

Town of Trumbull

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TOWN HALL
Trumbull

TELEPHONE
(203) 452-5005



Minutes

December 13, 2012

CALL TO ORDER: Chairman Carl A. Massaro, Jr. called the special meeting to order at 8:32 p.m. at the Trumbull Town Hall. All present joined in a moment of silence and the Pledge of Allegiance.

ROLL CALL: The clerk called the roll and recorded it as follows:

PRESENT:

Suzanne S. Testani	Jane Deyoe	Debra A. Lamberti
Vicki Tesoro	Jeff Donofrio	Ann Marie Evangelista
Kristy Waizenegger	Martha A. Jankovic-Mark	
Chadwick Ciocci	Carl A. Massaro, Jr.	
Tony J. Scinto	James F. Meisner	
Jeffrey Donofrio	Mark LeClair	
Gregg Basbagill	Fred Palmieri, Jr.	

ABSENT: James Blose, Michael J. London, Jeff S. Jenkins, John A. DelVecchio, Jr., Thomas Whitmoyer and David R. Pia.

ALSO PRESENT: First Selectman Timothy M. Herbst, Town Attorney Robert Nicola, Scott Kerr of the Conservation Commission and Brian Bidolli Executive Director of the GBRC.

*The Chair reserves the right not to vote unless otherwise noted.

1. TC24-95: Moved by Ms. Testani, seconded by Mr. Palmieri.
BE IT RESOLVED, That the First Selectman on behalf of the Town of Trumbull is hereby authorized to enter into a lease agreement with State of Connecticut Department of Energy and Environmental Protection for property located on Quarry Road.

First Selectman Herbst extended his gratitude to all for attending the special meeting. The City of Bridgeport approached the First Selectman three years ago with regard to the Magnet High School currently under construction. At that time the City of Bridgeport indicated that they wanted to expedite the construction of the school and wanted to enter into an inter-municipal agreement with the Town of Trumbull. There would be three parties involved. Throughout the process there has been discussion and debate that the Town of Trumbull gave up property to get property, all of the property involved is owned by the State of CT. Trumbull never had any property to give up, only

certain parcels were within the territorial jurisdiction. There were issues that needed to be resolved such as police, fire, EMS response and which municipality would be responsible for providing school security. Unlike Bridgeport, Trumbull's fire departments are volunteer and are separate from the Town government; this presented a host of issues for the agreement. The challenge of the inter-municipal agreement was that municipalities were guaranteed a certain amount of seats in the school; conversations did take place between the First Selectman, BoE Chairman and the Superintendent of Schools with regard to whether Trumbull would utilize all 100 seats in the magnet school. After dissecting the issues with the fire companies and the fact that were two different parties negotiating the agreement that might have conflicting interests, the discussion shifted to a land transfer that would be prudent for both Trumbull and Bridgeport. The discussions included Governor Malloy's office, representatives from the Department of Education, representatives from the Department of Environmental Protection and representatives from the Office of Policy and Management. There was a consensus of all parties at both the state and local level that the boundary change would make the most practical sense for both communities. The CT General Assembly unanimously approved this land transfer agreement and was signed into law by Governor Malloy. Under the terms of the agreement Bridgeport would have the State property that is currently located in Trumbull and the boundaries would be changed to make sure that the property would be in the territory of Bridgeport. In turn the State property currently in the Town of Trumbull leased by the City of Bridgeport would go to the Town of Trumbull. What is before the Town Council at this meeting is a lease agreement between the State of CT and the Town of Trumbull, the Town will acquire 40 acres of land with a 25-year lease with two 25-year options, 75 years in total for \$1.00. The 40 acres is double than what was originally negotiated. This parcel is important to our trail initiative. Trumbull's resources and Parks system define Trumbull. This agreement will improve and enhance Trumbull's Park system.

Town Attorney Robert Nicola distributed and reviewed a full size map prepared by the Town Engineering Department to the Town Council. There is an existing building on the larger of the two parcels being utilized by the City of Bridgeport for park maintenance facility and also as a garage for storing various equipment; it was allowed to be constructed years ago with the permission of the descendants of the Wheeler family. The City of Bridgeport in the initial negotiation indicated that they were going to building a new structure to house the equipment in a fairly short period of time, but as time went on there was no indication that they had any short term plans to do so. The impediment to this agreement was what to do with the maintenance garage and how much of the property Bridgeport would have to use and for how long. After substantial negotiations and with the assistance of the governor's office they were able to come to this agreement. Originally Bridgeport was looking for over 11 acres that is down to 6 acres. This gives Bridgeport retention of the existing large building, Bridgeport will surrender to Trumbull the smaller building adjacent to the larger facility. The facility surrendered to Trumbull will hopefully be able to be used as either a ranger station and/or other uses. In conjunction to this another reason for the delay to this agreement was that they had to go into negotiations on the sub-lease. That documents defines what Bridgeport's rights are with regards to this parcel, it is a 10 year sub-lease. Bridgeport will vacate earlier if they build something. Trumbull will have use of the building for the remaining 65 years or more if Bridgeport vacates it earlier. This does provide potential for Trumbull to develop this into a Nature Center or a learning facility. An environmental study has not been done. The property is owned by the State agency that is responsible for supervising and dealing with environmental issues. Atty. Nicola conducted an investigation into the environmental issue question, it has been confirmed that

there was a buried tank on the site, it was not for heating oil, it was for gasoline. At some point the State compelled the City of Bridgeport to abandon it and fill it. That was the only item on the property that could be called into question, other than that the property has been undisturbed for hundreds of years. Trumbull's short term goal for this property is to connect the Rails for Trails to Bridgeport. Provisions have been made so that the maintenance facility could be skirted; it is also their hope that the City of Bridgeport will make the place cleaner. The lease is an unenforceable lease, the State of CT at any time has the right to terminate the lease, and the Town of Trumbull also has the right at any time to terminate the lease. This is common in state leases, they will never bind themselves to enforce the lease, and based on the history the State has never terminated leases unless there was egregious cause. The Town does have the option of terminating the agreement at anytime if there are environmental concerns. The lease itself provides for Trumbull to be responsible for any environmental issues Trumbull creates or exasperates. This will be an improvement for the Trail system and there is the possible use of the prefabricated office building. There is nothing that would potentially expose the Town to liability and even if this was the case the Town has the right to terminate the agreement at any time.

Scot Kerr of the Conservation Commission indicated that the Conservation Commission supports this agreement. This will expand the park land by 40 acres and will ultimately connect the open parks and open spaces. The property has 3 unique features:

- Recreational Value - The property south of the River Road Bridge has beautiful stretches of the Pequonnock River, fishing spots, waterfalls and picnic areas. The areas will be improved an open to the residents.
- Environmental Value - The river, adjacent wetlands and lowland flood plains within the property mitigate flooding.
- Direct Economic Value-Properties near the parks and bikeways have higher values. Town use and management of this property will have a direct value to the residents in the adjacent neighborhoods as well as the developing businesses near Quarry Road.

The Conservation Commission recommends that the Town Council approves this agreement.

Brian Bidolli, Executive Director of the GBRC explained the benefits of obtaining this property would provide future opportunities for trail & river uses such as a rest area, enhanced public access to the river, a paved area for parking, prevention of stock piling debris, enhancing bicyclists' safety will and provides an alternate mode of transportation. First Selectman Herbst stated that parking conditions at Whitney Avenue and Church Hill Road have gotten to the point that residents from the surrounding streets approached the Town and the Police Department for better parking enforcement. Having more trail and parking addresses a lot of these concerns.

Per Mr. Palmieri's request Atty. Nicola distributed to him copy of the sub-lease. Mr. Palmieri voiced his concern with regard to culpability that would fall to the Town with environmental issues on the site. Atty. Nicola stated that the issue would be with the owner of the property. The property with exception of the building has not been developed for as long as this area has been settled. The DEEP and its predecessor have been aware of this building and the use thereof by the City of Bridgeport for approximately 35 years. Atty. Nicola assumes the building has been monitored by the DEEP and has not been given any information by representatives at DEEP that they have any concern about this site or its potential for environmental issues. A Phase I Environmental Study has not been done on this property. Mr. Palmieri suggested that one be done before entering into this agreement.

Atty. Nicola indicated that the Director of Public Works is planning on doing a Phase I. First Selectman Herbst stated that the intent of procuring the Phase I Environmental Study is to have a framework in place that establishes what conditions existed on the property before occupancy. If any other issues arise after occupancy the Town of Trumbull can point to the Phase I Environmental Study. Bridgeport will be retaining the garage where most of the more sensitive activity is. Trumbull will have access to the property that has had no development. The DEEP is the State agency charged with enforcing all environmental laws in the State, if they re going to have an environmental condition on their property while enforcing private property that would be hypocritical. The Town will do its due diligence by performing a Phase I Environmental Study before they occupy the property on February 1, 2013. Atty. Nicola explained that the agreement needs to be approved by December 31, 2012 per legislation approval. The Town does not technically occupy the property until February 1, 2013. If the Director of Public Works finds a situation the Town can send the owner a letter to terminate the agreement. Mr. Donofrio stated that the transaction is not covered by the Transfer Act because it is less than 99 years therefore he is not worried about liability form a lessee liability perspective and spoke in favor of the Town having a record, whether it is an informal Phase I Study or a video record that establishes a baseline condition of the property. First Selectman Herbst indicated for Ms. Tesoro that there are people on staff, engineers, who understand soil testing. Atty. Nicola stated that if a problem is discovered and the Town feels there may be some exposure the agreement would be terminated. The Town could not go on the property until they had reached this point in the negotiation/agreement. Every one of the sub-lease drafts went to the Attorney General's Office, to the DEEP Council and the Council of the Governor's Office was also involved, what is on the table has been approved by everyone involved. Ms. Tesoro requested a copy of the sub-lease to review. Atty. Nicola agreed.

The Chair stated that the Phase I is typically done by a licensed professional, it is a topographical physical inspection of the property and record search to determine what the use of the property. Based on what is found or not found, there may be a recommendation for further testing and as Atty. Nicola had indicated the obvious step would be not to proceed and to terminate the agreement at that point.

Atty. Nicola stated that paragraph 20 of the agreement includes the language for the termination of the lease by the lessee. Mr. Meisner voiced concern over the possible liability of someone drowning in the area where it is marked that no swimming is allowed. Atty. Nicola indicated that if the area is marked as a no swimming area that limits liability. First Selectman Herbst explained to Mr. Meisner that the traditional valley was jointly purchased by the Town of Trumbull and the State of Connecticut in 1989.

First Selectman Herbst clarified that Phase II is when you take states to remediate; Phase I is the exploratory stage to determine if Phase II remediation is needed. Phase II is the actual action of remediation, the owner of the property has to take the action of remediation, not the lessee. If Phase II were needed the DEEP and the State of CT would be responsible for that action. Mr. Bidolli indicated that he has been involved in the Bridgeport and Stratford Brownfield Remediation program. The Town is not responsible for existing contamination, they are concerned about future contamination.

Mr. Bidolli indicated for Mr. Basbagill that this area represents Section B. of the \$1.8 million grant; the grant is for construction and maintenance. First Selectman Herbst stated that the property is within Trumbull, it is leased by the City of Bridgeport, whatever patrols done on Quarry Road that are done now will continue to be done, if this becomes part of the parks system it will require the oversight and supervision of the Parks Department. In the 1990's the Town Parks' system expansion was the greatest it had ever been to date and the Town has been able to maintain it without an adverse effect on the Town's budget. Trumbull will work with its partner, GBRC for alternate sources of income to ease the burden on the taxpayers. We need to have the vision and the foresight to recognize that this could be a valuable asset to our community. The lease now outlines a specific framework, Bridgeport is the sublease, and Trumbull is the primary lessee. There is a Blight Ordinance in Trumbull; if necessary to act at the local level to enforce the ordinance the town will do so.

In response to Mr. Meisner, First Selectman Herbst stated that the property is in Trumbull we take pride in our Town and how it is perceived, Bridgeport created the problem because they have been the primary lease holder of the property, the condition of the facility is a blight issue. When the community utilizes an under utilized area everyone wants it to be a destination area and a source of pride for the community. When it comes to the Town's Parks System, Trumbull always does it well and makes sure moving forward that it continues to be done well.

Ms. Jankovic-Mark spoke in favor of the trail connecting but was not comfortable voting in favor of this without seeing an environmental report and suggested that if this is not done by Dec. 31, 2012 the Town would need to start the process over and suggested the Town consider looking into ownership of the property. Atty. Nicola stated that the State is not willing to consider transferring ownership. Mr. Bidolli explained it would not be prudent for Trumbull to own this site, that liability is transferred with the ownership. Mr. Bidolli stated that the DEEP has a list of contaminated or potentially contaminated sites. If they had contamination on this site, (the only possible was the underground storage/gasoline tank) it would not meet the threshold requirements and would look at this when drafting this agreement, they would not put that liability on the Town. The State will not hold the Town liable for anything that exists on the site. First Selectman Herbst stated the more prudent course of action to protect the Town's assets is to start with a lease agreement where the Town is not liable for any environmental remediation. The property is owned by DEEP, it has been classified as being part of the Fairchild Wheeler Park. Atty. Nicola stated that it is titled in the State of CT. The State's park land is always given to DEEP to manage. Fairchild heirs of the estate have made it very clear that the property would be maintained by deed restrictions and to be maintained for park purposes.

Atty. Nicola stated that there is a provision within the sub-lease that the tenant needs to keep the property in a safe and sanitary condition. If it is not, it will be enforced by the Town of Trumbull.

Mr. Bidolli confirmed that all flood plain management approvals for the trail will be in place, the cost has already been assessed, with regard to the bridge they are not making any new improvements they are replacing what exists. One of the nice aspects of working at the regional level is that they were able to cross purpose improvements to the watershed a lot restoration activity along the trail will be seen, this will allow for the Town to have the ability to maintain it as they like, and will be an asset to the parks. This will be a gateway to the City of Bridgeport, when the new trail comes in

there will be lighting that will be put together nicely and it will be an asset for the Town and a gateway for the area.

Attorney Nicola added that if the Town does not sign the lease, Bridgeport will continue to have the land; Bridgeport.

The Chair clarified that the State owns all of this property and we have all seen how it has been used to date. A municipality does not tell the State what to do on their property. The state controls the property even though it is within the Town's jurisdiction. There will be follow through with regard to the environmental issues. The irony is that main department to look at the issues is DEEP and they are in control of the property on behalf of the State. The potential conditions of a spill or an issue on the site is already identified. There will be further inspection and examination; any recommendations beyond that will be followed through on, that is the will of the Town Council.

The Chair called a recess at 9:50 p.m. for the Town Council to review the sub-lease.

The Chair called the meeting back to order at 10:01 p.m.

Ms. Mark spoke against the resolution, she could not review the sub-lease in 5 minutes , had not done her due diligence by not having the environmental report and had just learned of the December 31st date and the meets and bounds at this meeting.

Mr. Scinto spoke in favor of this agreement; he lives on one of the streets that are on the map. He has lived there for 15 years. Mr. Scinto spoke in favor of the Town of Trumbull having control over this property rather than Bridgeport. This will be better if Trumbull is in control. The adjacent neighborhood will be better protected.

Moved by Mr. LeClair, seconded by Ms. Lamberti to call the question.

VOTE: Motion CARRIED 10-3-1 (Against: Tesoro, Meisner and Basbagill)

VOTE: ADOPTED 12-1-1 (Against: Jankovic-Mark) (Abstention: Tesoro)

There being no further business to discuss the Trumbull Town Council adjourned by unanimous consent at 10:06 p.m.

Respectfully Submitted,

Margaret D. Mastroni
Trumbull Town Council Clerk