

TOWN OF WALLINGFORD, CONNECTICUT

SPECIAL TOWN COUNCIL MEETING

November 20, 2008

The following is a record of the minutes of a Special Meeting of the Wallingford Town Council held Thursday, November 20, 2008, in the Robert Earley Auditorium of the Wallingford Town Hall. The Meeting was Called to Order at 6:40 P.M. Responding present to the Roll Call given by Town Council Secretary Sandra Weekes were Councilors Mike Brodinsky, Nick Economopoulos, Jerry Farrell, Jr., John LeTourneau, Robert F. Parisi, Rosemary Rascati, and Vincent F. Testa, Jr. Mayor William W. Dickinson, Jr. and Town Attorney Janis Small were also present. Councilors Vincenzo M. DiNatale and Michael Spiteri were absent from the meeting

Representatives from the respective companies included Virginia Raymond from CRRA; Stephen Diaz, Sheila Bilder and Cheryl Thibeault from Covanta. Program Planning staff member in attendance were Don Roe and Doreen Zaback.

Reporters from the New Haven Register and the Meriden Record-Journal were in attendance. Members of the public included Bob Gross, Debbie Gross. Bob Hogan, Pat Kohl, Wes Lubee, Geno Zandri and Jason Zandri.

The meeting began with a Moment of Silence, the Pledge of Allegiance and the Roll Call.

1. Discussion concerning:
  - (A) The status of the negotiations with Covanta and CRRA concerning the Wallingford trash-to-energy facility; and,
  - (B) An initial comparison of the two proposals.
2. A presentation by the Mayor of his recommendation as to which of the two final proposals is more advantageous to the Town of Wallingford.

Chairman Brodinsky read the agenda, and said that there would be a discussion on the two proposals and an initial comparison of the two proposals, Covanta and CRRA. He said that the Mayor would give a presentation on his recommendation as to which of the two final proposals is more advantageous to the Town of Wallingford in his opinion.

Mayor Dickinson said that there is currently continuing negotiation or issues being pursued between Covanta and CRRA. He said that between those parties there is arbitration and some court proceedings seeking a determination by CRRA of a fair market value for purchase of the facility prior to the December 31<sup>st</sup> date. With that as the backdrop, the towns have also been discussing contract terms both with CRRA and Covanta. He said that they have reached a point where they have a good understanding of what the respective deals would entail. He said that Covanta has requested that each of the five towns' operating manager a letter indicating whether that individual would recommend the Covanta contract to the respective legislative bodies

in each of the five towns. Covanta is interested in a serious commitment on the part of the communities to continue move forward. He said that is the reason for this meeting. He said that there isn't a final contract but that it is still being negotiated and that it is close to final forms. He referred to his letter stating that it would hopefully be ready by Tuesday, November 25<sup>th</sup>, and that copies would be distributed. The purpose tonight is for him to provide the Council with some summaries of the general, major terms as they believe them to exist in the respective proposals, Covanta and CRRA, and for him to indicate that he will sign the letter on intent, the letter of interest, indicating that he would be recommending the Covanta contract to the Town of Wallingford. He said that the letter would be signed tomorrow (*November 21, 2008*). He said that he wants to hear the Council's comments with regard to the general ideas, terms, which are close to being finalized. He said he wants to be aware of any serious problems.

He discussed the comparison sheet (*Appendix I*) of Covanta and CRRA in the areas listed on the sheet as below:

### **Tip Fee**

Chairman Brodinsky said that before the Council needs to vote he would like to see a chart on the tip fee comparison that brings it out to year 20, assuming no market reset of both CRRA and Covanta to understand how each progresses. Mayor Dickinson said that there is a market reset, and that it might not be meaningful beyond 5 years. He said that it might not work for CRRA. Chairman Brodinsky said that it would be very relevant to know that it would be impossible to project the CRRA tip fee, that the unpredictability of it would be a factor. He said that it would also be a factor if it could be predicted with some reasonable certainty without undue speculation. Uncertainty of one and the certainty of the other is part of the balancing act. Mayor Dickinson said that they could assume a certain CPI escalation and assume that both are subject to the same things.

Chairman Brodinsky asked if there was a provision for recapture. Mayor Dickinson said, no, that there is no carryover. Chairman Brodinsky said to understand the CPI percentages, and that it would not allow for a credit in it fell below the minimum of 1.75% and that Covanta was limited to the maximum of 3.5% and could not take any excess. Chairman Brodinsky asked about market reset. Mayor Dickinson said that it is still being discussed.

Mr. Testa also asked about the 5-year reset as it relates to market escalation. He stated that it is good that no other municipality would be offered a contract but what if private haulers came in at a lower rate. Mayor Dickinson said that they could do that. The Mayor defined "spot waste" as it is not a long-term contract in that you are looking for waste to fill an immediate need, and it can be a very low figure.

Mr. Testa spoke about market conditions. Mayor Dickinson said the expectation is finding out where you are in five years compared to the market and that that enables us to make sure that the plant is not out of line. He said this helps with regard to flow control and allows us to function within a predictable business model rather than too high or too low.

### **Committed Tonnage**

Mayor Dickinson said that for Wallingford the Covanta contract would require 18,900 tons to begin. He said that the figure that we committed to for the CRRA/Covanta plant was 23,000+ tons making this commitment lower than the project that is coming to a close, since this is the 18<sup>th</sup> year of it. He said that with the rolling average that the commitment would go down, especially if recycling goes

up. He said that Wallingford has been annually delivering in excess of 40,000 tons. He said that 18,000 is a comfortable figure to meet. He said that CRRA estimate is 43,000 adjusted annually by a formula using a rolling average but with a guarantee of a higher tonnage figure.

Chairman Brodinsky asked about committee tonnage, and if there was any cause for concern that the tonnage levels on either side, either proposal, is something that may put us at a disadvantage. Mayor Dickinson said that he would be more concerned on the CRRA side, whose commitment is 43,200, even though it is a rolling average. He said that we would be hit more quickly if there is a significant drop due to the economy, to recycling, etc. Chairman Brodinsky asked when we might feel some jeopardy with either contract or is the amounts low enough that this is not likely. Mayor Dickinson said that with CRRA, we are guaranteeing what we are supplying. Chairman Brodinsky asked if there is any difference between the two contracts in the formula as to how they compute. He pointed out that the language in the comparison is the same but what after that. He said that the contract language is different. Mayor Dickinson said with regard to increased recycling, they have been looking carefully at the Covanta contract. Mayor Dickinson said the reason for the rolling average was to take into account the issue of recycling, and the reduced tonnages that may result from that, so there is an effort in both contracts to adjust the level of waste and what we see is the potential for recycling to take away from the tonnage.

Mr. Economopoulos asked if there is a concern of people not recycling, and if this is a problem. Chairman Brodinsky said that we would be recycling the same way under either contract if people would be forced to use certain haulers. Mayor Dickinson said that there is not a change in recycling in either contract. He said it could change, for instance, by state law. He said that we could look at other ways of collection.

### **Facility Ownership**

The Mayor said that in their contract, Covanta would own the plant with a 20-year option for municipal purchase. Under the CRRA it is public ownership but there is no option for municipal ownership.

Chairman Brodinsky asked about the specifics of municipal ownership. Mayor Dickinson said that any one municipality of the group of the originals, who sign on to this, is able to exercise that option providing continuous participation. Town Attorney Janis Small said that she met with two appraisers regarding the appraisal process and that it will start two years out from the end of the 20-year term. Those towns that are interested in purchasing the property will hire an appraiser for property appraisal and address to rights of access. Upon completion of the appraisal, if the town(s) does not like the price, there could be a decision to make an offer to Covanta. If Covanta does not accept the offer, they have the right to get its own appraisal. There are certain requirements and qualifications in the agreement for the appraiser. If the two appraisals are within 5% of each other, then the two will be averaged and that will be the purchase price. If they are not within 5%, the matter goes to arbitration and the appraisers would testify, and the arbitrator would make a decision as to the fair market value base of the appraisals. She said that the appraisal process could be entered into without needing to commit to purchase, which is unlike the current contract, which requires a commitment without knowing the purchase price.

## **RECESS**

Chairman Brodinsky called for a short recess at 7:08, and he reconvened the meeting at 7:18 P.M.

Attorney Small said that the language regarding the buy-out option would be negotiated further.

Mr. Testa asked if the language is such that the arbitrator would have to choose between the two or would they have the authority to split the difference. Attorney Small said that they would make an independent determination based upon the evidence from both appraisers. It's not an averaging, and they do not have to choose one or the other but that they make their own determination based on the evidence that they hear.

Mr. Parisi asked if the comparison report is final or subject to change. Attorney Small said that the Covanta offer is substantially the deal and that she does not expect the terms to change. She said that Covanta is listening to all of the legislative bodies, and that they are working on the reset of the market average. She said that is still under discussion. She said that the contract that will be released on Tuesday is substantially final, subject to the Council's review. Mr. Parisi confirmed that the 10/31/08 contract is "gone." Attorney Small asked that the new one be reviewed as a fresh start, fresh look and to formulate questions based on the new version.

Mr. Farrell said that he thinks that the Council is at a disadvantage in that they don't have this most recent version of the contract. He said that they have a summary and that there are a number of areas that need to be tied up. He asked about the 20-year scenario, and whether there is the ability for Covanta to substantially increase the size of the plant as it exists at this point. Mayor Dickinson said that there is a contract term that they must have the approval of the Town of Wallingford, the host community, in order to expand the size. Mr. Farrell asked if there were any gray areas or loopholes in this contract term as Pasquale Mellilo would ask. Mayor Dickinson said not as far as they are concerned. Mayor Dickinson reminded the Council that the purpose tonight is to recommend and they recognize that we don't have the document and that there parts that are still in progress but that there is a desire of Covanta to know whether the communities are serious or not and are asking the chief elected officials in the communities to indicate whether they recommend this or not. He said that his purpose is to tell the Council that and to hear the comments and to make a determination for signing that recommendation tomorrow.

Mr. Paris asked if the Mayor signs a letter if there is a commitment. Mayor Dickinson said that ultimately the town is only committed to this if at the point there is an approval by the legislative body authorizing the mayor to sign and execute the contract, to enter into the contract on behalf of the town. He said that this does not alter or modify the authority in the Charter that the Council makes that determination authorizing the town to enter into the contract

## **Host Community Benefits**

Mayor Dickinson reviewed and explained the Covanta and CRRRA benefits to the host. They discussed host benefit escalation and decline, amounts of tonnage for each proposal, if the calculation could be distributed to the Council, minimum and maximum tonnage and that \$1.6 million would not increase, and that the \$1.6 million is more than the town is now receiving.

### **Flow Control**

Mayor Dickinson said that this deals with getting the refuse, the MSW, to the plant and that the Covanta contract proposal requires no immediate action to address delivery to the facility, so that we can continue with what we do now. He said that the contract is indicating that we are committing to sending our waste there but it also states that we are not obligated to begin franchise systems or other methods and that we use reasonable means to get the waste there. He said that we are obligated to meet our minimum and would pay for the minimum if we don't get it there assuming that other municipalities didn't cover for us. He said in the future if there is a significant reduction in tonnage at the plant or if there is a possibility for reducing costs in town via a different method of collection or if there are law changes that indicate to us that we are going to have to comply to decisions that we have to be taking a more affirmative role in getting our refuse to the plant, it could mean that we have to look at it and deal with it. He said it would involve minor technical changes to the ordinance where it states that we would have to have authorization from CRRA, which would not be the case. He said that all the contract would require, and that under the CRRA proposal, they are requiring that we pass a flow control ordinance directing the MSW to the facility. This would be more affirmative in language than what the town now has. He said basically we would be saying that all of that waste has to go to that facility and that we can do that legally because under CRRA, it would be publicly owned, whereas, with Covanta, it is privately owned, and there are some restrictions on being able to direct waste to a privately owned facility. He said that this is where there is a gray area regarding 'directing.' He said that the Covanta proposal does not require the town to get into changes with the collections system, which is now with private haulers. Mayor Dickinson said that given the tip fee and the proximity to the plant, we believe that it is unlikely that there would be a flight to use I-91 to take the garbage to some other place because this is a competitive place to do business, if you are looking to take MSW. He continued that if the tonnage begins to drop, and we know that it isn't because everyone moved away, we might have to address this. We are in a position to make sure that the waste goes there because it's favorable to everyone and is the best flow control.

Mayor Dickinson addressed haulers going elsewhere to alternate sites, transfer stations, the impact on flow control, the distance involved to go to an alternate site and the tip fees in regard to other transfer stations, ash landfill, penalty for falling below the minimum, "reasonable measures" to assure that trash goes to the Wallingford facility, licensing with haulers is an example of a reasonable measure, and the possibility of establishing a district or franchise system. He spoke about penalties in regard to committed tonnage for a community that does not meet its minimum, if other municipalities were not providing sufficient volume to cover that different you would owe the tip fee times the number of tons that hadn't been delivered but were obligated to be delivered. He said that currently other towns have covered for other towns and there hasn't been a penalty to anyone. He believes that it work this way with CRRA as it does now.

### **Reserves**

Mayor Dickinson said that the reserves have been built up over time for the payment of the tip fees. He said that the Covanta contract requires no reserves being setup or maintained by the participating municipalities. He said that the CRRA proposal requires between \$7 and \$8 million for several reserves, and they would be funded out of the current project reserves on a pro rata basis. He said that the balance of those reserves would be returned to the towns. He said that when the contract ends the towns would receive all of the reserves that are not necessary to pay outstanding bills. With CRRA proposal \$7 to \$8 million of that would be used as reserves for the new project. There are no demands for that money from Covanta. Mayor Dickinson said that the town is legally bound in the

most prudent and cautious manner possible use the money coming back to us from CRRA. He said that it would go into the general fund. He said that there are many ways for it to benefit the citizens of Wallingford.

*“Host Community Benefits”*

Ms. Rascati referred back to “Host Community Benefits” and asked if there is a possibility that the fair market value would not always be \$23.5 million and could it change within the first 5 years. Mayor Dickinson said that one of the difficulties with the CRRA proposal is that it is not really known what the cost of buying the plant is, and that is the fair market value, and that is why there is skirmishing going on between CRRA and Covanta over the value of the plant. For the CRRA proposal to go forward, CRRA must purchase the plant, and the question mark is what is the value of the plant, the project then would pay whatever the price of the plant is. For example, if it is \$15 million, the project would pay Covanta \$15 million, and CRRA would own the plant, and operate it from then on. If the price came in at \$23.5 million, or a different cost, then that becomes the price tag that gets into the debt payment and is part of the operating cost of the plant. He said that the dollar figures that were developed and provided by CRRA were based on the fair market value being this \$23.5 million. It is the wild card of the CRRA project.

Mr. Testa wanted to know if in any of the analysis that have been done, have any projections been done that would indicate that the host community benefit could come close to what Covanta is offering from the CRRA proposal based on a number of fair market values, average tax increases over time. Mr. Testa acknowledged that it is impossible to predict. He said that his point is that in looking at that have we seen anything that comes close to \$1.6 million. Mayor Dickinson said that they can do that but the maximum would be around \$30 million so that in addition in value to the plant will not produce taxes in the amount that would come anywhere close to \$1.6 million. Mr. Testa asked about the 3% escalation in the CRRA proposal, and if it would escalate at 3% a year no matter what happens with property taxes. Mayor Dickinson said that was correct. Doreen Zaback added that at that point the tip fee would be too high. Mr. Testa confirmed that we really aren't going to be receiving a property tax payment from CRRA, if we go with their proposal, that we will receive a payment that is somehow related to a property tax determination at the beginning and then escalates irrespective of where property taxes tend to escalate. They talked about COL and that an increase was not considered given the amount of the money that is in excess of what we are receiving today. Mayor Dickinson said that any increase on that would impact a tip fee and also on other municipalities and their willingness to sign. Discussion covered plant ownership; the cost of moving waste from resident drop-off to the facility, which is the town's obligation and that a transfer station is not part of either proposal; hauler routing and its enforcement; truck litter and its enforcement; the reverter clause to Cytex; time limits of appraisal.

Mayor Dickinson said that the desire on the part of Covanta is to have, assuming that the chief elected officials recommend the contract, the legislative bodies approve a contract by December 19, 2008. He said that date takes onto account holidays and to avoid a lengthy time period, any ore than necessary to review. He said that if there is reason for a longer period of time, then we can inform them. The desire is to have a vote, either way, by December 19, 2008.

Mayor Dickinson said based upon what has been presented tonight, he believes that the best proposal is the one proposed by Covanta, and at this point he would be intending to sign that letter of recommendation tomorrow, short of becoming aware of things that have not been considered to date and certainly the comments made tonight. He asked if anyone feels strongly that there is not to

believe that Covanta is the better deal, he is willing to listen. He said that one aspect that has not been mentioned is the continuing disputes over the meaning of arbitration, which is costing money and that is the concern of Covanta and CRRA as are we.

Members of the Public who participated in comments included:

Geno Zandri, 9 Balsam Ridge Circle, regarding the participation of other towns or not; plant expansion; tipping fees; and losing control of the facility

Bob Gross, 114 Long Hill Road, regarding contracts; who pays for problems and how is it paid; and electronic waste

Jason Zandri, Lincoln Drive, regarding tip fees and CPI; plant life span; discussion of utility revenues and how to use funds for delivery of services; and condition changes,

Bob Gross, 114 Long Hill Road, regarding plane emissions.

Wes Lube, Montowese Trail, regarding reserves; plant expansion and tip fees; and who prepared the comparisons.

## RECESS

Mr. LeTorneau made a motion, seconded by Mr. Parisi, to go into a short recess. All Councilors present (7) voted Aye. Mr. DiNatale and Mr. Spiteri were absent from the meeting. The Council began the Recess at 8:55 P.M. and reconvened at 9:07 P.M.

## MOTION

Mr. Farrell made a motion, seconded by Mr. LeTourneau, to adjourn the meeting. All Councilors present (7) voted Aye. Mr. DiNatale and Mr. Spiteri were absent from the meeting. The meeting adjourned at 9:08 P.M. with no further business to conduct.

Respectfully submitted.

Sandra R. Weekes  
Town Council Secretary

Meeting recorded by Sandra Weekes

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Chairman, Mike Brodinsky

Date

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Town Clerk, Barbara Kapi

Date