

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
Wednesday, June 15, 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.*

Chairman Jeff Capeci called the meeting to order at 7:35 pm.

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

ABSENT: none

ALSO PRESENT: First Selectman Patricia Llodra, Finance Director Bob Tait, Community Development Director Liz Stocker; members of the Economic Development Committee (EDC) Don Sharpe and Margaret Olinger; Chairman and CEO of Advanced Fusion Systems (AFS) Dr. William Joyce and AFS Treasurer Robert Powell; and 2 members of the press.

MINUTES: Regular Meeting of June 1, 2011 – Ms. Jacob moved to accept the minutes from the regular meeting, June 1, 2011 as corrected, Mr. Spragg seconded and the motion unanimously carried.

Page 5, under Committee Reports, Ordinance Committee, 3rd paragraph after motion, 2nd sentence, “. . . any *access* amounts . . .” should be, “. . . any *excess* amounts. . .”

NEW BUSINESS:

Advanced Fusion Systems (AFS) Business Incentive Program Application – According to Ms. Stocker, an application from AFS was received by EDC filed under the business incentive program. She added that a request was made to abate taxes for \$25 million - \$30 million in improvements to the old Pitney Bowes plant.

The Ms. Stocker explained that Board of Selectman and Board of Finance had already approved the application and AFS was coming before the Council for the determining vote.

She noted that the plant has been vacant for a couple of years and based the Town's economic development the EDC is trying to fill the vacancy just as they are trying to get companies to occupy the other vacant properties in Newtown.

Ms. Stocker explained that in regards to job creation, they are already seeing over 30 people on site every day. She added that the hope to create 50 jobs within 3 to 5 years

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She told the Council that once the abatement is finished the Town will see the value of a Real property. Ms. Stocker indicated that their analysis showed that the assessment could increase up to \$10.5 million.

Ms. Jacob asked if the abatement was for the real value of improvements only. Ms. Stocker explained that the program fixes the baseline value of the real estate today.

Mr. Sharp indicated that the land is close to Technology Park which is designed to accommodate 100,000 square feet of new building space. He noted that AFS could bring in more businesses.

At this point, Dr. Joyce and Dr. Powell took time to brief the Legislative Council on what their company does and answered any questions Council members had.

According to Dr. Joyce, AFS makes a few select products for the power industry including a switch that protects vital resources from a huge power surge or an EMP and an X-ray Laser that can be used to produce computer chips with line widths smaller than produced today or be used to remove PCB contamination from water and soil.

Dr. Joyce discussed the costs that have already gone into the building and the costs yet to come. In addition, he explained that AFS is a big user of power and ultimately would like to provide its own power.

Dr. Joyce suggested that by providing their own power, they would be capable of providing the 15 Megawatts necessary to power the essential services in Town in the event of a power failure.

Council members indicated that this was a very exciting and positive venture to come to Newtown.

Mr. Ferguson asked if the x-ray laser would work for airborne contaminants as well; and Dr. Joyce replied that people have been thinking about using it in a hospital area.

Ms. Jacob moved to approve Advanced Fusion Systems Incentive Program Application. Mr. Fitzgerald seconded and the motion was unanimously approved.

COMMUNICATIONS: none

COMMITTEE REPORTS:

Mr. Spragg reported that the Finance Committee met prior to the Council meeting and discussed the \$150,000 transfer; the referral to get the Debt Cap to 9%; and what efforts can be made to slow future increases in property taxes.

FIRST SELECTMAN'S REPORT:

Mrs. Llodra circulated a document pertaining to the minimum budget required in an effort to look at the increasing taxation

The First Selectman asked about the status of the Cat Ordinance and suggested that it needs to be in place before the opening date of the animal control facility scheduled for January 1.

Next, she reported that the text of the modified state legislation now includes Newtown Underwater Search and Rescue (NUSAR) and will go into effect July 1, 2011.

\ Ms. Jacob told the First Selectman that the Ordinance Committee was scheduled to meet on July 11, 2011 and indicated that Animal Control (re: the Cat Ordinance), and NUSAR were on the top of their list.

UNFINISHED BUSINESS:

Discussion and possible action on: Discussion on transferring \$150,000 to the Capital/Non-Recurring-Education fund from general ledger a/c 01-0257 Board of Education Encumbrance Carryover and a/c 01-0261 Board of Selectmen Encumbrance Carryover -

Mr. Spragg stated that they had checked the referral from the Council and met with Mrs. Llodra. He noted that the administration withdrew its request for approval and so it was the Committee's

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recommendation that no action be taken. In addition, Mr. Spragg indicated that the Committee recommended the Council charge the Finance Committee with writing policy governing the transfer of unexpected school funds to the Capital Reserve Account.

Mrs. Llodra advised the Council that she and Mr. Tait were not the architects of initiative they were the agents. She noted that the members of the Board of Finance were the architects. The First Selectman said it was brought to the attention of the Council because the resolution brought a sense of accountability and a process. She noted that the resolution was originally tabled because they needed to get a legal opinion. Mrs. Llodra indicated that the Town's Counsel suggested that a legal opinion was not possible because it was an accounting function. She added that the failure to get a legal opinion caused them to seek other strategies. The First Selectman said they came up with another alternative – that they can do it without the Councils' approval by using a management prerogative to repurpose the funds which is acceptable to the auditor. She also suggested that they decided to withdraw their request but didn't want to do it. It is the First Selectman's inclination not to act without the support of the Council because it is not her initiative. Mrs. Llodra concluded that they just want to know where the Council stands.

Ms. Jacob stated that the Council tabled it; and Chairman Capeci added that they had made a new motion asking the Finance Committee to look into it.

Ms. Fetchick told the Council that she would like to make a motion to bring back the original motion.

Ms. Fetchick made a motion to bring back the original motion moving 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). Ms. Jacob seconded.

Ms. Fetchick favored of the motion because she believed it was good practice to take monies not expended and put them into an account for future capital expenditures. She added that it allows for a regular process of using those funds with all the checks and balances.

Chairman Capeci noted that it was put in an account and the only way to expend the funds is through a special appropriation.

Ms. Andras indicated that the Finance Committee really didn't discuss it because they were told it wasn't on the table.

Mrs. Llodra noted she wants accountability and the current process doesn't have accountability to it.

Ms. Jacob stated that she supports this. She noted that they spent a year asking the Board of Education to be financially transparent with their transfer policy. Mrs. Jacob added that they were not giving back the \$150,000 but rather putting it aside in a savings account. She said she doesn't want to stop this process if they don't like what the Board of Education uses it for down the road.

Mr. Spragg noted that the lack of an opinion of the Town Attorney was due to the lack of structure to give an opinion on and that's why he is voting against the resolution. He suggested that there should be a policy for the Board of Education to transfer money into an account and have a way of getting it out.

The First Selectman indicated that she is asking the Council to support her and the Finance Director if they make a move.

Mr. Spragg moved to amend the motion adding that the Legislative Council supports the Administration to move money to the capital Non-Recurring Fund. Mr. Davis seconded the amendment.

Mr. Davis suggested that everyone's intent was correct, but noted that the problem was that the Council never got to develop a policy before implementing this. He said he supports the First Selectman and believes the Council should charge the Finance Committee with getting a policy in place.

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Mr. Ferguson said he supported the first motion because the Board of Finance and Board of Education came together a year or so ago and agreed that if the Board of Education returns funds to the Town it could access them in the future. Mr. Ferguson noted that he is unable to support the amendment because he thinks the original motion should have the approval of the Council.

Mr. Woycik stated that he didn't support either of the motions. He noted that the Board of Education always talked about surpluses, but now funding the transfer would take money away from the Board of Selectman. Additionally, Mr. Woycik suggested that this was a discussion between the Board of Finance and the Board of Education, but it was never discussed with the Legislative Council. He noted that next to the voters the Council is the final fiduciary body in the Town. He suggested that they money was the taxpayers money and it should be returned to them not the Board of Education. Mr. Woycik concluded by asking the Council to reject the motion.

Mrs. Llodra suggested that they will follow the regular charter mandated process. She noted that both the Board of Selectmen and the Board of Education have access to the funds through a special appropriation. The First Selectman added that it is true the Board of Finance asks it to be noted but indicated that it doesn't mean there is a promise.

Mr. Belden wanted clarification that what was passed in the referendum doesn't change with this. He said it was his understanding that the Board of Education had included the \$150,000 as part of its income. He noted that the Board of Education could have spent the \$150,000 but through a collaborative effort with the Board of Finance decided to save it for the future.

Mr. Davis agreed with the First Selectman, but said the process wasn't followed. He said that Mr. Woycik was right that the \$150,000 was an issue and that the expectation by the Board of Education was that the money would go into their budget. However, Mr. Davis suggested that this was not the time to debate this and indicated that he strongly supports Mr. Spragg's amendment.

Mr. Davis suggested that the amendment allows the First Selectman to do what needs to be done; and he indicated that he supports the transfer, but suggests the Council shouldn't be authorizing it.

Mr. Ferguson surmised that the many different parts of this were making the matter quite complex. He said he agreed with Mr. Woycik that by approving the transfer they would increase the allocation of dollars that the tax payers originally approved for the Board of Education. He also noted that by not approving it, the Board of Education has a revenue line that will be \$150,000 under funded.

Mr. Tait reminded the Council that the Board of Education doesn't have an income and stressed that what they collect comes to the Town.

Chairman Capeci stated that the Council is not allocating the money; the money is going into a Capital Non-Recurring Fund. The Chairman added that the only way the money can be obtained is through an approval process. If the Board of Finance agrees and the Legislative Council agrees than the Board of Education can get that money.

In regards to the \$150,000, Ms. Fetchick suggests that the Board of Education understands it may be unwise to think that transfer will automatically be approved. She added that the money could be used to off-set the cost of the upcoming Hawley HVAC Project.

Mrs. Llodra stressed that the Council needs to separate the process from the concept. She said there were two parts. The First Selectman indicated that they are not discussing the special appropriation to the Board of Education tonight, but rather looking at a process piece to that.

Mr. Merola stated that the evening's discussion assumes that the \$150,000 goes to the Board of Education when in fact it goes into Capital Non-Recurring. He said it has to be made crystal clear that this is not earmarked for the Board of Education. Mr. Merola noted that he went to the Board of Finance meeting and felt the money would be earmarked for the Board of Education. He preferred to table the motion until July 1.

To clarify the path of surpluses, Mrs. Llodra explained that end-of-year money gets swept into the Fund Balance; but if they want money, it comes out of the Capital Non-Recurring Fund.

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Mr. Fitzgerald stated that they need tools to encourage the Board of Education to return surplus funds back and suggested that by the Council taking this step first and then have the discussion will defeat the approach. He suggested that regardless of what action they take the Board of education with the approval of the Board of Finance and the Legislative Council could get the \$150,000 out of the Capital Non-Recurring Fund.

Chairman Capeci told fellow Council members he agrees with Mr. Spragg that the original motion is unprecedented, and said he never recalls anything being moved from a general ledger account. He added that the amendment to the motion offers support without the Council authorizing to do it and he encouraged the rest of the Council to vote for the amendment. He added that after the motion is called he would charge the Finance Committee with starting the process.

Chairman Capeci called the vote. Ms. Fetchick and Ms. Jacob stated that they accepted Mr. Spragg's amendment to the original motion as a friendly amendment.

Incorporating Mr. Spragg's friendly amendment, Ms. Fetchick moved to support the administration's transfer of \$150,000 of unexpended encumbrances from other uses general ledger accounts (general fund) 01-257, "BOE Encumbrance Carryover" (\$68,000) and 01-0261, "BOS Encumbrance Carryover" (\$82,000) to the Capital / Non-Recurring fund. Mrs. Jacob seconded and the motion was approved 10-2. Mr. Woycik and Mr. Merola voted against the motion.

NEW BUSINESS (continued):

Resolution: RESOLUTION AMENDING A RESOLUTION PROVIDING FOR A SPECIAL APPROPRIATION IN THE AMOUNT OF \$4,257,690 FOR ROOF REPLACEMENT AT NEWTOWN MIDDLE SCHOOL AND AUTHORIZING THE ISSUANCE OF \$4,257,690 BONDS OF THE TOWN TO MEET SAID APPROPRIATION AND PENDING THE ISSUANCE THEREOF THE MAKING OF TEMPORARY BORROWINGS FOR SUCH PURPOSE.

To be amended to expand the scope of the project to include replacement and/or extension of the HVAC and related electrical and architectural work, related to the cafeteria, nurse/administrative office and computer rooms. Appropriation amount is not changed (from the original resolution) – tabled pending discussion.

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To be amended by increasing the amount of the appropriation and bond authorization therein by \$969,610 from \$4,257,690 to \$5,227,300 and to expand the scope of the project to include (i) replacement of the red copper gutters, corridor lighting, ceilings, and devices in work, and (ii) replacement and/or extension of the HVAC and related electrical and architectural work, and replacement of the skylights, duct, and ceiling, all related to the cafeteria, auditorium, principal/guidance office, nurse/administrative office, library and computer rooms – tabled pending further discussion.

TRANSFERS:

From 01650-1006 Benefits \$606 and 01650-2017 Fuel Oil \$25,350 to 01650-2011 Supplies \$3,600 and 01650-2021 Sewer Assessment \$606 and 01650-4001 Contractual Custodian \$17,750 and 01650-4060 Contractual Services \$4,000 –

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Mr. Spragg moved to transfer from account 01650-1006, Benefits, \$606; and account 01650-2017, Fuel Oil, \$25,350 to account 01650-2011, Supplies, \$3,600; and account 01650-2021, Sewer Assessment, \$606; and account 01650-4001, Contractual Custodian, \$17,750; and account 01650-4060, Contractual Services, \$4,000.

According to the Finance Director, new employees, budgeted for building maintenance in the Municipal Center, were not hired and the work was handled by outside contractors with in-house support. In his reason for the transfer, the Mr. Tait indicated that operating costs for heat (fuel oil) were lower than estimated due to lower than estimated consumption for the Municipal Center and lower pricing for natural gas. He added that supplies, contractual custodian and other contracted services were higher due to the shift to full operation outside of warranties.

Ms. Andras seconded and the motion unanimously carried.

From 01515-2018, Bldg. Electric, \$3,000; To 01515-103 Overtime –

Mr. Spragg moved to transfer from account 01515-2018, Building Electric, \$3,000, to account 01515-103, Overtime.

According to Mr. Tait, the estimated savings in Landfill overtime account were over estimated. However, he noted in the reason for the transfer that savings of \$12,000 have been realized and indicated that after this adjustment the adjusted balance would be \$12,000. Mr. Tait added that the budget amount in the last two years was about \$24,000.

Ms. Fetchick seconded and the motion was unanimously approved.

From 01570-2000, Contingency, \$11,400; to 01180-1005, Referenda –

Mr. Spragg moved to transfer from account 01570-2000, Contingency, \$11,400, to account 01180-1005, Referenda. Ms. Andras seconded. The motion unanimously carried.

According to the Finance Director, the reason for the transfer was to cover costs of the Charter Referendum and second budget adoption. He noted the breakdown of the funds as follows: \$3,000 ballots, \$161 signs, \$540 meals, and \$7,699 payroll.

From 01515-4025, Contractual Services, \$15,000; 01650-2017, Fuel Oil, \$4,650; and 01570-2000, Contingency, \$21,380; to 01510-1003, Overtime, \$5,538; and 01510-2032, Salt, \$35,492 –

Mr. Spragg moved to transfer from account 01515-4025, Contractual Services, \$15,000; account 01650-2017, Fuel Oil, \$4,650; and account 01570-2000, Contingency, \$21,380, to account 01510-1003, Overtime, \$5,538; and account 01510-2032, Salt, \$35,492.

According to Mr. Tait, this is the last request for transfers relating to winter maintenance and bad weather. He indicated that budget amounts are available in landfill Contractual Services due to lower costs on contracts related to garbage and recyclable materials tip fees. The Finance Director noted that fuel savings were realized from reduced expenditures in building heat both from lower than anticipated consumption in the Municipal Center and lower pricing for natural gas.

Mr. Ferguson seconded and the motion was unanimously approved.

From 01500-1003, Payroll, \$25,000; 01500-4065, Contractual Roadside, \$25,000; and 01570-2000, Contingency, \$46,500; to 01500-1004, Overtime, \$7,500; 01500-3050, Repairs, \$79,000; and 01500-2016, Equipment, Fuel \$10,000 –

Mr. Spragg moved to transfer from account 01500-1003, Payroll, \$25,000; account 01500-4065, Contractual Roadside, \$25,000; and account 01570-2000, Contingency, \$46,500; to account 01500-1004, Overtime, \$7,500; account 01500-3050, Repairs, \$79,000; and account 01500-2016, Equipment, Fuel \$10,000. Mr. Merola seconded. The motion unanimously carried.

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According to the Finance Director, the request for additional budget amounts in repairs and equipment fuel relate to the effect the winter had on our equipment and the additional equipment fuel needed for the additional snow runs. Mr. Tait added that the amount available in payroll due to workers out on workers' compensation and disability. He noted that the amount available in contractual roadside due to postponement of program and work handled in house.

UNFINISHED BUSINESS (continued):

Discussion and possible action on: Changes to the Rules of the Legislative Council -

Ms. Jacob moved to approve all changes to existing Rules of the Legislative Council as recommended by the Administration Committee. Mr. Belden seconded and after a brief discussion of the changes the motion was unanimously approved.

Ms. Jacob moved to add section A1-15 as recommended by the Administration Committee. Mr. Ferguson seconded and the motion was approved 10-2.

Mr. Woycik suggested that Council members be allowed to give their opinion but that the public spokesman for the Council should be the Chairman.

Ms. Jacob believed that any members should be able to speak about issues relating to a meeting.

Ms. Fetchick indicated she was against anyone telling her who she could or couldn't talk to.

Ms. Fetchick and Mr. Fitzgerald voted against the motion.

Mr. Spragg moved to refer review of the policy, on moving year end monies to the Capital/ Non-Recurring Fund, to the Board of Finance. Ms. Fetchick seconded.

Mr. Spragg told the Council that he spoke to the Chairman of the Board of Finance and added that the Board of Finance has done detail work and written policies in the past for the Legislative Council's approval. He indicated that the flow of information comes through the Board of Finance to the Council and said he put into motion an email to Mrs. Llodra and Mr. Tait asking them to begin the drafting of a policy.

The motion unanimously carried.

VOTER PARTICIPATION: none

ANNOUNCEMENTS: none

ADJOURNMENT: The meeting was adjourned at 10:34 pm.

Ted Swigart, Clerk