRICIA C. SULLIVAN
VINCENT M. MARINO
JULIE D. KOHLER
ARI J. HOFFMAN
COURTNEY A. GEORGE
BARBARA M. SCHELLENBERG
JANE L. HARNISS
JESSE A. LANGER
RACHEL A. PENCU
JASON A. BUCHSBAUM
L. JOYELLE DEFELICE
LAUREN G. WALTERS
DAVID M. MOROSAN
MARCIA M. ESCOBEDO
AUSTIN D. KIM
DAVID DOBIN
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PETER A. ARTURI
LEONARD C. BLUM
ANN L. FOWLER-CRUZ
ROSAMOND A. KOETHER
JACK E. MCGREGOR
ALLAN J. ROSEN
MARTIN F. WOLF

Water Pollution Control Authority
Town of Brookfield
100 Pocono Road
Brookfield, CT 06804

Re: Brookfield High School Sewer

Gentlemen:

The Water Pollution Control Authority (WPCA) by resolution adopted November 16, 2011 has requested written approval from this office that the WPCA's agreement to accept a non-cash liability (due-to Town) in the amount of \$485,000.00 on its books in FY 2012 representing the capital cost of sewer serving the Brookfield High School to be off-set by a non-cash assessment [of benefits] (due-from Town) in the amount of \$485,000.00 is in compliance with the Town Charter (Charter). The Charter does not control the WPCA's capital costs or expenditures or its assessment of benefits and therefore the resolution of the WPCA does not violate the Charter. The resolution appears to carry out the purposes of a prior WPCA allocation in accordance with the opinion letter of Francis J. Collins dated February 23, 2009 (copy enclosed) upon which the action was predicated consistent with the Charter.

The Charter spells out the role of the Board of Finance in adopting the municipal budget but does not include or require any approval by the Board of assessments for benefits made by the WPCA relating to its capital costs for sewers serving municipal buildings.

Yours Truly,

COHEN AND WOLF, P.C.

By: 
Neil R. Marcus

NRM:jd
Enclosure

COLLINS, HANNAFIN, GARAMELLA, JABER & TUOZZOLO
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

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PLEASE RESPOND TO DANBURY OFFICE

February 23, 2009

*Via e-mail rsilvaggi@Brookfield.org
and U.S. Mail*

Hon. Robert Silvaggi, First Selectman
Town of Brookfield
Brookfield Town Hall
100 Pocono Road
Brookfield, CT 06804

Dear Bob:

You have requested that we review the \$31,750,000 High School Renovation Authorization and bonding and the Water Pollution Control Authority's (WPCA) decision to use \$550,000 of its assessment fund to finance a portion of the sewer cost for service to the High School to advise you whether this procedure was consistent with the Town Charter.

The \$31,750,000 was authorized by two (2) Town actions; a Referendum vote of \$31,000,000 on April 29, 2003 and a Special Town meeting vote on August 5, 2008, which approved an additional \$750,000.

The WPCA vote to use approximately \$600,000 of its assessment fund balance for construction of a sewer line from the High School to Center School took place at its meeting on May 26, 2004. This vote occurred after the First Selectman and Controller reviewed the costs estimate for septic repair and the cost of constructing a sewer line. The High School renovation project allocated \$650,000 for septic repairs however, the septic repairs estimates were \$1,800,000 to \$1,900,000 vs. \$1,200,000 for construction of a sewer line. Thereafter, the WPCA contracted for engineering services for the sewer line and on March 30, 2006 contracted with J. Iapaluccio, Inc. for the construction of the sewer line. The figure from the Controller as of February 20, 2009 indicates an expenditure of \$1,133,632.57 for the sewer line with some unpaid items outstanding. The sum of \$650,000 was to be used from the \$31,750,000 Renovation Authorization and the remainder, up to \$600,000, from the WPCA assessment fund.

**COLLINS, HANNAFIN, GARAMELLA,
JABER & TUOZZOLO, P. C.**

Hon. Robert Silvaggi, First Selectman

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February 23, 2009

We have checked with Town's Bond Counsel who has indicated that the WPCA funding of the sewer described above, will not affect the \$31,750,000 Authorization and Bonding for the high school project.

The WPCA is the statutorily authorized authority to construct and operate a sewage system and is independent of the Town's authority pursuant to the Renovation Authorization. Once the authority has constructed a system, it levies benefit assessments against the land and buildings benefitted pursuant to its regulations. These benefits are payable over an installment period established by the WPCA. The construction of a sewer system does not require the prior approval of the property owners who will be benefitted thereby. Provisions for payment of any benefit assessment made to the Town payable over a period of years would have to be included in each annual Town budget which must be approved by the Board of Finance and the voters pursuant to Article VIII of the Charter.

Accordingly, we do not find that the procedure described above was inconsistent with the Town Charter.

Very truly yours,



Francis J. Collins

FJC:pkf