

TOWN COUNCIL  
**Town of Trumbull**  
CONNECTICUT  
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TOWN HALL  
Trumbull

TELEPHONE  
(203) 452-5005



LEGISLATION & ADMINISTRATION COMMITTEE  
MINUTES  
AUGUST 27, 2014

CALL TO ORDER: The Chair called the Legislation & Administration Committee to order at 7:01 p.m.

The clerk called the roll and recorded it as follows:

Present: Suzanne Testani, Chairman, Enrico Constantini, Vice Chairman, Edna Colucci, Joseph Pifko, Daniel Marconi and Thomas Christiano, Alternate.

Absent: Patrick Helfrich and Ken Martin, Sr., Alternate.

Also Present: First Selectman Timothy M. Herbst (arrived at 7:30 p.m.), Chief of Staff Lynn Arnow and Director of Economic & Community Development Edward Lavernoich, Town Attorney Dennis Kokenos, Town Council Chairman Carl A. Massaro, and Town Council member Vicki Tesoro.

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1. RESOLUTION TC25-94: Moved by Mr. Marconi, seconded Christiano.  
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.

Mr. Lavernoich distributed and reviewed the attached Situation Summary with the Committee.

This resolution was before the Public Works Committee in July, there were concerns with the acquisition relating to environmental issues and the condition of the title of the property.

*Situation Summary:*

- The signs are owned by Lamar and have fallen into disrepair. The current lease will expire in early 2020.

- Pursuant to CT 8-24 P&Z has recommended an approval of the acceptance of this charitable donation.
- The findings of the Phase 1 Environmental Site Assessment (ESA): It is unlikely there is contamination on the site. (ESA Excerpt Attached).
- Under section 9.0, Opinion of the ESA the site is not an “Establishment” therefore it does not fall under the Transfer Act.
- A title search was obtained for the property. There was one mortgage found dated 1986, it is not an actual encumbrance. Bridge will take of this prior to the donation. There was nothing on the title search showing an adverse possession claim on the signs.

It was explained a survey would not guarantee someone claiming adverse possession in the future. If there were to be such a claim on any part of the property besides the signs the Town would just add that portion to the tax log.

If the Town was to acquire the property it would be able close the door to ever having a sign on that property. The gas station next to the property is down stream, the Town is not liable if someone’s problem were to come onto its property, the other property owner is. There are no uses considered by the State that would cause this property to be considered an Establishment, therefore there would be no reason for someone to say the property needs to be remediated. The Phase 1 ESA confirms this. The site is full of healthy fauna and flora. The site is a natural detention pond. The lease can not be cancelled prior to the Town accepting the donation. Accepting the donation would put the Town in control of the property and its use.

Mr. Massaro indicated his preference to a final form of the agreement before council approval. Mr. Lavernoch indicated a survey of this property would be approximately \$3,000 - \$5,000. The property line is approximately where the dirt area is and where there has been some storage. The gas station has encroached upon the property. There will not be a legal obligation to go back and test for lead paint. Mr. Lavernoch confirmed if the Town was to dispose of the signs there would be a certain cost associated with the disposal and for the test of lead paint. Mr. Christiano stated at the end of the day the Town is responsible. Atty. Kokenos and Mr. Lavernoch stated the lack of maintenance by Lamar is a blight issue. The ESA is specifically commissioned to say whether it is an Establishment, the attorneys would not be charged with agreeing or disagreeing with the findings.

First Selectman Herbst requested if the council members have any other questions with regard to this matter to request the information prior to the full council meeting so that the people who speak to the resolution are prepared in advance.

Moved by Ms. Colucci, seconded by Mr. Constantini to send without recommendation. Council members had been requested to forward their questions on this matter prior to the full council meeting so the people speaking to the resolution will be able to properly research and address the questions.

Atty. Kokenos confirmed they will move forward on drafting the final agreement the day after this meeting.

VOTE: Motion CARRIED unanimously.

2. RESOLUTION TC25-112: Moved by Mr. Constantini, seconded by Mr. Pifko.  
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. Marconi, seconded by Mr. Christiano to amend the resolution to read as:  
RESOLUTION TC25-112: BE IT RESOLVED, That Jonathon Greene of 23 Topaz Lane, 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.

Mr. Marconi stated this resolution is due the vacancy created by Mr. Murphy and there has been no public announcement as was last year when Mr. Rutigliano resigned from the BOF. The alternate members of the board should reflect the parties that the people elected. Trumbull has elected 3 republicans and 3 democrats to the BOF. Mr. Haberlin is a republican. Mr. Greene is a democrat and an active local resident who has attended many Town meetings and is well informed on the Town budget.

First Selectman Herbst stated in the past republicans had held the majority on P&Z but alternates were appointed by the other party 2-1. Mr. Haberlin has served on the BOF during the last budget and will be able hit the ground running with no learning curve, there are vacancies on many other boards and commissions where he has received no democrat nominations. Ms. Tesoro stated the amendment would represent how people voted, the current board is 3-3, and it would be unfair to have no democrat alternate.

Mr. Greene of 23 Topaz Lane was present and indicated his party affiliation as democrat. Mr. Greene was vice-chairman of the Finance Committee in the Town he lived in prior to Trumbull. He has been through the town budget process there and is knowledgeable of Trumbull's budget process. He went to the Charter Revision Commission and made recommendations to the budget process.

VOTE: Motion FAILED 2-4 (AGAINST: Colucci, Testani, Constantini and Pifko)

Mr. Haberlin of 351 Shelton Road was present and indicated his party affiliation as republican. Mr. Haberlin has been on the BOF since December 2103 and has served through one budget cycle. The board did an excellent job working together; for the most part they had a bipartisan agreement on the budget. He was chairman of the Town Council and the Finance Committee in his hometown Stratford, CT and would like to continue serve on the BOF and looks forward to continuing the work.

VOTE: Motion CARRIED 5-1 (AGAINST: Marconi)

3. RESOLUTION TC25-113: Moved by Ms. Colucci, seconded Mr. Marconi.  
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.

Mr. Meisner of 62 Driftwood Lane was present and indicated his party affiliation as democrat. He would like to continue to advocate for the Town to meet its pension obligations and its need to better fund the pension. He is an investment management business and is qualified to contribute to the Town's investment decisions. Mr. Meisner stated that in principal agrees with the Charter Revision provision to fund the pension to the ARC, (actuarial recommended contribution). He is not sure how it is exactly worded and understands people's concerns with regard to tying the Town's hands too tightly. It needs to be worded properly. Any method that makes that happen and takes it out of the political channel would be helpful. First Selectman Herbst spoke to the importance of funding the pension and stated if the Charter Revision provision is not passed at the next election the next order of business for the council should be to enact an ordinance.

Ms. Tesoro stated for the record that the democrat party nominated Mr. Meisner for this board and she has never said she was against funding the pension to the ARC.

Mr. Massaro stated it is a Pension Board member's duty to recommend funding to the actuarial recommended amount. Mr. Meisner assured the committee he would advocate meeting the ARC. Mr. Meisner works for Common Fund, an institutional investment firm. Their clients are not-for-profits. The firm does not manage any government entity. He would not be able to accept this nomination if his firm did. His firm hires other managers to manage their assets. This is similar to how the Trumbull pension is managed. They allocate out to a third party, therefore he has useful experience in hiring outside managers.

VOTE: motion CARRIED unanimously.

4. RESOLUTION TC25-114: Moved by Mr. Pifko, seconded by Mr. Constantini.  
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.

Ms. Arnow stated the Town has been awarded a \$150,000 grant for this project. This grant will be in addition to that. The Town has been looking at two options for the kitchen: one is a warming kitchen and the other is a cooking kitchen. There is an \$8,000 difference between the two. The Senior Center is a primary shelter for the Town and it is important to have a full kitchen. The Senior Center administrator has obtained her QFO. She can provide food in an emergency situation. She would not be the primary food

preparer on a regular basis. The Senior Commission will be a part of the decision making for the kitchen. It has been found that there is not much of a difference between the two (\$8,000). This grant expands the Town's capabilities.

Moved by Mr. Constantini, seconded by Mr. Pifko to amend the third line of the resolution by adding the word grant after the phrase "2012 State of Connecticut Dept. of Social Services".

The resolution would read as:

RESOLUTION TC25-114: 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 grant in the amount of \$20,000 to undertake renovations at the Trumbull Senior Center kitchen/snack bar.

VOTE: Motion CARRIED unanimously.

VOTE: Motion CARRIED as amended unanimously.

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

Atty. Kokenos distributed a revised draft of the ordinance (See Attached). The Town Council's ability to adopt this ordinance is allowed through CGS 7-148w. The State legislation outlines the seven (7) causes of disbarment and disqualification. The proposed ordinance states that the Chief Elected Officer along with the Purchasing Authority will send notification that they believe one of the 7 causes of disqualification exists subsequently a hearing would take place allowing the contractor to put its case before the hearing officer. The hearing officer's decision will be final. Per statute the disbarment is for two years. This could not happen mid-bid a determination would have to take place prior to a bid. Someone would have already been disqualified and would be allowed to bid. If they did bid they would be disqualified.

First Selectman Herbst spoke in favor of the proposed ordinance. This is the last step in a process of implementing reforms to ensure the Town protects itself and history does not repeat itself. The first step in this process was adopting the Town's Purchasing Policy in 2011. This ordinance puts procedural safeguards in place. Atty. Kokenos spoke to the importance of items #4 & #5 on page 2 subsection c. These would be the most applicable. First Selectman Herbst stated the current proposed ordinance speaks to public bid and suggested an amendment that items used for disbarment be used to disqualify a bid waiver. (Mr. Christiano left the meeting at 8:29 p.m.) Atty. Kokenos stated the person subject of the bid waiver would have to have been disqualified prior to the emergency. First Selectman Herbst stated the department heads could use the 7 causes as a checklist before they request a bid waiver. Atty. Kokenos stated the Purchasing Policy may need to be amended to reflect this.

The committee spoke to the checks and balances in place, and not being able to have one individual make a unilateral decision. First Selectman Herbst stated the Purchasing Agent needs to be a firewall, to be consistent and fair. Atty. Kokenos stated that other municipalities have included Town Attorneys, but in the Town of Trumbull that should be, because they could be handling the litigation. The committee discussed adding the Purchasing Agent and striking the Town Attorney. Attorney Kokenos confirmed the Hearing Officer is not defined by statute.

Moved by Mr. Constantini, seconded by Mr. Marconi to amend page 1 of the ordinance in three places 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 a contract person to bid waivers.”
- 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.

(Sections as amended attached)

VOTE: Motion CARRIED unanimously.

Atty. Kokenos explained for Mr. Massaro the On-Call list is established by bid. If they have already been awarded the bid it would be handled in the contractual terms rather than a retroactive disqualification. Mr. Constantini suggested that the bid include language that the bid is subject to the contractor not being disbarred. Mr. Massaro stated much of this language is already included in the bids, if this is adopted the Purchasing Policy should be looked at as well. Hartford, Danbury, Norwalk, New Haven, Milford and Middletown have this ordinance. First Selectman Herbst stated the cities listed have had many of the same issues with same contractors as Trumbull. Atty. Kokenos does not see a down side to the ordinance. This is an added ability for the Town to be proactive. To make sure the contractors are honest, hard working noncriminal people.

VOTE: Motion CARRIED as amended unanimously.

There being no further business to discuss and upon motion made by Ms. Colucci, seconded by Mr. Marconi the Legislation & Administration Committee adjourned by unanimous consent at 8:55 p.m.

Respectfully Submitted,

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Margaret D. Mastroni, Town Council Clerk

## Attachments

### (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, after consultation with the Purchasing Authority and the ~~Town Attorney~~ Purchasing Agent, 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 a contract person to bid waivers.

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

- (1) Subsequent to a determination made by either the Chief Executive Officer, ~~or~~ Purchasing Authority or the Purchasing Agent that there exist one (1) or more causes for debarment and/or disqualification of any Contractor or Candidate, the Chief Executive Officer shall conduct a hearing, or may appoint a hearing officer to conduct such 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.

## *Situation Summary*

Bridge Group, LLC (Bridge) has proposed a charitable donation of real estate it owns at 6175 Main Street to the Town of Trumbull. The property is a parcel of approximately 2.1 acres, the majority of which is considered a wetland. The First Selectman directed the E&CD Director to request the Town Council's authorization to accept the property donation.

Bridge pays approximately \$4,000 annually in real estate taxes on the parcel. The Town would no longer receive this revenue if it acquires the parcel.

Bridge has a 20 year lease with Lamar Company, LLC (Lamar) that allows Lamar to keep billboards on the property until March 31, 2020. The charitable donation is subject to the current lease; the Town will likely inherit Lamar as a tenant. Lamar pays Bridge approximately \$1,800 annually in rent. Reportedly, Lamar is currently up-to-date on its rent payments.

The attorney for Bridge has verbally represented the following:

Bridge has no knowledge of contaminants being released on the property.

Bridge has no other agreements with Lamar regarding Lamar's tenancy or use of the property.

Bridge has no other agreements with any other party regarding tenancy or use of the property.

Bridge is not aware of any encumbrances (other than the existing lease) or liens on the property.

The Town would require the aforementioned representations, and perhaps others, in an agreement at the time of transfer. The Town, in accepting the charitable donation of the property, has no obligation to confirm or certify the value of the donation to Bridge or the US IRS.

Lamar pays approximately \$2,000 annually in personal property taxes on the billboards. The Town will be entitled to receive this revenue until the signs no longer exist, or Lamar abandons the signs.

The (4) billboards are primarily wooden structures. They are "pre-existing non-conforming" in the Town's Zoning Regulations; new billboards are not permitted in Trumbull. Hence, the existing billboards can be repaired, but not replaced, enlarged or enhanced (e.g. lighting) in any way.

The billboards have not had any advertising on them for several months. They appear to need major repair. Any repairs on the billboards would require entering into the wetlands. A plan for entering the wetlands and undertaking repairs would have to be approved by the Inland Wetlands and Watercourses Commission (IWWC). Reportedly, Lamar is preparing an application to the IWWC.

The Trumbull Planning & Zoning Commission, pursuant to Connecticut Statute 8-24, has recommended an approval of the acceptance of the charitable donation to the Town Council.

A Phase I Environmental Site Assessment was conducted for the Town by Trumbull-based CT Licensed Environmental Professional Daniel White (Mountain Laurel Environmental). An excerpt of the ESA report (Findings, Opinion & Conclusions) is attached.

A Title Search was obtained for the property at the request of Owens, Schine & Nicola.

Amended 8-27-14 EL

**Excerpt from Mountain Laurel Environmental Phase I ESA for 6175 Main Street  
Trumbull August 27, 2014**

8.0 Findings

The Subject Site is undeveloped, except for four (4) wooden billboard signs situated on the northern portion of the property. Billboards have been present at this location since at least 1934, although it is not clear when the current billboards were constructed. Historic aerial photographs and directories indicate that the Site has been vacant since at least 1934. The majority of the Site consists of wetlands. A tributary to Horse Tavern Brook, situated on the western portion of the Site, flows to the south.

A gravel parking area in the southern portion of the Site property is used by the gasoline service station located on the adjoining property. Vehicles were parked in the gravel area and a dumpster containing cardboard, paper, domestic trash, and an empty windshield washer container was situated on the western edge of the parking area. A pile of un-split firewood was present along the western side of the gravel parking area. It is not known who placed the firewood there. Historic aerial photographs and directories indicate that a service station has been situated on the adjoining property since at least 1934.

The following section presents the Conceptual Site Model (CSM) with a focus on the AOCs.

8.1 Conceptual Site Model

AOC-1: Dumpster: As noted previously, a dumpster belonging to lake and Main Service Center was situated in the southern portion of the Site, to the west of a gravel parking area. Cardboard, paper, domestic trash, and an empty windshield washer container were observed in the dumpster. It is conceivable that oil, gasoline, and other petroleum products could enter the dumpster on or in oil filters, used car parts, rags, and/or empty containers. Contaminants could leak out of the dumpster to the ground surface, and then migrate downward through the soils to groundwater. The contamination could then be carried laterally by ground water flow. Mountain Laurel notes that no staining, sheen, discoloration, odor, or other evidence of contamination was observed on the soil surrounding the dumpster; however the presence or absence of contamination can only be confirmed through the collection and analyses of soil samples.

AOC-2: Billboard signs: Four (4) wooden billboard signs are situated on the northern portion of the property. Billboards have been present at this location since at least 1934, although it is not clear when the current billboards were constructed. The signs area painted. Given the potential age of the billboards, the paint used in the past may have contained Lead. Over time paint can flake off and fall to the ground surface. Lead could leach from the paint into the soil and then migrate downward through the soils to groundwater. The contamination could then be carried laterally by ground water flow. Mountain Laurel notes that no staining, sheen, discoloration, odor, or other evidence of contamination was observed on the soil surrounding the dumpster; however the presence or absence of contamination can only be confirmed through the collection and analyses of soil samples. The billboard signs should be tested for Lead-based paint prior to

removal. If Lead-based paint is present, the signs should be properly disposed and soils evaluated for contamination.

AOC-3: Off-site sources: A gasoline service station has occupied the adjoining property to the south (6149 Main Street) since at least 1934. Operations at the service station include storage and sale of petroleum products and automobile mechanical repair. Petroleum products can be released to the ground surface and subsurface soils as a result of spills, leakage from USTs and product lines, and/or improper disposal of waste. Contaminants could then migrate downward through the soils to groundwater. The contamination could then be carried laterally by ground water flow. Mountain Laurel notes that the anticipated groundwater flow would carry contaminants away from the Subject Site; however groundwater flow direction has not been confirmed. The direction of groundwater flow can only be confirmed through a groundwater investigation. Mountain Laurel further notes that, according to the DEEP, property owners are not responsible for remediation of contamination originating from an off-site source.

## 8.2 Recognized Environmental Conditions

Three (3) potential RECs were identified at the Site, These include:

REC-1: Dumpster: As noted previously, a dumpster belonging to lake and Main Service Center was situated in the southern portion of the Site, to the west of a gravel parking area. Cardboard, paper, domestic trash, and an empty windshield washer container were observed in the dumpster. It is conceivable that oil, gasoline, and other petroleum products could enter the dumpster on or in oil filters, used car parts, rags, and/or empty containers. Contaminants could leak out of the dumpster to the ground surface, and then migrate downward through the soils to groundwater. The contamination could then be carried laterally by ground water flow. Mountain Laurel notes that no staining, sheen, discoloration, odor, or other evidence of contamination was observed on the soil surrounding the dumpster; however the presence or absence of contamination can only be confirmed through the collection and analyses of soil samples.

REC-2: Billboard signs: Four (4) wooden billboard signs are situated on the northern portion of the property. Billboards have been present at this location since at least 1934, although it is not clear when the current billboards were constructed. The signs area painted. Given the potential age of the billboards, the paint used in the past may have contained Lead. Over time paint can flake off and fall to the ground surface. Lead could leach from the paint into the soil and then migrate downward through the soils to groundwater. The contamination could then be carried laterally by ground water flow. Mountain Laurel notes that no staining, sheen, discoloration, odor, or other evidence of contamination was observed on the soil surrounding the dumpster; however the presence or absence of contamination can only be confirmed through the collection and analyses of soil samples. The billboard signs should be tested for Lead-based paint prior to

removal. If Lead-based paint is present, the signs should be properly disposed and soils evaluated for contamination.

REC-3: Off-site sources: A gasoline service station has occupied the adjoining property to the south (6149 Main Street) since at least 1934. Operations at the service station include storage and sale of petroleum products and automobile mechanical repair. Petroleum products can be

released to the ground surface and subsurface soils as a result of spills, leakage from USTs and product lines, and/or improper disposal of waste. Contaminants could then migrate downward through the soils to groundwater. The contamination could then be carried laterally by ground water flow. Mountain Laurel notes that the anticipated groundwater flow would carry contaminants away from the Subject Site; however groundwater flow direction has not been confirmed. The direction of groundwater flow can only be confirmed through a groundwater investigation. Mountain Laurel further notes that, according to the DEEP, property owners are not responsible for remediation of contamination originating from an off-site source.

## 9.0 Opinion

It is the opinion of Mountain Laurel that the Subject Site does not meet the definition of an "Establishment" as defined in Sections 22a-134 through 22a-134e of the Connecticut General Statutes and would not be subject to the State of Connecticut Transfer Act. Since the Transfer Act requirements don't apply, investigations conducted at the Site do not require the same quantity and higher quality of data as an investigation conducted under State programs. Mountain Laurel notes that investigation and/or remediation of the Site may be required under other federal or local regulations.

## 10.0 Conclusions

Based on the findings of this Phase I ESA, Mountain Laurel is of the opinion that no significant contamination is present at the Subject Site. Investigation of soil and groundwater at the Site would be required to confirm this, however.

Revised Ordinance

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 and Purchasing Authority, 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.
- (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 and Purchasing Authority 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 Agent.
- (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.