

A. Jeffrey Capeci, Chairman
Mary Ann Jacob, Vice Chair
Dan Amaral
Jan Andras
Kathy Fetchick
James S. Belden



Gary Davis
George T. Ferguson
Kevin Fitzgerald
Bob Merola
Ben Spragg
Richard Woycik

TOWN OF NEWTOWN

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**Minutes of the Regular Meeting of the Legislative Council
Held in the Board Room in the Newtown Municipal Center,
3 Primrose Street, Newtown, Connecticut
Tuesday, June 1, 2011**

**** These are draft minutes and as such are subject to correction by the Legislative Council at the next regular meeting. All corrections will be determined in minutes of the meeting which they were corrected.***

Vice-Chairman Mary Ann Jacob called the meeting to order at 7:30 pm.

PRESENT: Ben Spragg Dan Amaral, Jim Belden, Jan Andras, Gary Davis, Rich Woycik, Kevin Fitzgerald, Bob Merola, Kathy Fetchick, Mary Ann Jacob, and Chairman Jeff Capeci

ABSENT: George Ferguson

ALSO PRESENT: First Selectman Patricia Llodra, Finance Director Bob Tait, and 3 members of the press.

Approval of the Minutes: May 18, 2011: Mr. Spragg moved to approve the minutes from the May 18, 2011 regular meeting, as corrected. Mr. Davis seconded and the motion unanimously carried.

Corrections:

Page 3, under Communications, 2nd paragraph, add the word "policy: after the word Council at the end of the sentence.

Page 3, under First Selectman's Report, 5th paragraph, 2nd & 3rd sentences should read: "She indicated that a suggestion was made to use the Code Red System for notification other than emergencies, but it is not an acceptable use for the system. The First Selectman added that there is an opportunity through the Town web site to get alerts via their email."

Page 4, 1st paragraph, should read, ' Mr. Woycik indicated that he had some questions regarding the consolidation effort. He asked the First Selectman if it would be available for consideration for the next budget cycle . . . "

Page 4, 2nd paragraph, 3rd sentence, should read, "Mrs. Llodra noted that one concern of the education office is that consultants will be recommending that Newtown uses one system to support financial practices . . . "

Page 4, 3rd paragraph, 1st sentence, should read, "Additionally, Mrs. Llodra told the Council that there is a possibility the consultants might recommend there will be an increase in a staffing position.

Page 4, under New Business (continued), the motion should read, Ms. Jacob moved the adoption of the following Resolution for adoption: Resolved, The Newtown Legislative Council will pursue efforts to slow future increases in property taxes.. Mr. Davis seconded the resolution.

Page 4, under New Business (continued), paragraph 3, 3rd & 4th sentences, should read, "Mrs. Llodra added that 7.7% of the Grand List is commercial real estate and 82.3% is from residential; and she thinks

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that is too heavily weighted towards residential. She concluded that if all things are held equal there will be a \$4 million more in costs in fiscal 13 than we do now.

Page 5, 6th paragraph, 1st sentence, the word “roll” should be “role”

Page 6, 3rd paragraph, 1st sentence, should read, ‘Ms. Fetchick expressed her belief that a vote against the resolution would imply that she *is not in* favor of lower taxes.’”

Page 6, following the 4th paragraph, add the following “Mr. Kortze asked Mr. Davis if he wanted to reduce taxes to 1% and Mr. Davis said yes.

UNFINISHED BUSINESS:

Discussion and possible action on: An amendment to the Fairfield Hills Authority Ordinance - Mr. Spragg moved to direct the Chairman of the Ordinance Committee to arrange for a public hearing on an amendment to the Fairfield Hills Authority Ordinance to be held on July 6, 2011. Mr. Davis seconded.

According to Ms. Jacob, the Council directed the Finance Committee to look at Fairfield Hills Authority (FHA) Ordinance as it relates to the issue of negative leases. She stated that at that time Finance Committee made a recommendation to close that loop hole and then passed it on to the Ordinance Committee. She noted that the Ordinance Committee changed the Finance Committee’s recommendation was a small portion that adds a reference to the Charter. “. . . .And where the release requires the expenditures by town as conditions of the lease the lease shall be subject to provisions of Section 6-30, Special and Emergency Appropriations, of the Newtown Charter relative to required expenditures.” Ms. Jacob added that this was done to close the loophole.

Mr. Fitzgerald asked what the Charter calls for in the case of an Emergency Appropriations. Mr. Spragg indicated that the Charter doesn’t govern FHA, the ordinance governs FHA.

Dealing with a negative lease, where Fairfield Hills got into an amended lease and ended up where the Town was required to pay the lessee. By closing that loophole, if FHA should get into a lease that require payment by owe the Town it will go through the special appropriation process – it will require Board of selectman, Board of Finance and the Town Council and possibly a Town meeting or referendum depending on the size of it.

Mr. Davis questioned whether section 7-90 of the Charter “Acquisition or Disposition of Real Property better governs how the Town enters into leases.

The town established an authority that is not bound by the charter but rather it is bound by the council’s ordinance

Ms. Jacob said this doesn’t restrict the FHA from entering into any leases it restricts them from entering into a negative leases which means they would be encumbering the town and that would be a special appropriation so that’s why it refers back to the special appropriation section of the Charter.

Mr. Davis again questioned why 630 is better than 790.

The First Selectman noted that the matter went to the Finance Committee was as a negative lease which encumbered the community to spend money which is a special appropriation. Mrs. Llodra added that it’s that kind of negative leasing this ordinance is designed to prevent from ever happening again.

Ms. Jacob called the vote, and the motion was unanimously approved.

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Discussion and possible action on: Child Protection Ordinance – Mr. Spragg moved to direct the chairman of the Ordinance Committee to arrange for a public hearing on a proposed Child Protection Ordinance to be held on July 6, 2011. Mr. Merola seconded.

According to Ms. Jacob, the ordinance has undergone three changes since it was first forwarded to the Ordinance Committee. First, the name was changed from the Sex Offender Ordinance to the Child Protection Ordinance; a change in the language about what areas are covered by this they added “passive recreation areas or open space parcels”; and third was changing the name in section 283-9 “Child Safety Zone” were changed to Child Safety Enforcement.

Ms. Jacob noted that there are clear definitions of what areas can be included and the only way they can be included is if they have for example the need for proper signage. She indicated that the idea to including this language was the town grew and changed the Police Department could change the signage without having to change the ordinance.

Ms. Jacob told the Council that Police Chief Michael Kehoe suggested that the ordinance doesn't change the duties of the Police Officers but rather adds another tool to their tool box to enforce local law.

Ms. Jacob called the vote, and the motion unanimously carried.

According to Ms. Jacob, a hearing with regard to the FHA Ordinance and the Child Protection Ordinance will be held on Wednesday, July 6, 2011 at 6:30 pm prior to the Council's regular meeting. She stressed that the meeting requires a quorum and urged everyone to attend.

COMMUNICATIONS:

Ms. Fetchick reported that she and Mr. Merola attended the Board of Education's Space Needs Committee meeting last night. She indicated that things were moving along slower than she had hoped due to a number of delays in the number of meetings and scheduling meetings. Ms. Fetchick suggested that they were at the mercy of the administration providing information to them. She said she thought the Committee would have all the data collection completed, but all of the questions didn't get answered at the meeting. Ms. Fetchick added that they are still waiting for the information they asked for a month ago and stated that she knows it delays the First Selectman's work but said they are at the mercy of the administration.

Mr. Davis asked Ms. Fetchick what was going to happen once the facilities review was completed.

Ms. Fetchick replied that Board of Education Chairman Bill Hart asked what the committee thought and she stated that she doesn't think they have enough information. She indicated that once the committee has a recommendation they will bring it the Board of Education, and the Board will make a decision.

Ms. Fetchick told the Council that the Superintendent of Schools Janet Robinson brought some preliminary numbers of closing Head O' Meadow School – only as an example of closing an elementary school. She noted that Dr. Robinson also suggested the following scenario: What if the Middle School was closed and the Middle School – grades 6, 7 and 8 - moved to Reed and the fifth grade was moved back to the Elementary School. Ms. Fetchick indicated that a lot of assumptions have been made and no one has talked about the validity of those assumptions. She indicated that they needed to have at least two more meetings.

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Mr. Merola stressed that the information provided by the superintendent was purely an example. He noted that there shouldn't be any concern about any school closing, indicating that they don't have enough data to even recommend that.

Ms. Fetchick noted that Mr. Hart wants to make a decision, but she said she felt they don't have enough data to do it.

Mr. Woycik noted that clearly the process is taking longer than expected and if they are considering doing something with the middle school and Reed and suggested that there is work that needs to be done to the Middle School

Ms. Jacob concluded that the Committee asked the superintendent to bring back data and she didn't. Ms. Jacob added that regardless of what Newtown does with the Middle School, the building still needs a new roof.

Mr. Woycik questioned why they should fix the building if it's not going to be used as an educational building and noted that it was a large building. Ms. Jacob noted that it was purely an inventory assessment.

Ms. Fetchick indicated that the Committee was determining what space was needed for the school and added that when they reach the "tipping point" with the population than they can release a building.

Mr. Amaral asked if there was going to be a meeting regarding the middle school roof, and Mrs. Llodra told him there was one scheduled for June 7 at 7 pm with the location to be announced.

Mr. Amaral noted that the AC in the building needed to be replaced and Mrs. Llodra indicated that the reason for meeting was to look at all the alternatives in regards to what needed to be repaired – the roof or the roof and other things like the HVAC.

FIRST SELECTMAN'S REPORT:

Animal Control Facility – Mrs. Llodra reported that, May 19, 2011, Planning and Zoning approved the building and site plan for the Dog Park and Animal Control Facility. She indicated that the funding for the facility was under the umbrella of Public Works, and added that the Dog Park currently doesn't have funding but will be under the umbrella of Parks & Recreation. The First Selectman concluded that the project for the facility would go out to bid in a week or so; they should break ground in the early fall; and the facility should be in place by winter.

Sandy Hook Waterline – Mrs. Llodra told the Council that the waterline should go out to bid soon. She noted that in order to square out the intersection in the center there is a telephone pole that needs to be moved. The First Selectman noted that they are awaiting the final change recommendations from the DOT and suggested that in the meantime they will go out to bid for the waterline. According to Mrs. Llodra, the costs will be "really unsubstantial" to move the utility pole because every provider is taking on their costs to move their particular systems.

Bogg's Hill Road Culvert – Mrs. Llodra reported that culvert has failed and they are just about ready to go out to bid on that project. She added it was an unanticipated expense and recommends the Town use the money from the CIP identified for a bridge to be used for the project rather than borrow additional money. The First Selectman reported that the evaluation of the culverts in Town revealed that they were all made of the same materials and installed at the same time roughly 20 years ago.

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Permits – Mrs. Llodra indicated that the Town continues to see an “uptick” in the number of permits and in their value. She noted that in 2009 there were 96 permits at a value of \$1 million, 2010 there were 141 permits with a value of \$2 million; and 2011 there were 142 with a value of \$3 million.

Public Safety – The First Selectman updated the Council on the status of the Tax Abatement for NUSAR (Newtown Underwater Search and Rescue). She noted that they were not allowed to benefit from the tax abatement because their ordinance references a CT state statute that was written with such specificity that they couldn’t include them. Mrs. Llodra indicated that she had a conversation with legislators and they had written a rider to go on another bill that will go forward in the next few days.

Aquarion Water Company – In regards to United Water, Mrs. Llodra reported that another water company, Aquarion, has applied as an intervener in the docket, and has expressed a desire to purchase two small water systems that provide rural water to Brookfield.

Employee Medical Benefits Committee – The First Selectman reported that the oversight committee is being formed and the names of three “very qualified” individuals were brought forward to the Board of Selectmen. She stated that according to the Charter, a committee with three regular members, no more than two can be from the same parties; and explained that currently everyone who came forward is Republican. Mrs. Llodra explained that two of the three individuals who came forward will be regular members and one will be an alternate; and she stressed that they will be looking for two more members from other parties.

COMMITTEE REPORTS:

Ordinance Committee – Mrs. Jacob said the committee recognized there needs to be a bigger discussion around Fairfield Hills going forward.

Mrs. Llodra noted that the Board of Selectman sees the whole question of Fairfield Hills as having several stages. She added that she expects a report in July and depending on what that report contains the Board will send it to Planning and Zoning.

Discussion on transferring (“other financing uses”) \$150,000 to the Capital / Non-Recurring – Education fund, from general ledger accounts (general fund) 01-0257, “BOE Encumbrance Carryover” (\$68,000) and 01-0261, “BOS Encumbrance Carryover” (\$82,000) – Ms. Fetchick moved to transfer \$150,000, from other financial uses, to the Capital / Non-Recurring – Education fund, from general ledger accounts (general fund) 01-0257, “BOE Encumbrance Carryover” (\$68,000) and 01-0261, “BOS Encumbrance Carryover” (\$82,000). Mr. Merola seconded.

Mr. Tait clarified that this “new” fund is the same capital reoccurring fund, however for administrative purposes he has set up a separate fund to for education money.

Ms, Jacob noted that these are unspent funds that were encumbered, and not needed; and are not part of the fund balance dollars.

Mr. Woycik noted that this transfer was being set up for specific use by the Board of Education. He suggested that it will be funded by any access amounts within the Board of Education Budget, but pointed out that he sees \$82,000 from the Board of Selectmen.

Mr. Tait stated that the original \$150,000 came from the Board of Education. Referring to the transfer before the Council, Mr. Woycik indicated that the Town was funding 60%.

Mrs. Llodra explained that if they had initialized the process before accounting closed at FY 2010, the \$150,000 would have gone into the Fund Balance. She added that the encumbrance carryover came from the carryover from Board of Selectmen.

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Originally, according to Mrs. Llodra, a state statute went to OPM that enabled the Board of education to carry over money in some account, but the regulatory language was never written to support the process. She added that the process was under the domain of the financial authority and noted that Newtown has two financial authorities and said that it was no one's fault.

Mrs. Llodra stressed that the Board of Finance made it clear months ago that this is their intention. And said they brought this to the Council as the next step. She believes the Council should get through this now, but recommends that in the future the Legislative Council's Finance Committee takes this on. The First Selectman suggested that there needs to be a process defining how much money can be placed into the Capital Non-Recurring Account and who makes that decision and when.

Mr. Spragg indicated that he had sent a page of questions regarding the transfer to Mrs. Llodra and Mr. Tait that afternoon and wanted to know their responses before making a decision. He thought it was a false promise that the Legislative Council would have moved \$150,000 last year if they moved quickly enough and stressed that he doesn't think the Council would have done that.

Mr. Spragg questioned how they were getting money into the CAP reserve according to the statute. He indicated he heard what the auditor said about making a resolution to do it, but questioned the process.

In addition, he indicated he had questions for the school board, but pointed out there was no one from the board at the meeting. Mr. Spragg reminded the Council that when they were putting the budget together, Mr. Hart gave them a list and the \$150,000 was right at the top. He expressed his concern that this was '09-'10 money that was encumbered and for two years it was not spent; and now in year 3, they will possibly spend it. Mr. Spragg suggested that it was as though they didn't want the school board to return money. He added that other Town departments were equally deserving of having money returned to them. As an example, Mr. Spragg suggested that money should be given back to Parks and Rec to keep the pool open the extra hour.

Mrs. Llodra explained that money was defined on the way out not the way in. She said she was trying to get everyone to understand the concept that their job is to enable it, and they can either accept or not – it's not for all time.

Mr. Spragg suggested that the Council needs a legal opinion; and since there was no member of the school board present, no Council present and no committee report he suggested that under A1-7B of the Rules of The Legislative Council, the motion be postponed.

Mr. Davis recommended postponing the motion until the next meeting.

Chairman Capeci cited Council rules which clearly allow a motion to be postponed when there is no committee report or no Counsel present. He noted that there are legal concerns and asked Mr. Spragg if he chose to do that. Mr. Spragg said yes.

Chairman Capeci asked that the original motion be withdrawn and a new motion be made to refer the matter to the Finance Committee for further vetting and to invite the Chairman of the Finance Committee and the Chairman of the Board of Education.

The motion and second were withdrawn and the matter was tabled per Council rules A1-7B as there was no committee report available for the meeting and no legal counsel present

Ms. Jacob moved to direct the Finance Committee to review the transfer request of \$68,000 from GL Account 01-0257 to Board of Education Encumbrance Carryover, and \$82,000 from GL Account 01-026 to Board of Selectmen Encumbrance Carryover and return to the Council with recommendations, Ms. Fetchick seconded and the motion was unanimously approved.

Discussion and possible action on: Changes to the Rules of the Legislative Council – Ms. Jacob moved to adopt the amendments to the Rules of the Legislative Council proposed by the Administration Committee dated May 19, 2011. Mr. Davis seconded.

Committees - Mr. Davis began by reading some of the recommended changes. The first being the reduction of the number of committees from 6 to 4 and recommended that the Chairman name 3 to 6

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people to serve on any of them. Mr. Davis noted that it was also suggested that the Finance Committee and Administration Committee be merged to become one committee and that the Public Safety, Public Works and Park and Rec be merged into one committee. He indicated that it was suggested that a land use, environmental and sustainable energy rolled into forming a new committee. Mr. Davis also suggested that instead of Council member serving on two or three committees which many of them felt was burdensome that they be allowed to serve on just one.

Voter Participation - Regarding voter participation, Mr. Davis reminded the Council that in order to participate, currently, a voter must speak to an item on the agenda. He suggested that they allow them to speak to anything but limit them to three minutes.

Voting – Mr. Davis reminded Council members in the past that they were allowed to call in. He suggested that they add into the rules that Council members can attend a meeting that allows for two-way communication.

Identifying One's Self as a Member of the Council – Mr. Davis indicated that when someone is speaking to another board or social media that they make sure it's known it's their opinion and not an opinion as a member of the Council. However, he noted that if it's a subject they were discussing as a Council that a member states that they are a member of the Council.

Officers – Ms. Fetchick indicated that under officers the title Chairman would be changed to Chair and that Vice-Chairman would be changed to Vice-Chair.

Distribution of Minutes and Agenda – Mr. Davis indicated that in regards to distributing the minutes and agendas that there is already a state statute the states that the motions to the minutes must be posted within 48 hours, the minutes posted within 7 days, and the agenda filed 24 hours before the meeting. Chairman Capeci noted that the Charter specifies an agenda must be distributed 3 days prior to the meeting so it is typically done on a Friday for the Council's regular Wednesday meeting.

Audio Video Recordings – Chairman Capeci noted that the audio recordings will be maintained per the state for six months. He noted that currently there are no requirements for video.

Mr. Fitzgerald asked that should there be an infraction caused by someone due to some oversight, that there is a discussion rather than some formal action.

Ms Jacob proposed to amend the original proposal as follows: § AI-2-D Clerk - delete the last sentence, "Audio and video recordings, when created, will be maintained per state requirements"; § AI-6. Voter Participation - Change all references to "voter participation" to "voter comments"; strike the wording "that is under the jurisdiction of the council"; and change "the voter participation" to "one of the voter comments"; § AI-9. Voting - Change the last sentence to read, "Members who cannot physically attend a meeting but are able to participate, hear and be heard by all, may vote by telephone or other electronic means that allows two-way communication." § AI-15 – Add after "explicitly say or write" "something to the effect of" and § AI-15-C – delete the last sentence "He/she shall be careful to clearly delineate, when differences exist between his/her personal beliefs and the intentions of the Council's action. Mr. Belden seconded.

After a brief discussion, the original motion and second, as well as the motion to amend and the second, were withdrawn following the Chairman's recommendation to send the matter back to the Administration Committee for their review.

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VOTER PARTICIPATION: none

ANNOUNCEMENTS: none

COMMUNICATIONS:

Chairman Capeci told the Council he received a communication from Mrs. Llodra that day that Stratford's bond rating was reduced from "Aa2" to "Aa3". He indicated that one of the major factors was insufficient fund balance and reliance thereof.

ADJOURNMENT: The meeting was adjourned at 10:07 pm

Ted Swigart, Clerk