

TOWN OF WALLINGFORD, CONNECTICUT

REGULAR TOWN COUNCIL MEETING

Town Council Chambers

February 26, 2013

RECORD OF VOTES & MINUTES

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The Regular Meeting of the Wallingford Town Council was called to order at **6:30 P.M.** The Opening Prayer was offered by the Reverend Dee Ann Dodd of St. Paul's Episcopal Church of Wallingford. The Pledge of Allegiance was said. Councilors in attendance were as follows: Vincent Cervoni, Nick Economopoulos, Craig Fishbein, Thomas Laffin, John Letourneau, Chairman Robert F. Parisi, Rosemary Rascati, John J. Sullivan and Jason Zandri. Mayor William W. Dickinson, Jr. was in attendance. Town Attorney G.E. Farrell, Sr. attended at the beginning of the meeting and Corporation Counsel Janis M. Small attended being present for the discussion with regard to Item 7 and for part of Item 6.

2. Correspondence – *None*

Councilor Economopoulos raised an objection, stating that there were two letters to the Town Council and he wished one particular one to be read. He was overruled. Chairman Parisi responded stating that it was deemed a personnel matter and would be handled by the departments.

3. Consent Agenda

3a. Consider and Approve Tax Refunds totaling \$9,509.93 (#510 - #536)  
Acct. # 001-1000-010-1170 - Tax Collector

3b. Acceptance of Federal/State Highway Safety Grant and Appropriation for \$3,700 to Revenue Highway Safety Acct # 1002001-45208 and to Police Overtime Acct # 10020050-51400 – Police Department

3c. Consider and Approve a Transfer in the Amount of \$2,000 to Capital-Vehicle Acct # 10050050-57000-00174 from Salaries & Wages Acct # 10050050-51000 - Parks & Recreation Department

3d. Consider and Approve a Transfer in the Amount of \$3,064 to Software Support Acct # 10050050-56718 from Salaries & Wages Acct # 10050050-51000 - Parks & Recreation Department

3e. Consider and Approve a Budget Amendment in the Amount of \$115,440 to Revenue-Sale of Electricity-Commercial/Industrial Acct # 442 and to Amortized Expenses Acct # 425 (new) – Electric Division

3f. Consider and Approve the Re-Appointment of Cheryl Christie Collett to the Historic Properties Commission for a five-year term ending March 27, 2018  
- Chairman Robert Parisi

3g. Approve minutes of Regular Town Council meeting of February 13, 2013

3h. Approve minutes of Special Joint Meeting - Town Council and PUC February 7, 2013

**MOTION WAS MADE TO APPROVE THE CONSENT AGENDA 3a. – 3h.**

**MADE BY: CERVONI**

**SECONDED BY: RASCATI**

**VOTE: 8 AYE; 1 NAY (ECONOMOPOULOS)**

**MOTION PASSED**

Following the vote, Councilor Economopoulos asked for help in understanding Item 3e.

Town Clerk swore in Cheryl Christie Collett to the Historic Properties Commission  
(*off mike*).

4. Items Removed from the Consent Agenda - *None*

5. **PUBLIC QUESTION & ANSWER PERIOD**

Geno Zandri, 9 Balsam Ridge Circle, reported on street lamps and reporting the status of those lamps is progressing.

Bill Comerford, 5 Broadview Road, made comments on the street lamps, and then brought up the Diversity Commission. He asked the Mayor if any of the recommendations made by the Commission to the town had been implemented. The Mayor said he would review the report. Chairman Parisi asked Mr. Comerford if he had received a report from the state's attorney regarding 'woodgate investigation'. Mr. Comerford said that he took a different path and is still waiting for the report.

Tanya Bishon, 25 Hickory Court, commended the town for outstanding work during the blizzard. She said that she lives on a private road, and they got to her on Saturday afternoon.

Bob Gross, 114 Long Hill Road, asked why the town, which has its own Water-Sewer Division, doesn't just repair the American Legion building water-sewer by going across the Parade Ground to South Main Street. Chairman Parisi noted that this is not the place to discuss agenda items. Mayor Dickinson stated that it has not been determined what the town wants to do with the property. He said all costs associated with the property should all be in one place. He further explained that town time, materials, labor, etc. should not show up as an expense on the property. He also pointed out that there is not easement on the property at this time.

6. Report from the Health Department with regard to wells at 1171 South Broad Street  
Councilor Nick Economopoulos

*In attendance – Eloise Hazelwood, Health Director  
Stephen Civitelli, Chief Sanitarian*

Councilor Economopoulos stated that he attended a Board of Health meeting where he learned of contaminated wells and about water in the Town Clerk's Office with resulting mold in that area.

Ms. Hazelwood stated that the wells have been on the board's agenda and in the minutes for at least one year and that they are also posted on the town's website. She reviewed the history of the subject wells including the testing of water; the contaminants involved as distinguished from bacteria; the contaminant TEC could be a solvent or come from automotive sources or just be a by-product and that with respect to the location, there are many possible sources of contaminants making it not feasible to identify the exact source of the contamination; the involvement of DEEP in the process; and what led to the placement of DEEP maintained filters on the subject wells.

Despite residents stating they have never heard from anyone, she explained that her department records indicate that there has been consistent contact with the residents involved as well as that of DEEP. She said that they deal with environmental issues everyday in her department, and it was her department that turned this issue over to DEEP. She addressed issues on Seiter Hill Road when someone inquired. Councilor Sullivan was interested in learning more about wells. Ms. Hazelwood explained public water v. private wells. Councilor Fishbein asked about the identified contaminant TEC.

The discussion touched on the water leaking in the Town Clerk's Office and the reported odor and possible mold. Ms. Hazelwood remarked that there are no air control standards for the Town Hall building. Currently the wet spot in the Clerk's Office has improved and this leak will be addressed by Public Works in the spring.

Harold Lincoln, 1175 Broad Street, Wallingford, spoke about his experience with his well and expressed that he was not communicated with by the town or by DEEP. He was reminded that testing was done, and a filter installed and that test results were sent to him, all of which mean that there was communication with him.

Nicholas Sherwood, 1179 South Broad Street, Wallingford, said he first reported the problem, and he commended Stephen Civitelli in his response to the reported problem. It was explained that the Town's Water Division is currently looking at the situation getting costs of water connection to the public supply and should be reporting something in the near future.

Bill Comerford, 5 Broadview Drive, asked about contamination and septic tanks. Ms. Hazelwood again differentiated between contamination by TEC and bacteria, and bacteria is not the problem that is being discussed.

Geno Zandri, 9 Balsam Ridge Circle, asked about the location of city water in relation to the private wells. He also warned the homeowners with regard to fire hydrants in the area and future costs to them.

7. Discussion and possible action on next steps regarding the American Legion Building, including possible action of the cancellation of the Gouveia bid - Councilor Jason Zandri

Councilor Zandri referred to a memo from Corporation Counsel Janis Small regarding Mr. Gouveia's bid, the return of his deposit and bid specifications that listed the building was to be sold "as is". He also noted the severed sewer line and the lack of an easement for the sewer line over abutting property.

**MOTION WAS MADE THAT THE TOWN COUNCIL CANCEL THE ENTIRE BID BECAUSE THE OFFER WAS WITHDRAWN AND RETURN MR. GOUVEIA'S DEPOSIT.**

**MADE BY: ZANDRI**  
**SECONDED BY: LETOURNEAU**

Councilor Fishbein briefly reviewed the history of the building, and that the current financial arrangements include a non-refundable deposit. He told of prior bids to the one

being reviewed. Because of the level of risk, subsequent bids was lower as it was being offered “as is” with a non-refundable deposit. He felt that the project was offered that the prospective buyer indicated that he would work out the deal. Councilor Fishbein said that was not what occurred. It changed. He said that is why he wanted to see this bid include the non-refundable deposit. He spoke about how the situation with the sewer line. He did acknowledge a “mutual mistake” where two parties’ contract, and where they both make a mistake. It is a legal concept that the contract can be rescinded. He does not think the party acted in good faith in just backing away from what was offered without any further discussion. He does not think that this motion should pass. He said that other individuals have now shown interest in bidding on this property, and there is risk in bidding.

Councilor LeTourneau felt the situation came about because of Water-Sewer Department work being done and that the sewer line problem was discovered. He said to return Mr. Gouveia’s deposit and added that the “as is” was on the condition of the building and was not to include the sewer line.

Councilor Cervoni stated that in principle, he was opposed to selling the building but that since the Council voted to approve selling the building to Mr. Gouveia that he was not going to obstruct that deal over the sewer problem, which was an unanticipated problem. He said he was willing to participate in a negotiation of a credit but that he wanted more information and that was the reason for his voting against the motion that was proposed with respect to the credit. He said he thought there was a lot of uncertainty. He then stated that the lack of sewer service to that building was unanticipated and a significant unforeseen situation. He said he thinks that this is such a significant piece of information that was not previously known that it is his inclination to give him back his deposit money.

Attorney Small addressed Councilor Zandri’s question with regard to the situation where ‘mutual mistake’ has been acknowledged but the town does not return the deposit, or returns a part of it, whether Mr. Gouveia could sue the town. Attorney Small said that anyone could sue us, that Mr. Gouveia would have an argument.

There was discussion of an appraisal of the property. Attorney Small said that we did not have an appraisal done but that in 2011, it was a consideration, and she consulted with an appraiser regarding the property. At that time, there was the sale of the American Red Cross Building, which was a very good comparable property to the property that the town is selling. There were certain issues with regard to parking available and how much you were actually buying compared to what you could use on the adjoining property. It was a very similar property. She said it sold in 2011 for approximately \$320,000.

She continued stating that if you look at that as being a good comparable sale, and you then look at the American Legion Building in terms of value; it’s not easy to say what someone would be willing to pay for it. The question is when I invest \$400,000, what is it worth when it’s done. If the comparable sale is a building that is valued at \$320,000, then that weighs into what you are willing to pay for the lot “as is”. An appriaser could do it but in the restoration one of the key factors is, what will the renovation cost?

A key component is deciding what someone would pay for that building “as is”. That was a 2011 conversation. She said this is her bottom line - if we had known prior to any of the ‘going-out-to-bid’ postings that there was not a sewer line connected, that she

would have told the Council, “*Do not put it out to bid,*” until we know legally how that can be remedied. And she said, “And I’m going to tell you that tonight too!” We need to be certain as to how this issue will be resolved. It doesn’t matter that we’re not willing to pay for it and a potential buyer is. She said we have to be able to represent what the solution is going to be in terms of getting the sewer hooked up to that property. That would have been her advice if we had known this even 15 years ago. It shouldn’t have gone out to bid.

Attorney Small said that she doesn’t have an appraisal of the property. In reference to offering the property in “good faith” without an appraisal, she said that there is no such law, or legal requirements, to have one done.

After acknowledging the continued presence of Reverend Dodd at the meeting, Councilor Sullivan compared this issue to the file ‘Ground Hog Day’ because the same things keeps happening, and the Council should certainly give the deposit back. No one knew that the sewer was broken and that the facilities haven’t been used since the nineties, so who would know, and there is no way to document that the church broke the pipe. He talked about the beautiful projects for which Mr. Gouveia is responsible, which gives him a tremendous reputation.

Councilor Laffin explained that he voted for not refunding the deposit was to find qualified buyers and to eliminate bidders who pull out. He thinks the sewer line is a big deal and made him agreeable to working with Mr. Gouveia to reduce some of the money. He said he supports returning the deposit. He directed a question to Attorney Small with regard to the motion to cancel the bid and asked if it has been officially withdrawn, then do we need to also cancel it? Attorney Small said just a motion to approve refunding the deposit would be fine.

Discussion between Councilor Fishbein and Attorney Small turned to the sewer issue. Councilor Fishbein expressed that the sole issue with regard to the ‘mutual mistake’ is a lack of access to put a sewer line in because there is no easement. Attorney Small said that basically there is no sewer line; it doesn’t really exist. To answer Councilor Fishbein’s questions, she said at this point it is not only the lack of a physical sewer line but also the lack of an ability to put in a sewer line. Councilor Fishbein stated that the inability for Mr. Gouveia to put in a sewer line, the lack of easement, is the problem and that the money isn’t the issue. Attorney Small said you need an agreement with the town and/or the abutting property owner and that it does have to do with money because in that analysis it does come into play. Mayor Dickinson stated that the sewer line is so vital to the building receiving Certificate of Occupancy that it goes to the very heart of the issue of the proposal to create a livable premises to rebuild the structure and use it and the lack of a sewer line goes to the very heart of whether that can occur or not. This prevents the building from being used in the manner that both parties anticipate. Councilor Fishbein said this a a totally different situation because one party has rescinded.

Attorney Small stated that the whole point of a “mutual mistake” is that the person who is adversely affected has the option of walking away the deal.

Mrs. Rascati in referring to the “mutual mistake” said she want to see the deposit returned.

Chairman Parisi complimented Attorney Small on her “excellent opinion”. He said he will vote to give Mr. Gouveia his money back as he had good intentions and not at fault here.

**MOTION TO AMEND MOTION THAT THE TOWN COUNCIL RETURN MR. GOUVEIA’S DEPOSIT.**

**MADE BY: ZANDRI**  
**SECONDED BY: LETOURNEAU**

Geno Zandri, 9 Balsam Ridge Circle, wanted to know if there will be discussion on a solution to the problem.

Ray Rhys, 96 Pierson Drive, said to give the money back and that getting an appraisal is a good place to start. He also said to take this back to court.

They discussed the value of the actual real estate component to the property. The building is an enhancement. The property does not include the Parade Ground in front of it.

Attorney Small said that an appraisal assigns a value to the land itself and the second component is the land as improved. Appraisals were discussed and that the town has not had an appraisal performed. This is different than the two independent appraisals to which Councilor Letourneau refers that were done perhaps in 2007.

Councilor Cervoni pointed out how much the council need to talk about on this topic – appraisal, sewer line and other things and what to do next with this property.

**ROLL CALL VOTE:**

<b>CERVONI:</b>	<b>YES</b>	<b>RASCATI:</b>	<b>YES</b>
<b>ECONOMOPOULOS:</b>	<b>YES</b>	<b>SULLIVAN:</b>	<b>YES</b>
<b>FISHBEIN:</b>	<b>NO</b>	<b>ZANDRI:</b>	<b>YES</b>
<b>LAFFIN:</b>	<b>YES</b>	<b>CHAIRMAN PARISI:</b>	<b>YES</b>
<b>LETOURNEAU:</b>	<b>YES</b>		

**8- AYE; 1- NAY (FISHBEIN)**

**MOTION PASSED**

Discussion continued with regard to the sewer line and whether this will go back out as an RFP and whether an appraisal should be performed.

Attorney Small addressed the sewer line problem stating that this should be resolved before this is put out to bid. She said that according to Vincent Mascia’s memo this is doable and she does not know if the Council has any issues with going through the Parade Ground. She said going to the church is another ball game. She doesn’t know of any other option that the town has other than giving an easement through the Parade Ground. It’s up to the Council to allow that. Chairman Parisi asked if where the sewer line is going wouldn’t be up to the bidder. In order to go out to bid, Attorney Small said you need some means of

saying the sewer is available though an easement through the Parade Ground but if the bidder gets another solution, then that would be their business. It doesn't make practical or legal sense for a building to be put out that cannot be developed. She said that the only one right now is going across the Parade Ground.

Councilor Letourneau pointed out that the sewer line of the building next door goes across the Parade Ground to the sewer system on South Main Street.

**MOTION WAS MADE FOR THE COUNCIL GIVE ANY POTENTIAL BIDDERS THE EASEMENT NEEDED TO GO ACROSS THE PARADE GROUND.**

**MADE BY: LETOURNEAU**

**SECONDED BY: ZANDRI**

Attorney Small said that if the Council wants to ask Mr. Mascia if any further analysis is needed or not. She said if the Council's position is that it's feasible, then it makes sense to have it on the table. Councilor Letourneau said he thinks that it is up to the potential bidder to check with the Water Department. He thinks to move it forward tonight and give the easement. He added then it's up to the Water Department and the potential bidders. Attorney Small said she thinks checking with Mr. Mascia would be a good idea to see if there are any other issues that we need to be aware of.

Councilor Cervoni stated that the last meeting, it may be possible to re-connect the line that goes out behind the church property and may be the least expensive way to reconnect the sewer use. He said he understands that requires an easement with the church. Attorney Small said the Council can explore that if the Council wishes.

Councilor Letourneau said it will be easier for potential bidders to know coming in that they can go across the Parade Ground. He said an easement with the church could also be worked out, so the sewer can be connected with the one on Center Street. He said from his conversation with potential bidders that the easiest way is to go across the Parade Ground.

Attorney Small said that she has not asked the church for an official opinion on this but that can be done, if that is something the Council would like to be done. She won't do that unless she is asked by the Council. And she added that a bidder could do that on their own as well. Councilor Zandri would like to see the motion pass and also said there is less risk now that this information is known.

Councilor Fishbein acknowledged his continued criticism of how this building is being sold saying to the Council that they are rushing and he says that, except for this latest one, he has been correct. He said that the right way to do this is to talk about options, put it out to bid, disclosure of this latest bump in the road, say that the town is willing to consider giving the access. He said that if we give an easement under the Parade Ground it diminished our property value, even though he does not see the town ever selling the Parade Ground. He said give the option because there is no need to do this if it is unnecessary. There is a value to allowing access. Put the power in the hands of the bidder.

The motion was read back to the Council.

**MOTION TO HAVE THE COUNCIL TO GIVE ANY POTENTIAL BIDDERS AN EASEMENT TO GO ACROSS THE PARADE GROUNDS.**

Councilor Sullivan has no problem giving a easement over the Parade Ground. We have good advice from Attorney Small and we are overcomplicating this.

Tom Mezzi, Jr. 18 East Dayton Hill Road, and the land isn't worth 5 cents without the easement and that he is interested in the property as an investment with an easement in place. He said that going behind the church triples the distance and the cost to connect, and you would need water and sewer. The sewer line was put in about 1890, he said. He said the clay pipe line is worthless.

Attorney Small stated the potential buyer has to know they have access. Mayor Dickinson stated that the Council is not conveying an easement tonight. You are indicating a willingness to convey, assuming you are satisfied with all of the other issues surrounding a contract. He said the motion is you will convey There is no specification. There is no map. All the details are not there. The Mayor stated that the Council will have to vote for the conveyance at the point that is going to occur. Attorney Small stated that this will be in the bid specs, and when you put this out to bid, it will say that the Council is going to grant an easement for a sewer line through the Parade Ground. That is all it's going to say and if at a later date you say, "Oh, never mind," then you will be sued. Councilor Fishbein stood his ground saying that it is totally premature. She said the wording is fine in the motion.

**ROLL CALL VOTE:**

<b>CERVONI:</b>	<b>YES</b>	<b>RASCATI:</b>	<b>YES</b>
<b>ECONOMOPOULOS:</b>	<b>YES</b>	<b>SULLIVAN:</b>	<b>YES</b>
<b>FISHBEIN:</b>	<b>YES</b>	<b>ZANDRI:</b>	<b>YES</b>
<b>LAFFIN:</b>	<b>YES</b>	<b>CHAIRMAN PARISI:</b>	<b>YES</b>
<b>LETOURNEAU:</b>	<b>YES</b>		

**UNANIMOUS; 9- AYE**

**MOTION PASSED**

Councilor Zandri thanked the parties who have stepped forward with regard to this property. He said that he think the next step for the Council is to put it back our to bid because there are three interested parties.

**MOTION THAT THE TOWN COUNCIL WORK TO DO AN RFP FOR PURCHASE (OR SALE) OF THE PROPERTY.**

**MADE BY: ZANDRI**

**SECOND: NONE**

Councilor Letourneau objected to an RFP and made another motion.

**MOTION TO HAVE APPROVAL OF THE TOWN COUNCIL TO PUT THE BUILDING BACK OUT TO BID.**

**MADE BY: LETOURNEAU**

**SECONDED BY: ZANDRI**

Councilor Cervoni said that typically the Council has requested proposals from interested purchasers. Attorney Small said that it was an RFP last time.

Assuming the prior motion and its second were withdrawn, a new motion was made.

**MOTION TO REQUEST THE LAW DEPARTMENT TO DRAFT AN RFP FOR THE SALE OF THE AMERICAN LEGION BUILDING.**

**MADE BY: ZANDRI**

**SECOND: LETORUNEAU**

Council would like to review a draft of the RFP. It was agreed that the Corporation Counsel would send the Council a copy next week of the RFP, stating that if she does not hear from them, that it does not go on the agenda that she will post the RFP and have it go out.

An appraisal was requested. Councilor Cervoni said that going forward, he would like to know the value of the land. An appraisal is not needed to go out to bid. Councilor Small said the cost might be around \$500. The evaluation of property by the assessor is done through a mass appraisal process and buildings owned by the town are viewed differently. She said that is a 2010 valuation, and this is 2013. She said that this can be done when the RFP is out because an appraisal is part of the Council's consideration but not part of the bid.

Councilor Fishbein asked if this RFP has to go on the agenda. Attorney Small said that she has sent it to the Council in the past for review and told them if she didn't hear from them by a certain date that it would go out. Councilor Fishbein asked if we could do this now for the next RFP. Just get it done. He reminded that this last time, he had suggested that the Council not consider any bid less than \$125,000 to set the floor. He thinks that timing of the RFP and the appraisal are about the same. Attorney Small said that would be the goal and the Council would have the additional information in doing the analysis as to which bid to accept.

Ray Rhys, 96 Pierson Drive, agreed with getting the appraisal.

Attorney Small said there is nothing wrong with appraising just the land so that you have a point of reference as to what the value of the land is, but that's not necessarily the same thing as to what someone will pay for what they are getting. It's a valuable piece of information to guide.

**ROLL CALL VOTE:**

<b>CERVONI:</b>	<b>YES</b>	<b>RASCATI:</b>	<b>YES</b>
<b>ECONOMOPOULOS:</b>	<b>YES (voted later)</b>	<b>SULLIVAN:</b>	<b>YES</b>
<b>FISHBEIN:</b>	<b>YES</b>	<b>ZANDRI:</b>	<b>YES</b>
<b>LAFFIN:</b>	<b>YES</b>	<b>CHAIRMAN PARISI:</b>	<b>YES</b>
<b>LETOURNEAU:</b>	<b>YES</b>		

**Unanimous; 9- AYE**

**MOTION PASSED .**

There was a general consensus for an appraisal to be performed.

8. Executive Session pursuant to §1-200 (6)(D) of the Connecticut General Statutes with respect to the purchase, sale and/or leasing of property – Mayor

9. Executive Session pursuant to §1-225(f) and §1-200(6)(B) of the Connecticut General Statutes regarding strategy and negotiations with respect to the pending matter of the Town of Wallingford v. Rivera, et al – Town Attorney

**MOTION WAS MADE TO GO INTO EXECUTIVE SESSION PURSUANT TO:**

9. Executive Session pursuant to §1-225(f) and §1-200(6)(B) of the Connecticut General Statutes regarding strategy and negotiations with respect to the pending matter of the Town of Wallingford v. Rivera, et al

**MADE BY: CERVONI**  
**SECONDED BY: RASCATI**  
**VOTE: 9- AYE**  
**MOTION PASSED**

**MOTION WAS MADE TO COME OUT OF EXECUTIVE SESSION.**

**MADE BY: CERVONI**  
**SECONDED BY: RASCATI**

**VOTE: 9-AYE**  
**MOTION PASSED.**

**TIME OF EXECUTIVE SESSION: 8:40 p.m. – 8:50 p.m.**

**ATTENDANCE AT EXECUTIVE SESSION: 9 COUNCILORS.**

**Mayor William W. Dickinson, Jr. and Corporation Counsel Janis M. Small**

10. Discussion and Possible Action regarding the matter of Town of Wallingford v. Rivera, et al, as discussed in Executive Session – Town Attorney

**MOTION WAS MADE FOR THE TOWN ATTORNEY TO COMPROMISE THE MATTER OF Town of Wallingford v. Rivera, et al as discussed in Executive Session.**

**MADE BY: CERVONI**  
**SECONDED BY: RASCATI**  
**VOTE: AYE-9**  
**MOTION PASSED.**

**COUNCILOR CERVONI MADE A MOTION TO ADJOURN THE MEETING.**  
**MS. RASCATI SECONDED.**

**VOTE: AYE-9**  
**MOTION PASSED.**

**The meeting adjourned at 8:51 P.M.**

**Respectfully submitted,**  
**Sandra Weekes**  
**Town Council Secretary**

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**Chairman Robert Parisi** **Date**

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**Town Clerk, Barbara Thompson** **Date**