

TOWN COUNCIL
Town of Trumbull
CONNECTICUT
www.trumbull-ct.gov

TOWN HALL
Trumbull

TELEPHONE
(203) 452-5005



MINUTES
SEPTEMBER 4, 2014

CALLED TO ORDER: The Chair called the meeting to order at 8:10 p.m. All present joined in a moment of silence and the Pledge of Allegiance. The Chair asked all present to remember the Trumbull family of John Greene who lost his brother, Major General Harold Greene in Afghanistan a month ago. The Chair extended his gratitude on behalf of the community for his courageous service.

ROLL CALL:

The Clerk called the roll and recorded it as follows:

PRESENT:

Daniel Marconi	Joseph G. Pifko	Tony J. Scinto
Vicki Tesoro	Edna Colucci	Lori Rosasco Schwartz
Mark S. LeClair	Ennio DeVita	Antonio Petitti
Cynthia L. Penkoff	Enrico R. Costantini	Kenneth M. Martin, Sr.
Carl A. Massaro, Jr.	Michael J. London	Ann Marie Evangelista
Donna Seidell	Suzanne S. Testani	Thomas Christiano
Bethany Llodra Gilman		

ABSENT: Patrick Helfrich and Vincent DiMasi, Jr.

ALSO PRESENT: First Selectman Timothy Herbst, Chief of Staff Lynn Arnow, Town Attorney Dennis Kokenos and Director of Economic and Community Development Edward Lavernoich.

*The Chair reserved his right not to vote unless otherwise noted.

APPROVAL OF MINUTES: Moved by Mr. LeClair, seconded by Mr. Pifko to accept the August 4, 2014 meeting minutes as submitted. VOTE: Motion CARRIED unanimously.

Moved by Mr. Constantini, seconded by Ms. Rosasco Schwartz to amend the June 2, 2014 meeting minutes by substituting under RESOLUTION TC25-81 the number ~~\$7,440,677~~ with \$7,444,667 in all places.

The Chair explained this was a bonding resolution, all of the bonding numbers were correct throughout with the exception of the minutes. Bond Counsel requested that the record be checked and to get the correct number into the minutes. VOTE: Motion CARRIED unanimously.

PUBLIC COMMENT – There were 2 people present to speak. (Public Comment Attached)

DISCUSSION ITEM:

EMSBC – The Chair stated the committee had been charged with enabling THS to be what it was once was, a shelter for the community. The project has been completed with minor follow up being completed. The generator has been installed and is tested every Friday at 6:00 a.m. Mr. Marconi, the Town Council representative for the committee noted that the 75-page report had been read and reviewed at the last EMSBC meeting. The generator meets all of the parameters. The committee finished the project one (1) week early and came in under budget. First Selectman Herbst stated the generator is up and running and hopes to never have to use it. The Chair noted the final project cost as \$925,000 and there is approximately \$200,000 in renovation bond authorization remaining. Ms. Tesoro suggested that screening be considered. Mr. Scinto the Town Council representative on the committee suggested screening for the roof top. The Chair stated the THSBC has a list of items they want to do with the remaining \$200,000. There is a large tree which blocks the view of the generator from the classrooms. The generator is only visible from the parking lot. Mr. Martin agreed there should be additional screening of the generator.

First Selectman Herbst stated that he hopes in the next couple of months the new BOE Facilities Director will come to the Council to speak to energy efficiency. THS's energy cost is more than the whole Branford School district.

Moved by Mr. London, seconded by Llodra Gilman to take items #2 & #3 out of order.

VOTE: Motion CARRIED unanimously.

1. RESOLUTION TC25-112: Moved by Ms. Rosasco Schwartz, seconded by Mr. LeClair. BE IT RESOLVED, That William Haberlin of 351 Shelton Road, be and the same is hereby appointed as an alternate member of the Board of Finance for a term from December 3, 2012 extending to December 7, 2015.

Moved by Mr. London, seconded by Mr. Christiano to waive the reading of all committee reports for all resolutions on this agenda.

VOTE: Motion CARRIED 11-7 (AGAINST: Constantini, LeClair, Tesoro, Rosasco Schwartz, Scinto, Martin and Testani)

Ms. Tesoro submitted and read into the record a Minority Report re: Trumbull Town Council RESOLUTION TC25-112. (REPORT ATTACHED)

Moved by Tesoro, seconded by Mr. Christiano to amend by striking ~~William Haberlin of 351 Shelton Road~~ and inserting Jonathan Greene of 23 Topaz Lane.

Ms. Penkoff spoke against the amendment because she believes Mr. Haberlin is the best candidate. Ms. Tesoro stated the amendment represents basic fairness and has nothing to do with Mr. Haberlin's qualifications. The Chair stated that he and Mr. Christiano were on the council when he

had sat in the minority party position. At that time, Republicans were voted no alternate seats though they held majorities of the regular seats on boards those boards and commissions. The Chair stated he expects the Council to vote these matters in the best interest of the Town. The Chair noted the current Board of Finance sits with 6 elected members, three from each party and is anxious to see how that works out this budget season around knowing what occurred last time. The Chair suggested the Council was remiss in not proposing to change the Board of Finance to a seven member board during charter revision. Ms. Tesoro stated the community is tired of tit for tat and asked that those voting do the right thing. Mr. Constantini added by asking to vote for a democrat it is making it this political and would be assuming that there could not be bi-partisan work done. Mr. Scinto stated he was elected in 2006, in 2007 he was removed from the THSBC. When this administration was elected, Chairman Massaro added a seat to the THSBC for Ms. Bivona out of fairness. Ms. Penkoff stated her vote would reflect who would do the best job. Mr. Christiano stated in 2006 the democrats made a mistake and overreached, the Town leaders had not listened to anyone and this was the beginning of many of their party's problems. It appears the republican leaders are now doing the same thing. Mr. London stated his vote will be political, when the democratic party was in control there was excessive spending, and does not want it to go back to "any increase is a good increase." Ms. Colucci spoke in favor of Mr. Haberlin. She is new to politics and does not believe in "tit for tat". Ms. Colucci respects Mr. Haberlin and his qualifications she will not vote against him because he is a republican. Ms. Tesoro stated this is simply a matter of balance and fairness, Mr. Haberlin was not elected in the special election.

VOTE: Motion FAILED 3-15 (IN FAVOR: Tesoro, Marconi and Christiano)

VOTE: ADOPTED 16-2 (AGAINST: Tesoro and Marconi)

2. RESOLUTION TC25-113: Moved by Mr. Marconi, seconded by Ms. Llodra Gilman.
BE IT RESOLVED, That the James Meisner of 62 Driftwood Lane, be and the same is hereby appointed as a member of the Pension Board for a term from December 5, 2011 extending to the December 7, 2015.

The Chair stated that Mr. Meisner is a democrat and a former member of the council. Ms. Tesoro stated that the next time the L&A committee meet she would amend the 8-27-14 L&A minutes. First Selectman Herbst stated Mr. Meisner is well suited for this board, he has demonstrated while serving on the Town Council that he is in favor of funding the pension ARC and many times reached across the aisle in order to conduct the council's business. He will be an ideal member for the board.

VOTE: ADOPTED unanimously.

DISCUSSION ITEM:

- Shelton Road Property UOK, LLC

First Selectman Herbst explained the property is an abandoned gas station on Shelton Road and will involve contamination remediation. This is an opportunity for the Town to see that the remediation is done properly and be able to control the future use of the property.

Moved by Ms. Penkoff, seconded Ms. Testani to ENTER into EXECUTIVE SESSION for the purpose of discussing pending litigation on Shelton Road Property UOK, LLC.
VOTE: Motion CARRIED unanimously.

The Town Council ENTERED into EXECUTIVE SESSION for the purpose of discussing pending litigation on Shelton Road Property UOK, LLC at 9:01 p.m. with the following people present: Town Council members, Daniel Marconi, Joseph G. Pifko, Tony J. Scinto, Vicki Tesoro, Edna Colucci, Lori Rosasco Schwartz, Mark S. LeClair, Ennio DeVita, Antonio Petitti, Cynthia L. Penkoff, Enrico R. Costantini, Kenneth M. Martin, Sr., Carl A. Massaro, Jr., Michael J. London, Ann Marie Evangelista, Donna Seidell, Suzanne S. Testani, Thomas Christiano, Bethany Llodra Gilman, First Selectman Timothy Herbst, Chief of Staff Lynn Arnow, Town Attorney Dennis Kokenos and Director of Economic and Community Development Edward Lavernoich.

Upon motion made by Mr. London and seconded by Ms. Testani to the Town Council ENDED EXECUTIVE SESSION at 9:32 p.m.

3. RESOLUTION TC25-94: Moved by Ms. Penkoff, seconded by Mr. LeClair.
BE IT RESOLVED, That the acquisition of real property known as 6175 Main Street, Trumbull, CT is hereby approved; and
BE IT FURTHER RESOLVED, That the First Selectman is hereby authorized to execute any agreements or take any necessary steps to complete the acquisition.

The Chair explained this resolution represents the west-side of the property at Lake Avenue and Main Street. First Selectman gave a brief overview as follows:
There are individual issues with regards to encroachment, title, liability, liability the Town will assume, protection and adverse possession issues. There is an even bigger issue that needs to be considered, public safety. There is a policy that billboards should not exist in Town. The current bill boards are deteriorating and are unsightly. They need to go away. The question has been raised why the Town would take possession before the lease is up. First Selectman Herbst stated the Town would rather be in front of this. It is a preexisting non-conforming use that can be maintained. The property would be deeded to the Town and recommended the resolution be postponed until there is a final agreement. First Selectman Herbst suggested that moving forward the property be deed restricted. Atty. Kokenos stated a title search has been done, one old mortgage had been found that had not been released. It was paid but not released, there were no other issues. The agreement was forwarded to him this evening at 5:30 and has not had time to review it. Atty. Kokenos confirmed for Ms. Testani that they are current on taxes. Atty. Kokenos confirmed for Mr. Martin that there is no encroachment or adverse possession claims that they know of with the exception of the small strip near the gas station.

Moved by Mr. London, seconded by Ms. DeVita to POSTPONE to next month.
VOTE: Motion CARRIED unanimously.

4. RESOLUTION TC25-114: Moved by Ms. Evangelista, seconded by Mr. Testani
BE IT RESOLVED, That the First Selectman is hereby authorized to accept and enter into and execute any and all agreements, contracts and documents necessary on behalf of the Town of Trumbull, a 2012 State of Connecticut Dept. of Social Services in the amount of \$20,000 to undertake renovations at the Trumbull Senior Center kitchen/snack bar.

The Chair noted that an amendment took place in committee.

Moved by Ms. Testani, seconded by Penkoff to insert the word “grant” after the phrase “a 2012 State of Connecticut Dept. of Social Services”

Ms. Arnow explained there had been prior discussion with regard to the existing facility and possibly moving to another facility. For these reasons plus the requirements of the Health Department, the renovation has been in limbo. First Selectman Herbst stated the Health Dept. had shut the working kitchen down at the Senior Center..

VOTE: Motion CARRIED unanimously.

VOTE: ADOPTED as amended unanimously.

5. RESOLUTION TC25-115: Moved by Mr. Pifko, seconded by Ms. Evangelista
BE IT RESOLVED AND ORDAINED, That the Responsible Contractor Ordinance is hereby enacted. (Full Ordinance attached)

First Selectman Herbst explained the ordinance was modelled after other communities’ ordinances. This ordinance would put in place the protocols that allow a town to disqualify a contractor based upon a set of standards. The other towns that have enacted this ordinance have had the same experiences with the same contractors as Trumbull has. The Town has had their share of adversarial contractors. The Purchasing Policy was adopted in 2011. This was the first step in the process. The Town was without a comprehensive policy up to that point, only the Town Charter spoke to purchasing. The Purchasing Policy speaks to bid waivers, but there is no protocol in place on how to deal with an adversarial contractor, this ordinance is the second step to put controls in place. The Town of Trumbull is willing to pay a fair price for good work, the Town is not willing to over pay for poor work and will not reward bad behavior.

The Chair OPENED the Public Hearing at 9:56 p.m.

There was no one present from the public to speak.

The Chair CLOSED the Public Hearing at 9:57 p.m.

Moved by Mr. London, seconded by Ms. Penkoff to amend the ordinance as follows:

- Section (A) Authority, subsection (1) entitled *Debarment and/or Disqualification* by striking ~~Town Attorney~~ and replacing it with Purchasing Agent
- Section (A) Authority, subsection (2) entitled *Debarments and Disqualification* by adding the following phrase after the last word of the subsection: “which shall also include the awarding of any contract person to a bid waiver.”
- Section (B) Notice of hearing; Procedure for Debarment and/or Disqualification by striking the word ~~or~~ and adding “or the Purchasing Agent” after Purchasing Authority in the first line.

VOTE: Motion CARRIED unanimously.

VOTE: ADOPTED as amend unanimously.

Atty. Kokenos stated that the other towns which had enacted a similar ordinance are as follows:
Danbury, Hartford, Norwalk, and New Haven.

There being no further business to discuss and upon motion made by Mr. LeClair, seconded by Mr. London the Town Council adjourned by unanimous consent at 10:00 p.m.

Respectfully Submitted,

Margaret D. Mastroni, Town Council Clerk

**RESOLUTION TC25-115
AS AMENDED**

Sec. _____. Authority to Debar and/or Disqualify

(A) Authority.

- (1) *Debarment and/or Disqualification.* After due notice to the Person (including any Candidate or Contractor, or affiliate thereof) involved, as set forth below, and reasonable opportunity for that Person to be heard, in accordance with the procedures for hearings on contested cases established in Chapter 54 of the General Statutes, the Chief Executive Officer, Purchasing Authority and Purchasing Agent, after consultation with the Town Attorney, shall have the authority to debar and/or disqualify a Person for cause from consideration for award of contracts or purchase orders by the Town. A debarment and/or disqualification shall not be for a period of more than two (2) years.
- (2) *Debarments and Disqualification* means the prohibition of any Contractor or Candidate from bidding on, applying for, or participating as a subcontractor on, Town procurements in response to a request for response or from being considered for the awarding of any agreement with the Town, which shall also include the awarding of any contract pursuant to a bid waiver.
- (3) *Regulations and policies.* The authority to debar and/or disqualify shall be exercised in accordance with the General Statutes, this Article and regulations and/or policies, if any.

(B) Notice of hearing; Procedure for Debarment and/or Disqualification.

- (1) Subsequent to a determination made by the Chief Executive Officer, Purchasing Authority and Purchasing Agent that there exist one (1) or more causes for debarment and/or disqualification as set forth in subsection (C) herein of any Contractor or Candidate, a Hearing Officer appointed by the Chief Executive Officer shall conduct a hearing to determine whether there exists one (1) or more causes for debarment and/or disqualifying said Contractor or Candidate from bidding on, applying for, or participating as a subcontractor on, Town procurements in response to a request for response or from being considered for the awarding of any agreement with the Town for a period not more than two (2) years.
- (2) The Hearing Officer shall send written notice to the Contractor or Candidate of the proposed debarment and/or disqualification. Such notice shall include:
 - (a) A statement of the time, place and nature of the hearing;
 - (b) A statement of legal authority and jurisdiction under which the hearing is to be held;
 - (c) References to the particular sections of the statutes and regulations involved; and
 - (d) A short and plain statement of the reason asserted by the Town for debarment and/or disqualification. Copies of the notice shall be sent to the Town Attorney and the Purchasing Authority.
- (3) The hearing shall be conducted in accordance with the procedures for hearings on contested cases established in Chapter 54 of the General Statutes.
- (4) *Decision.* The Hearing Officer shall issue a written decision. The decision shall:
 - (a) State the reasons for the action taken;
 - (b) If the Contractor or Candidate is being debarred and/or disqualified, state the period of the debarment and/or disqualification; and,

- (c) Inform the Contractor or Candidate involved of any rights to judicial review as may be allowed under state law.

The existence of a cause for debarment and/or disqualification shall not be the sole factor to be considered in determining whether the Contractor or Candidate shall be debarred or disqualified. In determining whether to debar and/or disqualify a Contractor or Candidate, the Hearing Officer shall consider the seriousness of the Contractor or Candidate's acts or omissions and any mitigating factors.

- (5) *Notice of decision.* The Hearing Officer shall issue a written decision within ninety (90) days of the last date of such hearing, as determined by the Hearing Officer. The hearing officer shall send the decision to the Contractor or Candidate by certified mail, return receipt requested and by regular mail.
- (6) *Finality of decision.* A decision under subsection (4) of this section shall be final and conclusive.

(C) *Causes for debarment and/or disqualification.* The causes for debarment and/or disqualification include the following:

- (1) Conviction or entry of a plea of guilty or nolo contendere for, or admission to, commission of a criminal offense (i) relating to obtaining or attempting to obtain a public or private contractor subcontract or (ii) relating to the performance of such contract or subcontract;
- (2) Conviction or entry of a plea of guilty or nolo contendere for or admission to the violation of any State or Federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a municipal contractor;
- (3) Conviction or entry of a plea of guilty or nolo contendere or admission to a violation of any State or Federal antitrust collusion or conspiracy law arising out of the submission of bids or proposals on a public or private contract or subcontract;
- (4) A willful failure to perform in accordance with the terms of one (1) or more public contracts, agreements or transactions;
- (5) A history of failure to perform or of unsatisfactory performance of one (1) or more public contracts, agreements or transactions.
- (6) A willful violation of a statutory or regulatory provision or requirement applicable to a public contract, agreement or transaction; or
- (7) Evidence of debarment or disqualification by the State of Connecticut or the Federal Government; unless the Candidate can demonstrate why such rulings should not apply to the Town.

(D) *Imputed conduct as set forth in the General Statutes.* For purposes of a disqualification proceeding under this subsection, conduct may be imputed as follows:

- (1) The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, Employee or other individual associated with a Contractor or Candidate may be imputed to the Contractor or Candidate when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor or Candidate and the Contractor or Candidate knew of or had reason to know of such conduct. The term "other seriously improper conduct" does not include advice from an attorney, accountant or other paid consultant if it was reasonable for the Contractor or Candidate to rely on such advice.
- (2) The fraudulent, criminal or other seriously improper conduct of a Contractor or Candidate may be imputed to any officer, director, shareholder, partner, Employee or other individual

associated with the Contractor or Candidate who participated in, knew of or had reason to know of the Contractor or Candidate's conduct.

(3) The fraudulent, criminal or other seriously improper conduct of one (1) Contractor or Candidate participating in a joint venture or similar arrangement may be imputed to other participating Contractors or Candidates if the conduct occurred for or on behalf of the joint venture or similar arrangement and these Contractors or Candidates knew of or had reason to know of such conduct.

(E) *Reduction of debarment or disqualification.* The Hearing Officer may reduce the period or extent of debarment and/or disqualification, upon the Contractor's written request, supported by documentation, for the following reasons:

(1) Newly discovered material evidence;

(2) Reversal of the conviction upon which the debarment or disqualification was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment or disqualification was imposed; or

(5) Other reasons the Town deems appropriate.

The decision to reduce the period or extent of debarment and/or disqualification shall be made at the sole and absolute discretion of the Hearing Officer. Said decision shall be in writing and sent to the Contractor within thirty (30) days of the Town's receipt of Contractor's written request for reduction. Notice of said decision shall be mailed certified mail, return receipt requested.

(F) For purposes of interpreting this provision, the use of the terms "contract or subcontract" shall be inclusive of all contracts, purchase orders and agreements.

PUBLIC COMMENT:

Cindy Katske of 129 Meadowview Drive was present and stated that a special election for the BOF was held in the past summer. The voters spoke and elected a democrat. The board is now 3-3. The democrats have not been granted an alternate. Jonathan Greene was nominated at the L&A Committee, he is very qualified. It has been stated that in the past the democrats have not given the republicans adequate representation. She does not know when this was and has not keep score. If half the board is elected democrat and the board's alternates don't represent that, it is wrong. How long should decisions be based what the past person has done? We teach our children to do the right thing, why would we not expect that from our Town leaders? Ms. Katske spoke in favor of doing the right thing.

Kathleen McGannon of 59 Jackson Drive was present and asked the council to restore her faith in elected representation. The BOF's composition is 3-3 if a democrat is absent they are not represented. She has experienced party pressure and noted her first action as a previous BOF member was to elect a republican chairman and did so because it was the right thing to do. Ms. McGannon asked the council to vote their consciences. The board should not be a 2 republican, 1 unaffiliated with no democrat alternatives. Ms. McGannon asked the council to do the right thing.

Public Comment ended at 8:21 p.m.

TO: Carl Massaro, Trumbull Town Council Chair &
Majority members of the Trumbull Town Council

FROM: Dan Marconi, District 1
Tom Christiano, District 2
Vicki Tesoro, District 3
Patrick Helfrich, District 4

RE: MINORITY REPORT- Trumbull Town Council RESOLUTION TC25-112: Appointment of William Haberlin as an alternate member of the Board of Finance

DATE: September 4, 2014

The undersigned, the minority members of the Trumbull Town Council, not agreeing with the recommendation of the majority on the L & A Committee in reference to the above resolution, desire to express their views in this case.

On August 27th the L&A Committee of the Trumbull Town Council met to consider Resolution TC25-112: To consider and act upon a resolution which would appoint William Haberlin of 351 Shelton Road as an alternate member of the Board of Finance for a term from December 3, 2012 extending to December 7, 2015 (Murphy). The minority member of the L&A Committee offered amendments to this Resolution that were rejected along Party lines.

The Minority members of the Town Council disagree with the actions of the majority and present this minority report for consideration by the full Town Council. This Report is presented under the auspices of Roberts Rules of Order that govern the actions of this Council and under Rule 9 of this Council: REFERRAL TO COMMITTEE AND COMMITTEE REPORTS (Rule 9 Paragraph 3).

It is the position of the minority that the appointment of Mr. Haberlin is contrary to common courtesy toward fellow Town Volunteers and flies in the face of common sense and fundamental fairness. Please note, we make no reference to Mr. Haberlin's qualifications, instead, we focus on the incongruity of three Republican members having two alternates and the three elected Democratic members of the Board of Finance having none.

The current configuration of the alternates of the Board of Finance, that is two Republican alternates, one unaffiliated alternate and no Democratic alternates was conceived when the Board of Finance was a 4 to 2 Republican majority. On July 22, the voters of Trumbull voted for a balanced Board by electing Democrat Lainie McHugh to the seat vacated by Republican Dave Rutigliano thereby creating an evenly split 3 to 3 Board. Common sense dictates that the correct configuration of alternates should be one Republican (Ms. Egri), One Unaffiliated alternate (Mr. DeGennaro) and one Democrat. The proposal of Resolution TC25-122 would result in an unfair and unnecessary imbalance.

The minority wants to note, for the record, that no member of the Democratic Town Committee, no Democratic member of the Board of Finance and No Democratic Member of this Council was notified of the vacancy. As far as we know, no posting was made on the Town website and no notice was placed in any newspaper. These actions effectively prevented the Democrats from offering an alternative

resolution and forced the Democratic minority to amend the resolution at the Committee. For the record we protest the manner in which this vacancy has been handled as it is both dubious on its face and simply rude and unnecessary.

No member of the majority of the L&A committee was able to offer any explanation for a simple fact, why should three elected Republican members have 2 alternates and the three elected Democrats have none. It is our belief that the full council, presented with the facts stated above will vote for fundamental fairness and courtesy toward fellow elected volunteers. It is the intention of the minority to offer the credentials of Jon Greene, a respected citizen of our community and a man familiar both with the budget and other issues facing our community. We urge the full Council to consider these credentials and, recognizing the voice of the people seeking balance on the Board of Finance, accept Jon Greene as the Democratic alternate on the Board of Finance.

Respectfully Submitted,

Dan Marconi

Vicki Tesoro

Tom Christiano

Patrick Helfrich