

SPECIAL TOWN COUNCIL MEETING

FEBRUARY 7, 1991

7:00 P.M.

SUMMARY

<u>Agenda Item</u>	<u>Page No.</u>
2. Consider and Approve a Transfer of Funds in the Amount of \$1,000 from Acct. #100-1300, Clerk's Wages to Acct. #900-9000, Professional Services as requested by the Youth Service Bureau - Approved	1
3. Discussion and Possible Action on Payment of an Invoice From Vincent T. McManus, Jr. for Legal Services Rendered the Zoning Board of Appeals in the Matter of the Zoning Board of Appeals vs. Planning & Zoning - Failed	3 - 28
4. Discussion Regarding the Arbitrator's Agreement Concerning the New Yalesville Firehouse	29 - 52
5. Discussion and Possible Action on the Electrical Cable at Sheehan High School (this item was incorrectly stated and should read: Discussion and Possible Action on the Telephone Cable at Stevens School) - Approved - The Portable Classroom Committee (Spacial Needs Building Committee) Reimburse the Board of Education in the Amount of \$7,172.50	1 - 3

SPECIAL TOWN COUNCIL MEETING

FEBRUARY 7, 1991

7:00 P.M.

A meeting of the Wallingford Town Council was held on Thursday, February 7, 1991 at 7:00 P.M. in the Robert Earley Auditorium of the Wallingford Town Hall and called to order at 7:03 P.M. by Chairman Albert E. Killen. Answering present to the roll called by Town Clerk Kathryn J. Wall were Council Members Bradley, Duryea, Gouveia, Killen, Papale, Parisi, Solinsky & Zandri. Council Member Holmes arrived at 7:27 P.M. Mayor William W. Dickinson, Jr. arrived at 7:23 P.M. Corporate Counselor Adam Mantzaris was also present.

The Pledge of Allegiance was given to the Flag.

ITEM #2 Consider and Approve a Transfer of Funds in the Amount of \$1,000 from Acct. #012-9000-100-1300, Clerk's Wages to Acct. #012-9000-900-9000, Professional Services as requested by the Youth Services Bureau

Motion was made by Mr. Bradley, seconded by Mr. Parisi.

VOTE: Holmes was absent; all others, aye; motion duly carried.

Mr. Bradley made a motion to move Agenda Item #5 Up to the Next Order of Business, seconded by Mr. Parisi.

VOTE: Holmes was absent; all others, aye; motion duly carried.

ITEM #5 Discussion and Possible Action on the Electrical Cable Problem at Sheehan High School

Motion was made by Mr. Bradley, seconded by Mr. Parisi.

Mr. Killen explained that there was no backup information due to the fact that it was all handled verbally by himself. Ray Rys, Susan _____ and Dale Wilson were available to provide all necessary information.

Mr. Rys pointed out that the item is incorrect on the agenda. It should read Stevens School not Sheehan High School.

Mr. Killen apologized and admitted that it was his fault, not the secretary's. He provided the incorrect information to Kathy to be typed for the agenda. It was also noted that it should refer to a telephone cable problem, not an electrical problem.

Mr. Wilson explained that telephone line damage occurred during the summer behind Stevens School connecting the school to Dag Hammarskjold. Williams' subcontractor dug a ditch and nicked the telephone cable and repaired it. At that time no complications occurred. On a subsequent day they did further damage

February 7, 1991

and nicked it again. At that point problems with the phones throughout the system developed. Telelink provided a cost estimate of \$7,000 - \$8,000 to repair the cable. The work went out to bid and it cost approximately \$7,172.50 to repair the cable. Adam Mantzaris' opinion was solicited since the Board of Education did not feel that it was their responsibility to pay since the portable classrooms were not officially accepted yet. The work has gone out to bid and the o.k. has been given to repair, weather permitting. This issue was discussed at the Board of Education Council Liaison Committee at which time it was suggested that it be brought before the Council for discussion. The bid itself was \$4,605.00, also a \$900.00 additional charge will be incurred for the hook-up by Telelink, \$1,532.50 for the splicing and \$135.00 for additional services provided during the school year when the phones were down. This brings the total cost to \$7,172.50

Mr. Rys gave a detailed synopsis of the events as they occurred. On October 24, 1990 Mr. Rys' committee received a letter from the Town Attorney which indicated that the first break was excusable, the second break was not. He stated that a call was placed to "Call Before You Dig" and they had no records of the cable being there at all. In conclusion, it was discovered that the cable was buried anywhere from 6-10" in some areas, there were no markings of the cable and it was not encapsulated in any type of conduit. A final meeting was held with the school business manager, Corporate Counselor and the Spacial Needs Committee. It was concluded that the contractor was not liable for the damage due to the fact that it was indicated that the cable should not have been in the location that the contractor was digging.

Mr. Zandri asked if an attempt to locate the remainder of the cable was made after the first hit?

Mr. Rys responded that the subcontractor did not believe the cable to be in the area it was at the time of the second hit due to the location and direction of the cable at the first hit.

Mr. Zandri pointed out that there are ways to locate underground cabling with electronic equipment.

Mr. Rys stated that the Spacial Needs Building Committee does not have the funds to pay the invoice. He felt that the funds should come out of contingency.

Mr. Killen told Mr. Rys that his committee should have had a contingency account established just for this type of reason.

Mr. Zandri stated that for future reference, if any cable is discovered during construction, the remainder of that cable can be identified as to location, by means of electronic equipment.

Mr. Parisi felt that issues such as this should come before the Council and the Town Attorney does not have the right to authorize the payment but should advise the Council to make payment.

Mr. Killen: The Town Attorney did not authorize the payment, he pointed out that the contractor was not at fault.

Mr. Parisi: Who authorized the payment?

Mr. Killen: The Board of Education did.

Parisi felt that in the future, whoever is going to do the paying should be the one who approves it. If that philosophy is followed, there should not be any confusion.

Mr. Gouveia: The Board of Education was going to do the paying because they could not wait any longer, they had to have this issue resolved. Ray, are there any funds in your account?

Mr. Rys: I don't have my account run-off sheet with me and the Comptroller is not present.

Mr. Gouveia: Do you anticipate a surplus in your account Ray?

Mr. Rys: I don't know that you could say it will be a surplus or not. I have not approached the \$1.5 million in my budget. I am not sure if it is appropriate to take the money out of the account to pay for repairs or not.

Mr. Gouveia made a motion for the Portable Classroom Committee (Spacial Needs Building Committee) reimburse the Board of Education in the amount of \$7,172.50, seconded by Mr. Bradley.

Mr. Solinsky asked what the status of the project was?

isan _____ stated that we are waiting for the weather to break.

Mr. Rys asked Mr. Wilson if the cable that was bid was the same type and size as what was in the ground to begin with?

Mr. Wilson explained that the cable was not to increase the service.

VOIE: Holmes was absent; all others, aye; motion duly carried.

Mr. Holmes called to say that he would arrive approximately 7:30 P.M.

ITEM #3 Discussion and Possible Action on Payment of an Invoice From Vincent T. McManus, Jr. for Legal Services Rendered the Zoning Board of Appeals in the Matter of the Zoning Board of Appeals vs. Planning & Zoning

Motion was made by Mr. Bradley, seconded by Parisi.

February 7, 1991

Mr. Ray Havican, Chairman of the Zoning Board of Appeals, Pat Piscitelli, Chairman of the Planning & Zoning Commission and Linda Bush, Town Planner approached the Council.

Mr. Killen asked that the Council try to keep this issue to a minimum of redundancy since so much information has been covered at the previous meeting surrounding this issue.

Mr. Gouveia: Most of us felt that the provision of the Charter had been violated and we need to move accordingly. It may seem very clear to some people that since the Charter was violated, those individuals who violated it should pay for the bill. There may have been mitigating factors involved and due to the absence of the Chairman of the Planning & Zoning Commission and the Corporate Counselor I requested that this discussion be carried forward to tonight's meeting to obtain additional information. The legitimacy of Planning & Zoning (herein referred to as P&Z) depends on the Zoning Board of Appeals (herein referred to as ZBA). One does not exist without the other. In September, 1989 you changed your regulations knowing that it would have a great impact on ZBA, correct?

Mr. Piscitelli nodded yes.

Ms. Bush: It had an impact on the powers of the ZBA. There is a difference.

Mr. Gouveia: On the powers of the ZBA.

Mr. Killen: Peter, let's find out how far we are going to go into the correctness of the judge's opinion, of the philosophy of the P&Z, I'm not just asking you, I am wondering about the entire Council because we may be opening a can of worms.

Mr. Gouveia: Since I have the floor, why don't you let me answer that question.

Mr. Killen: Be my guest.

Mr. Gouveia: My point of view, if the question is, was the provision of the Charter violated? The answer is yes. If that is all we are looking for, there is no sense in going any further. We can vote right now, as far as I am concerned if that is what you are going to do, that is it. No sense in going any further. But, where there reasons, there may be mitigating circumstances as to why ZBA acted the way that they did and that may have caused them....there may be reasons as to why they did it and depending on the answers that we get today, I for one may decide to pay the bill. I am not going to pay the bill, I am telling you that right now. I will never approve to pay the bill simply because the job was done and was done right. It was stated here before that the reason why the bill should be paid was because the job was done and it was a good job and it should be paid. That should not be the criteria to pay the bill. If it is on the basis of

that, then let's not go any further. If you want to entertain and listen to the different people that were involved as to why they acted they way they did, then maybe there is a reason as to why they acted the way they acted. I will try to ascertain the reasons by asking my questions.

Mr. Killen: It will end up a matter of philosophy no matter how you cut the mustard. What we are trying to ascertain here is whether or not a body unto themselves can decide this decision is something that we have the right to abrogate the law or do anything that we want to because of the nature of our duties. That becomes a very fine line and I do not wish to become involved in it.

Mr. Gouveia: We are not here to argue, including members of ZBA whether or not there was a violation of the Charter. We all agree that there was a violation of the Charter. There may be compelling reasons as to why they did what they did.

Mr. Killen: Carry on.

Mr. Gouveia: You knew that the regulations that you were going to adopt would have significant effect on the powers of the ZBA?

Mr. Piscitelli: Limiting the right on planning use variances.

Mr. Gouveia: Did you consult the Town Attorney beforehand?

Mr. Piscitelli: The Town Attorney, the staff wrote the Town Attorney on August 21, 1989 "The Planning & Zoning Commission is scheduled to hold a Public Hearing and most likely adopt the attached amendment which will prohibit the Zoning Board of Appeals from granting use variances. It is authorized under 8-6 of the Connecticut Statutes. If you have any comments the Public Hearing is scheduled for September 11th." We did not receive a reply but in all fairness, at that time Adam was in the midst of having secretarial problems and that might have been one of the problems that kept him from getting back to us. We did send a note to his office.

Atty. Mantzaris: Can I comment on that? I have no knowledge that I have ever received that memo from Linda Bush. As a matter of fact my first information about this regulation came one evening from Mike Papale who came up to me and asked me about this regulation that was passed and what effect it might have on the ZBA. That was at a Town Council Meeting. When she sent me a copy of it, I looked through all my papers, it is true what Pat said, we were having secretarial problems but if I had not taken up some matter it still would have been on my table. I could not find it anywhere in my office. The first knowledge I had of the regulation was after it was enacted.

Mr. Gouveia: So in other words you did not receive a legal opinion before you...

February 7, 1991

Ms. Bush: We normally do not ask the Town Attorney... that is very uncommon but because this affected the power of another board. I felt as a courtesy and if Adam had any strong feelings...we did not wait for a reply because we very rarely do it that way.

Mr. Gouveia: I agree because this would curtail their powers so greatly that I would think that you would want to, number one, want to talk to them first because again, you exist only because they exist and vice versa. After you talk to them you would want to consult the attorney simply to review the State statutes to see whether or not you had a legal ground to do what you did. The end result is that we are all going to spend a great deal of money and we may not still have the answer to that. Why did you repeal that original regulation? There were two regulations, you adopted one and then you repealed it. You adopted one, they took an appeal on it and then you repealed that one.

Mr. Piscitelli: What we actually did was, on the advice of John Knott who was the attorney who represented P&Z and Adam, was to revise one of the paragraphs that had to do with constitutional taking. It was a matter of revising the language in one paragraph not in the total context of the regulation. It wasn't as stated in the minutes that we made a mistake and that we went back and had to correct the mistake.

Mr. Gouveia: I am not even getting to whether you made a mistake or not. I am saying that yes, from.....

Mr. Piscitelli:that there was one paragraph in there that they made up the language...

Mr. Gouveia: So you revised the original regulation.

Mr. Piscitelli: The language in one paragraph. It said the same thing but they made it so that, in part, it would be more suitable to.....in legalities.

Mr. Gouveia: When you revised that, again, it was mentioned at the last meeting that Adam argued and pleaded with you to try and talk you out of it.

Ms. Bush: If you are going to ask questions based on the presentation of facts at the last meeting, can I take 10 minutes of your time before you ask all of your questions and make comments on the fact that were presented at the last meeting. I would dispute that some were facts maybe just be presenting, and I have documents and minutes to back up my comments. Then that may answer a lot of your questions.

Mr. Gouveia: Fine.

Ms. Bush: This is all from verbatim. I did not realize at the last meeting that the discussion would be sort of an indictment of me and my office in addition to voting to pay Attorney McManus'

bill or I would have been there then. That is why I want to comment on some of the comments made at that meeting.

Mr. Gouveia: I don't think that there was an indictment of any sort. You could have been here just like they were.

Ms. Bush: It was not an agenda item that concerned me.

Mr. Gouveia: You knew that the people were going to come before us making.....

.. Killen: Let's continue from that point.

Ms. Bush: My office did send up a memo to Adam, perhaps it got lost in the mail. Mr. Havican in that same paragraph on page 1 talked about Linda Bush denying an appeal. I don't understand what that means I can't deny any appeal, I have no say in an appeal. Later on Mr. Havican was talking about Atty. Byrne and stated that "we must not allow this to happen as it violates your board's right as granted by State Charter". There is no State Charter, there are State laws and the ordinance that the P&Z Commission adopted was based on one of those State laws, Section 8-6. In that it is talking about the powers and duties of the ZBA and in that paragraph it says, "to determine...the application...provided that the zoning regulations may specify the extent to which usage shall not be permitted by variance in districts in which such uses are not otherwise allowed". In the draft amendment that I gave to the P&Z commissioners based on I believe Danbury's, other towns have ordinances, I think that ours are somewhat more restrictive than most other towns that I looked at but it is not totally unheard of for a ZBA to restrict the granting of use variance by the ZBA. It is permitted by State law 8-6. I am sure you have heard Atty. Byrnes talk, name that law, he has spoken in Wallingford twice. The first time in 1987 and once in 1983. Both times he said mainly the same thing. I will read quote that Mr. Byrne made at his meeting in 1987, "but the main problem usually arises when the Board of Appeals generally grants use variances. I don't think this happens on the setback type variances, yard variances. When the Board of Appeals permits the property owner to make some use of the property which is not permitted in the regulations, that is the type of variance that should not be granted almost never." I was the next speaker, "Ms. Bush: That is not a problem in Wallingford. The ZBA has never granted use variances." This is from September 1987 P&Z Meeting. The P&Z held their Public Hearing in September of 1989 on the first amendment. I was the first speaker and I stated, "I went through the ZBA records for the past 6 years today from 1984-88. In the period of 5 years the ZBA granted a total of 11 use variances. Two of those variances would now come under our Accessory Apartment regulations. Two of the use variances could now have been special permit. So there is another mechanism for that. Two of the use variances the P&Z Commission might have granted zone changes on because they were appropriate. One of the variances, when the person received the variance came before

you, you denied their site plan application and the applicant sued the P&Z. Atty. Mantzaris was the attorney for the applicant, he can verify that. We agreed to approve it because he had gotten his use variances. Two other variances were inappropriate, we made a big deal about one. Eleven use variances in 5 years....."

Mr. Gouveia: We are not here to determine whether those regulationsI did not take much stock in that type of presentation before either.

Ms. Bush: Can I read the one next sentence? "...and from 8 months in the first part of 1989 the ZBA granted 8. Eleven over the period of 5 years and 8 granted in the first 8 months. That is why the P&Z adopted the amendment." If you read the minutes the adoption of the amendment was suggested by Tom Flynn and Ed Makepeace at a P&Z meeting.

Mr. Gouveia: I know why you adopted the amendment, I think we all know. It was no secret why you did. I don't think that we are really here to determine which regulation or amendment to the regulation is the most appropriate one. We already know, that is between the two boards. We already know that they did violate our Charter but what I am trying to determine is whether or not they did it knowingly because they felt that they had no other alternative at that point, the regulations don't add much to it. I know why it was done.

Mr. Piscitelli: The only reason is, was there were allegations made and we don't particularly want to air them unless we have to get... we are prepared to back it with minutes, letters and what not, all the allegations made at the last meeting. I don't feel this is the form to go into that unless we have to. We will lend any support and lend any information you want.....

Mr. Gouveia: I would like to determine whether or not ZBA was somewhat misguided into thinking that they could go ahead and appeal. That is all. When the amendment to the regulation was made, did Adam in fact argue and plead with you to try to talk you out of adopting that regulation?

Ms. Bush: They recommended that the P&Z adopt it and that is part of the minutes of March 12th.

Atty. Mantzaris: I did argue, there was one particular part of that regulation which required an applicant for use variance to also supply a copy of the application to the P&Z Commission. I argued, I had meetings with Atty. McManus in the hallway before the meeting that that particular aspect of the regulation seemed to be a crow in the ZBA's throat. He suggested to me that if that aspect of the regulation could be eliminated he thought he could convince the ZBA not to proceed any further with the second regulation. So I argued for some 45 minutes or so not to include that aspect in the new regulation and I also thought besides attempting to settle the case at that time that they had no

authority at that time to require applications for use variances to also be given to the P&Z Commission. There was a double reason for my arguing against adoption, but they did not.....accept my recommendation.

Mr. Gouveia: I hate to make it personal Linda, but did you make the statement at that particular meeting that "we want to teach them a lesson"?

Ms. Bush: No, I did not. I did say at one of the meetings that I believe that the ZBA is out of control. I will stand by saying that statement.

Mr. Gouveia: I think that we have all said that, I have said that P&Z is out of control in the past too.

Mr. Killen: What we are looking for is what would be the nature of something to allow a body to say that we were pushed into this particular thing, if we can use that term.

Mr. Gouveia: I will get to it if you will allow me.

Mr. Killen: You are asking questions that are going far afield from it.

Mr. Gouveia: Mr. Havican, you appealed that first regulation right?

Mr. Havican: That is the one that had the 15 day limit on it.

Mr. Gouveia: The very first one?

Mr. Havican: Yes.

Mr. Gouveia: It seems to me last time they were talking about, they adopted a regulation, you appealed the regulation, they amended the regulation so that appeal became moot and then....

Mr. Havican: What happened on the first one, and by the way when you are talking about communication I had no idea of what they were doing. I know Pat, you would think that he would pick up the phone and talk to me before they did anything. There was no communication. I found out about it when they passed it and published it in the paper. We have 15 days once it is published.

Mr. Gouveia: Did you appeal the first one?

Mr. Havican: Yes.

Mr. Gouveia: Did you hire an attorney for the first appeal?

February 7, 1991

Mr. Havican: We hired Vinny McManus.

Mr. Gouveia: Then that is the only one that you appealed, not both of them?

Mr. Havican: What we did was, when the time ran out and we did not hear from Adam,
....

Mr. Gouveia: Is that the same one, are we talking about the same thing? I thought that they adopted a regulation, you appealed it and then they amended that regulation, and then you had to appeal the second one?

Mr. Havican: We had to stop the first one.

Mr. Gouveia: Did you appeal the first one?

Mr. Havican: That is the one where the time ran out. I would also like to make the point....obviously..did not feel that there was any violation of the Charter because when we went to Adam for a legal opinion he said that his feeling was that it was not going to come out of his legal account....

Mr. Gouveia: We will get to that. In my mind I still want to get to what really happened.

Mr. Havican: On the advice of our attorney who was Vinny McManus at that time we appealed the revised regulation because it was worse than the first one.

Mr. Gouveia: I am just going to move to.....I think that ZBA members were cognizant of the fact that they were violating the Charter, I really believe that. I want to approach it as what you suggested before....I wanted to know whether or not the ZBA members callously ignored the Charter. That is what I am going to try to find out. It was also evident from what they stated before that the ZBA was bent on appealing this regulation no matter what. That is the impression that I received. They felt that the State Statute gave them that power I guess from the power of their convictions. First of all they felt that the ZBA regulations violated their statutory rights. P&Z may disagree with that but I really feel that they really felt that that particular regulation would violate their statutory rights. They also felt that if they did not take any action they will be violating their own oath of office. I happen to believe that to be the case. I think that their feelings on the matter were further strengthened by the fact that they did get advice from Atty. Byrne and were encouraged as well by him and by "many other sources". From your testimony I think that your motivations were further strengthened because the Town Attorney vacillated somewhat on your right to appeal. I think originally he said, "no, you have no right to appeal, no board has the right to appeal" but then later on after you presented to him the case of what Atty. Byrne had presented to you and so on and so forth, you thought, maybe you do have the right to appeal.

Atty. Mantzaris: Let me comment on that and by the way I read the transcript of the first meeting and I know that Ray and Gail think that I only had one meeting with them. I wrote a letter about a month later and my very distinct recollection is that I had two meetings. I thought about this and it was 1½ years ago and I know I met with them Thursday night, and by the way those meetings were not confrontational meetings, I was the Attorney for the Town talking to a board that I represented. I listened to their arguments and I gave them my positions. It was a discussion in much the tone of voice that I am talking in right now. When they raised a question with me I accepted their observation and I said that I considered it...I mean that it was not an arguing type of situation, I was talking to them as an attorney to a client and as people who knew each other. That was Thursday night and it was a lengthy meeting and there was no question in my mind and I don't think in their minds

either that I did not approve of the ZBA taking an appeal of the P&Z regulation. My thought at that time, and still is, that I did not think that the ZBA had the power to appeal a zoning regulation. Gail had some questions for me to review. They never indicated that they were determined to take an appeal of the regulation at that first meeting. I thought about this often as I read the minutes of your meeting two weeks ago and I knew the appeal period was running the following Tuesday and my clear recollection is that Ray called me sometime Monday, I met with him Monday night, I don't think that Gail was there, I think I called her late in the evening, that is my recollection. I wrote that in the letter in November that I had two meetings with them. Tuesday morning someone called me, I am not sure who, telling me that they were going to file an appeal or had filed an appeal. I called Ray up right away, I was livid actually because I thought that I had their agreement to proceed according to my suggestion that I would look into the regulation and if I thought that their arguments had merit that I would attempt to get the P&Z Commission to amend their regulation or to throw it out if that were necessary. So I was really angry with Ray at that time and I called him and told him something about he was going to pay for this out of his own pocket or something like that. I called Atty. McManus I believe the same morning when I learned that it was he that took the appeal with the same type of statement. I don't recall at all giving Ray and/or Gail any impression that I would consider that they might have a right to appeal. My clear conviction was that they had no right to appeal and most of our discussions were aimed at finding ways...talking about how we would proceed to try to answer their concerns. As far as I am concerned there was no vacillation about their not having a right to appeal.

Mr. Gouveia: Once they made their presentation to you of their findings after their conversations with Atty. Byrne didn't you say to them that you were going to contact him and that you were going to look at the State Statute....

Atty. Mantzaris: I did and I called Atty. Byrne and Professor _____ and both of them had the same view that the regulation went too far. I didn't change my mind about ZBA's right to.....

Mr. Gouveia: Originally you said no....

Atty. Mantzaris: Yes Peter, but that was in connection with my proposal which I thought had been agreed to to investigate the merits of their complaints about the regulation with Professor _____ and Tom Byrne, with review of case law if there was any, there was only one other case around, and then attempt, if I thought that they were correct, attempt to get the P&Z Commission to either amend or change their regulation in some way to meet the satisfaction of ZBA's concerns and if I thought that Tom Byrne's and Professor _____'s concerns. Not with respect to, yes, I think that you should appeal this.

Mr. Gouveia: This was on that Thursday correct?

Atty. Mantzaris: That is what I recall distinctly anyway, the Thursday meeting.

Mr. Gouveia: And before they left your office they told you that they needed an answer by Monday, am I correct?

Atty. Mantzaris: I don't remember that they said anything like that to me. I knew that the appeal was going to run on Tuesday and we had decided, I think, that I would get back to them on Monday and my recollection is that I did get back to them on Monday, at least Ray Havican.

February 7, 1991

Mr. Gouveia: Again, I am just trying to establish whether or not their feelings on the situation were strengthened by the fact that they had legal opinion, whether it was solicited or not, and encouragement to go ahead and do it and the way that it was presented also, from the point that you first told them "no appeal, no one is allowed to appeal" but then you said, "maybe you do have a right to appeal, let me talk to them first, let me check the State Statutes, and then I will get back to you", it seems to me that this may have created in their own minds some sort of.....I don't know I am just wondering.

Mr. Piscitelli: Did Adam actually in part the fact that "let me think about whether you have the right to appeal", I don't think so, I don't think that was brought up.

Mr. Havican: You were not at the meeting.

Mr. Piscitelli: What Adam has spoken just a few minutes ago, his decision was, "don't take an appeal".

Mr. Gouveia: My understanding was that his original opinion was an emphatic, "NO". Then ZBA presented their case and said, "look, we have people that supposedly know these regulations very well, they are telling us the exact opposite", and I'm sure that it was not that particular sentence, there was a lot more conversation than that. And then after a while they were left with the impression because Adam stated to them, and you can correct me if I am wrong, "all right, let me call, let me talk to them, let me consult the State Statutes, let me talk to other personnel and I will get back to you". Now to me, in my mind, it seems like at the very least it could have created an impression that maybe there is a dim hope.

Mr. Piscitelli: That is not the impression that I received nor anyone on the P&Z Commission.

Mr. Killen: For the sake of argument, assuming that they did have in their mind the right to appeal, what gave them the right to go out and hire an attorney of their own choice?

Mr. Gouveia: Well maybe I will get to that.

Mr. Killen: We are going far a field on this.

Mr. Gouveia: I don't think so, I think that all these things are very important to really know why they did what they did.

Mr. Killen: No one here is trying to say that they should be pilloried for what they did but what we are saying in effect that they went one step beyond the law and, therefore, we shouldn't pay unless you can come up with something along the line that says that there are circumstances that allows them to do it on their own, I don't see where we are going.....

Mr. Gouveia: Let me then limit the rest of my remarks or questions to the time constraint and to the authority to....who gave them the authority to spend the funds o.k.?

Mr. Killen: Fine.

Mr. Gouveia: So the fifteen day.....that was a fifteen day appeal. On the tenth day you met with Adam. You also notified Adam that you needed some sort of an opinion by Monday because Tuesday you ought to appeal. Monday came around and you did not receive any opinion from Adam am I correct?

Mr. Havican: That is correct. I called him late in the day and he had not researched what ever he was going to research and he said that he would call me back Tuesday morning. First thing.

Mr. Gouveia: Did you get a call from Adam on Tuesday morning?

Mr. Havican: No sir.

Mr. Gouveia: Tuesday was "D" day?

Mr. Havican: Yes.

Mr. Gouveia: Ms. Powell mentioned at the last meeting that you talked to the Mayor. Was that also on Tuesday?

Ms. Powell: Tuesday.

Mr. Gouveia: Had you already filed the appeal when you talked to the Mayor?

Mr. Havican: No.

Ms. Powell: The appeal was filed on Tuesday and it came to the attention of the Mayor at the Council meeting that night. I believe that Adam had told him that the appeal had been filed that day and Bill left the Council meeting to call me and that is what I stated at that time.

Mr. Gouveia: You did not make an attempt to call the Mayor prior to filing the appeal?

Ms. Powell: I did not, no.

Mr. Gouveia: By then it was too late because it had been filed already.

Ms. Powell: Right. At that particular time, as I stated to the board, we were still waiting for Adam's replies to our questions and because the clock was ticking the appeal was filed, that was the only way that we could keep that option open. If opinions came back favorable that we had the right to file an appeal and so on...and even with the appeal filed there was always that possibility that Adam researching with Tondo and Byrne and other case issues, as he stated in his letter and as he stated to this board, there would always have been the option either for the regulation to have been withdrawn or amended acceptably. But without filing the appeal that door was closed.

Mr. Gouveia: In your conversation with the Mayor were you told that you had no authority to do that and that there were no funds there to pay for the appeal?

Ms. Powell: He advised me at that point in time that we had no money in our budget for legal fees.

Mr. Gouveia: Could you have stopped that appeal the following day on Wednesday morning?

Ms. Powell: I believe that once an appeal is filed at least the cursory expenses i.e., filing, sheriff's fees and the nominal fees that go with an appeal are up front fees. That probably would have cost somewhere between, that is a guesstimate, \$200 - \$300. Those expenses would have been incurred at that point anyway. It was not until you start filing briefs and start spending hours researching the issues that you would incur the extraordinary expenses.

February 7, 1991

Mr. Gouveia: Lastly, I just want to talk about that Thursday meeting. Adam, you stated that you were not going to authorize payment from your office? Could maybe by stating that, now if you have the authority to say no, I guess you also have the authority to say yes. Now by saying that you did not have the authority, I'm sorry, by saying that you will not authorize funds to hire a lawyer, could you have somehow given them the impression that if they were successful in convincing you or if they were successful, or if Atty. Byrne was successful in convincing you that you, indeed, could have funded it? Could you have given them that impression?

Atty. Mantzaris: I don't think that that came up until after Peter.

Mr. Gouveia: The statement was made on Thursday afternoon, that you were not going to authorize the funds from your office to hire a lawyer for their appeal. My concern is....

Atty. Mantzaris: If they had convinced me that they were correct, that they had a right to appeal and it was a proper appeal, could I have authorized the cost? I suppose I could have.

Mr. Gouveia: That is the thing....if you have the power to say yes or no, I guess that you have the power to say yes. If this was Thursday, the tenth day and you have until the fifteen day to make...to come up with your findings, a legal opinion, it could very well....since you stated that you did have a budget, you could have very well have come up with the funds for that appeal. I think that could have caused them to believe that that could have been a possibility. Is that what you wanted to say before Ray?

Mr. Havican: Yes sir.

Mr. Gouveia: I have no problem at all voting no payment and in stating that I feel that provisions of the Charter were violated but my concern is that, if indeed, they felt that, and they were in contact with Adam at least from the tenth to the fourteenth day they were in contact with Adam, my concern was that all along in those four days if they were led to believe that Adam was searching for a solution and looking to come up with an opinion from not only the State Statutes but also from other personnel, and that indeed he had a budget and if he led these people to believe that if he was convinced by the State Statutes and this other attorney that they should go ahead with this appeal that he would have the funds to provide them then I could see why they would not bother coming before the Council for the funds. I would expect Adam to come before the Council for the funds because it would be in excess of \$2,000.

Mr. Killen felt that there was too much assumption in Peter's point. The facts are they did not get clearance from the Town Attorney's Office to do so, felt strongly enough about it to go out and do something on their own, they did not feel strongly enough to come before the Council.

Mayor Dickinson: I think that the intent of the parties is critical. I don't feel that there was an intent to violate the Charter. There certainly was an intent to protect the territory, the statutory rights of a commission. Perhaps there is an error in judgement, however, I think that we can debate this a long time and really get nowhere. The issue that no faces us is, should the bill be paid or should it not. The reasons for payment in view are, even though proper procedures were not followed, the intent of the party was to protect the interest of the commission. An appeal was approved because of the significant legal interests of the Town of Wallingford in pursuing that appeal beyond the level of the trial court which, in a sense, ratifies the work at the trial level. Those two factors are significant enough to pay the bill and use this with a resolution as an illustration to every board and commission that should a similar occasion

arise, the language in the Charter must be adhered to and there is repercussion, there are consequences if proper procedures are not followed. But this is a matter of first impression, it has not occurred before in this type of situation and to continue a debate to try to delve into the background and all of the ramifications, I think that we can all agree that all of the commission members on both commissions feel very strongly and it is not strongly about violating the Charter, it is about their own duties. My recommendation is that we do pay it and get on with the business.

Mr. Killen: The only problem with following that logic is that if we say to this board that we do not question your motives therefore we will go on from there and the next group comes along and we have adopted your position that it can't happen in the next instance then we are making the motives of the next group suspect no matter how good those motives might be, and that to me is not fair to them. Their motives may be every bit as great if not greater than this particular board.

Mayor Dickinson: I do not mean in any way to justify this based upon how we find their motives.

Mr. Killen: That is the way that you worded it and that is why I say that it comes across that the next group that does it is not going to be allowed. The first group will be allowed because their motives were pure. Your motives no matter what they are are not going to be considered that way, therefore we cannot do it for you.

Mayor Dickinson: It is not motives alone. There are other factors involved.

Mr. Killen: That was your wording.

Mr. Bradley: With what you just said aside Mayor, I have to ask just where does the Town Charter come into play here? It is very specific as far as expenditures and accounting. These are the rules, these are the guidelines. As far as resolutions, they are fine, but it is right here in black and white. These are the rules and regulations. Adam on your letter, the appeal commenced on October 3, 1989, and I know you had these meetings prior to the November 16, 1989 memo that you sent out. Between October 3rd and this was there anything else that transpired other than those two meetings between you and the ZBA Board? I know that you say one, he says two.

Atty. Mantzaris: No, not that I recall Ed.

Mr. Bradley: Ray, were all the members aware of what was going on as far as the action on the appeal?

Mr. Havican: Yes sir.

Mr. Bradley: And do you agree with what is stated in Adam's letter other than what you state, 1 meeting as far as the different points that he brings up?

Mr. Havican: I would have to look it over again. My letter came after that and it was to point out some ideas on some points that he had mentioned. My letter was dated in January, 1990, my response to Adam.

Mr. Bradley: Your commission was made aware of this letter at your November 20th meeting.

Mr. Havican: The board members were given copies of all correspondence, nothing was held back.

February 7, 1991

Mr. Bradley: They were aware of the appeal prior to this letter?

Mr. Havican: Yes sir.

Mr. Bradley: Did the commission ever take a formal vote on the appeal, not the payment of it but the appeal?

Mr. Havican: Yes sir we had a vote to go ahead and take whatever action was necessary.

Mr. Bradley: Do you recall what meeting that was?

Mr. Havican: No sir I don't.

Ms. Bush: That date was 7 days after the P&Z adopted the amendment. Our amendment was effective on September 11, 1989, that was a Monday they voted to appeal the following Monday because I listened to the tape of their meeting.

Mr. Solinsky; This is the third time that I am hearing this now and I think that we have to be flexible. You mentioned Bert in Item #5 that we had communication in there. The only thing in Item #5 we voted to take the money from them. We did not have any decision as to who was liable, who did the damage or anything.

Mr. Killen: Certainly you did. I did not cut off debate on that issue.

Mr. Solinsky: But it was already, they already awarded a bid, Bert. We did not have a decision to make.

Mr. Gouveia: It would come from their budget.

Mr. Killen: You have to remember that the Board of Education awarded the bid and we told the other group to pay the bill, so

Mr. Solinsky: What if the Council decided that the contractor was liable? It was too late they already awarded the bid.

Mr. Killen: Regardless of the fact that they awarded the bid this Council has a lot more leeway than a lot of other groups and if this Council wanted to take it a step further, they could have taken it a step further. It was on the table for discussion this evening.

Mr. Solinsky: It was another one of those items that comes before us "take it or leave it" the way it is presented to us, we had no choice.

Mr. Killen: Nothing is ever presented to us in a "take it or leave it" way otherwise we would be out of here at 7:05 P.M. No one is being told that you must do this or you must do that.

Mr. Solinsky: They already awarded the bid and if the Council should decide that the contractor should have been pursued the Town Attorney made a decision, they made a decision and it was all done. The only decision that the Council made was where is the money coming from? There are some similarities.

Mr. Killen: The fact that they awarded the bid has nothing to do with

whether or not you could say that you wanted to take the contractor to court.

Mr. Solinsky: Now you are talking in the "what ifs" that you told Peter not to talk about.

Mr. Killen: The awarding of a contract does not preclude us from taking any action against the contractor. Where did you get that idea?

Mr. Solinsky: The way it was presented to us was "Discussion and Possible Action.." they awarded the bid....some work was already completed.

Mr. Killen: If you felt aggrieved by it, that was the time to raise the question at that point.

Mr. Solinsky: I agree, and we have the power to pay this bill and I don't see why you are saying that we are totally against the Charter by paying this bill.

Mr. Killen: Where do you get the power to pay this bill?

Mr. Solinsky: The Council has the power to pay this bill by an affirmative vote won't it?

Mr. Killen: Not that I know of.

Mr. Solinsky: It won't?

Mr. Killen: No.

Mr. Solinsky: I would think that it would.

Mr. Killen: If you can show me in the Charter where it says that regardless of what they do the Council can override them, fine, I will have no problem. I am asking you where it says that this Council has the power to pay no matter what the Charter says because the Charter happens to be the will of the people of Wallingford. They adopted that and it says how the expenditures and the accounting will be done.

Mr. Solinsky: That would be the same as waiving the bid.

Mr. Killen: We have the authority to do that because it is allowed under our ordinance. Our Charter says that we can adopt an ordinance fleshing out the section having to do with purchasing so we can waive a bid. That is also allowed in the Charter itself, the waiving of a bid.

Atty. Janis Small: On the point of having the authority to approve the bill, if this board has the authority to hire an attorney you can authorize payment of this bill legally under the Charter. If you have the original power to pay it you can ratify and pay that bill at this point in time, you do have the legal authority to do so. Our position is that they did not have the power which is why it has been brought to you. If you did not have the power to pay this bill it would not even be here. The Town Council does have the power to pay this bill....

Mr. Killen: Based on what? If I were to write you a question asking you for your legal opinion you would have to state in quote chapter and verse now I am asking you.....

Atty. Small: I can give you a legal opinion on that.

February 7, 1991

Mr. Killen: You cannot say off the top of your head that you can do that.

Atty. Small: I did look it up. I don't have the cases here but the board that has the authority to do something can ratify something that has been done by someone that did not have the authority.

Mr. Killen: You are talking about case law?

Atty. Small: Yes.

Mr. Killen: But you are not talking about a particular Town Charter which specifies

Atty. Small: The Charter does not prohibit you from doing that. You can correct an error and do it.

Mr. Killen: That was the very argument used on recall. Look it up.

Atty. Small: We would not put it before the Council if we didn't think that you had the authority to do it.

Mr. Killen: That could very well be. But the fact that you put it before us again you can't quote to me where we have the authority to do so. I am not fighting this simply to knock these people down. I would love to have it paid.

Atty. Small: Our position is that you have the authority to do so. I will put that in writing for you, it is my job.

Mr. Joe Ferrara: First I don't believe you have the authority as the Chairman to tell the rest of the Town Council that they can't vote yes or no on the bill. I think that it is up to the majority of them to decide whether it is proper to have a legal opinion on it and not just the board Chairperson.

Mr. Killen: I don't believe that I have instructed them that they can't vote any way that they want.

Mr. Ferrara: Just a point of reference. Second, I would like to know the Mayor has stated how this case could go forward and you should pay this bill and worry about it the next time around. I would like to know what is the difference between them violating the Charter and I hate to open up old wounds. but the Board of Education has had a black cloud over it for over a year and one half due to the fact that people said that we violated the Town Charter. I don't see any commission being formed here to investigate the ZBA and why they violated the Town Charter. Why is it different for them vs. the Bd. of Education. Why did people's careers get ruined, people get convicted of felony charges when it could have been wiped away the same way that this is being wiped away? I resent the fact that you are allowing the ZBA, the idea that their even being here asking for the approval to pay this bill, this should not be allowed. They violated the Town Charter. What was right for the Board of Education should be right for them.

Mr. Killen: Off the top of my head, Joe, the only difference is that if we agree or disagree the ZBA has been straight forward in their answers in what they have done, we were getting lies from the Board of Education which calls for an investigation. It is that simple. It is very different when you get the truth to the best of the parties' recollection.

Mr. Parisi: That bill was paid also. After 14 months.

Mr. Killen: Again we are getting far a field here.

Atty. Small: I want to make one correction, in my original letter to you requesting payment, the total bill was \$18,534.10. In my letter I believe that I put \$14,200.00. The number that I had agreed to with Atty. McManus subject to your approval was an even \$15,000 and that was my error and I apologize.

Mrs. Duryea: I have been hearing maybe Adam said this and maybe Adam said that and maybe he led this one to believe, etc., but I am looking at the letter and I would like to ask one question and get one answer. This is the letter from Adam Mantzaris on November 16, 1989 to Chairman Ray Havican, "in response to the reported vote of your board to appeal the action of the Planning & Zoning Commission to court, my advice was in the negative", is this true? You said no.

Atty. Mantzaris: That is true, yes.

Mrs. Duryea: Thank you.

Ms. Papale: I think this is the third time that we have discussed this, I will very quickly say that it has been a very, very difficult case for me to decide on but if I understand correctly our Town Attorney told the ZBA that they had no right to appeal. They did what they did but it did not come from an o.k. from your office, am I correct? And you did not authorize funds from your office?

Atty. Mantzaris: Yes, that is correct.

Ms. Papale: I understand how the ZBA felt at the time, they were concerned that time was running short and we have a letter in front of us tonight from Mr. Havican about your not responding to them the next day and then finally you called to apologize then the next day you were supposed to call them Tuesday in the morning and you didn't call them back either, is that exactly what happened, is this what led to ZBA to get so frustrated that they just hired Atty. McManus because they couldn't get in touch with you a second time?

Atty. Mantzaris: I recall that I talked to them a second time. I got that letter from Ray in January. I know what he said, I read it again last week, this week, what was in their minds I can't speak to that but my recollection is that I had a second discussion with him before the time expired for the appeal.

Ms. Papale: And at the time the commission still was told that there would not be funds authorized from your office. I think that is the bottom line to me.

Atty. Mantzaris: I don't exactly remember the conversation Thursday night, it was a 2+ hour meeting. If I said that in the letter,

I wrote that in November. I said it that night then. I don't now have a present recollection of what I said exactly that Thursday meeting. I answered Susan's question, I remember that positively. Whether I said I would not authorize funds, if I said that in the letter, then I said that Thursday night. I can't sitting here right now say I remember saying that to Ray and Gail.

Ms. Papale: I don't relish coming home and having to return 5 calls on my answering machine because it happens so often that I do not expect everyone to call me for everything that goes on and I don't feel that the Council has to feel powerful than the other commissions that are here in front of us today, but I mentioned this last time and I have to mention it one more time, I still don't understand. There was a problem with reaching anyone, not one person that I know of was called on this Council. We are here not just to sit up here as judges in a courtroom, I really feel as a Councilperson that I would like to try and help where I can. Sometimes being a Councilperson we can get our foot in the door and give a little push now and then. That is really very disappointing to me also that we as Councilpeople were not even aware of what was happening. I rest my case and I hope this will be it.

Gail Powell: I am sure that Adam realizes that if he read the letter that what he said when he arrived at the office was that he did not believe we had the right to appeal and so forth and so on, but we would not have left the office asking the question, "will you get back to us and advise us, #1 do we have the right to appeal, if we don't what is our legal opinion, if we don't so on and so forth" we would not have been waiting for these answers if all three of us were of an agreed upon solution at the time that we left the office. There were still unanswered questions. The only way that an option could be left open was by the filing of the appeal. I never said that Adam wanted us to file an appeal. I said two weeks ago that Adam encouraged us not to file an appeal but as the ZBA had voted the Monday night we met after the regulation had been adopted about whether or not we needed to take action on that, we agreed in a consensus as a body that we did. We sought, the first step was to go to the Town Attorney. We left his office after a 2 1/2 - 3 hour meeting with the feeling that he was going to get back to us and we waited. We filed the appeal to keep that option open. Adam kept investigating obviously he must have been trying to do something if he spent 45 minutes with the P&Z trying to explain to them that their regulation needed some kind of work which they did not go along with. I don't believe that he ever stopped working on the issues that he set forth in his letter in November that he would do. I concur with your frustration in that we probably should have sought higher authority sooner than we did but we felt then that we were working with the Town Attorney, that would suffice. All I can say is, sometimes Susan there are no simple yeses and nos just as sometimes everything isn't always black and white.

Mrs. Duryea: I sympathize with you also and it is very hard for us

up here to make a decision this evening. I have friends on both boards and it is very difficult. It would be nice to have a maybe vote but you don't have one and sometimes you have to take a tough stand and just listening to two weeks ago when we discussed this and looking at what is before us and even the Mayor saying that there is no money in the budget for this, it can go on and on.

Ms. Powell: I think that the Mayor is on the right track, we do have a Town Charter and it would be very nice if every person, lay person as well as Dept. Head within the Town...there is one advantage to working within the Town Hall and that is that you move with these things every day. Lay members who do their duties outside the Town Hall don't always have that option. It would be nice to have the resolution not just as a punitive measure but as a directive so that along with being told in plain language what the avenues are, what emergency precautions are there. What are the steps to initiating a purchase order, who to go to for this, etc. There are a lot of things that boards and commissions operating outside the genre of the everyday activity between 9:00 A.M. and 5:00 P.M. here at the Town Hall don't have. So I can understand some of that frustration and I think that the Mayor is on the right track but I would like to see a resolution as well as spelling out the punitive, be somewhat directive in its nature and be issued on an annual basis to not only chairmen and officers of boards and commissions but to the members of the commissions as well.

Mr. Parisi: It has all been said. I don't believe that Atty. McManus, the good sole that he is, will donate \$15,000 in services to the Town or the ZBA so I am sure that there is going to be a procedure that he will follow if we don't approve this bill. It started already, o.k. We will have to fight that position now I imagine. Are we going to expend funds not to pay Mr. McManus?

Atty. Mantzaris: ZBA has already sued the Town for his fee.

Mr. Parisi: I am going to guess that we are probably going to end up paying the fee. That is my own personal opinion. There will be a cost involved won't there?

Atty. Mantzaris: In defense to that lawsuit we will have to go to outside counsel.

Mr. Parisi: Is there any estimate as to what that might cost?

Atty. Mantzaris: It is a collection case, \$2,500 - \$3,000. I am sorry, Janis points out that there are substantial legal arguments connected with that lawsuit, indemnification of public officials so it would be \$5,000 - \$10,000.

Mr. Parisi: My point is that I believe the bill should be paid, a strong letter go out from the Mayor and the Council Chairman to

all the boards and commissions, departments, what have you. I also think that the Town Attorney's Office at the start of every term or year should, maybe every two years with the election, conduct a class on the Town Charter, perhaps the Purchasing Ordinance too and anything that might be pertinent to boards and commissions so that it might at least be an introduction to some of the areas that could, in fact, lead these boards and commissions into problem areas. I suggested this 10 years ago and no one ever tried. Maybe it is time again to give it another shot. I wish you would seriously consider it because it might be very helpful to people who are put into this position. I am sure that no one did anything to hurt anyone or act wrongly, I am sure that everyone believed that they were doing the right thing. But as it washes out, it was not the right thing. We have to solve the problem. The problem perhaps could be solved through the Town Attorney's Office.

Atty. Vincent McManus stated that three trial courts had made the decision unanimously that the ZBA had the duty, the right and the obligation to challenge the adoption of that P&Z Commission regulation and that regulation was illegally adopted. In the two cases recorded in the State of Connecticut where the ZBA ran into the same problem and the Town refused to pay the legal expenses, in both cases, the court that looked at that said that the Town had to pay the legal expenses. In both cases, the ZBA was entitled to indemnification under State law. He went on to say that this will not be a collection suit but an indemnification lawsuit. The problem with this type of lawsuit is that under the indemnification statute if ZBA is right on the first case and they are right on the indemnification, not only do you end up paying the defense attorney but Atty. McManus also for bringing the indemnification lawsuit. He stated that the Town either pays once or five times. He felt that the ZBA had the statutory right to do what they did otherwise they would not have won the case. Because the right and the duty arises out of State Statute it supersedes what the Council thinks applies as far as the Town Charter is concerned. The courts have universally held that State Statute supersedes Town Charter. He suggested that this issue be put to bed now for the good of the Town and for the good of everyone involved.

Mr. Bradley: Adam, did you say that the ZBA filed a lawsuit for payment?

Atty. Mantzaris: Yes.

Mr. Bradley: Is this a new lawsuit?

Atty. Mantzaris: New lawsuit.

Mr. Bradley: Who's authorization?

Atty. Mantzaris: I think that it is alleged that the ZBA authorized the lawsuit and the lawsuit is alleged.

Mr. Bradley: Who is the attorney?

Atty. Mantzaris: Mr. McManus.

Mr. Bradley: How much have we expended so far?

Atty. McManus: Just in case you misunderstood my comments. In the two cases that have looked at this issue before, the ZBA went out on a limb that this ZBA did. The trial courts that looked at that case and in both cases it has held that the Town had an obligation in law to indemnify them. By indemnify them I mean pay their expenses.

Mr. Bradley: But again, that is a separate lawsuit, above and beyond what we are talking about this evening?

Atty. McManus: That is correct.

Ms. Bush: Adam and I argued in executive session at length about an issue that would have resolved the lawsuit I thought. About writing a letter to the ZBA, a very public letter, stating, "ZBA you should not grant use variances" authored by Adam. The P&Z Commission did not want to amend the regulations, they did not want to take the power away from ZBA, if you read the minutes from both Public Hearings I stated that I thought it was unfortunate that was the result. My office and the P&Z Commission felt that the ZBA was out of control. We could have resolved the entire issue by just having the ZBA stop granting use variances. Variances should be granted if there is a hardship in the land, period. That is what the law says and we are arguing laws here. Atty. McManus feels the law says that he should be paid. I do not know anything about claims but I do know land use. The law says when variances should be granted and not granted. We don't like to keep suing and having the Town pay the bills but the issue is the law, fairness to the residents that they are all treated alike. That was why the amendment was adopted, P&Z felt that that was not happening.

Mr. Killen: I am not a lawyer Vinny, but you used the word "duties" two or three times and I looked through the two cases that we have here and nowhere did I find in the decision that they have a duty to take that case to court. They are aggrieved parties and they sustain their right as aggrieved parties and as individuals and as members of the ZBA to take it they have standing. But nowhere does it say that they have a duty and an obligation.

Atty. McManus: All three cases talk about a duty to protect those regulations and a duty to protect the rights....you have to remember, if this regulation was adopted a right that the citizens of 169 other cities and towns within the state have would have disappeared for the property owners of the Town of Wallingford, illegally. The court held, illegally, and the two other courts that looked at this regulation before held illegally. So what was protected was not something that lined the nest of the ZBA but what was protected was the property rights for the citizens of this Town. I think that they should be commended because what they did was prevent an illegal act. I think to punish this board for what they did, quite frankly, is the wrong signal to send.

February 7, 1991

Mr. Killen: In a rush to judgement they trampled over our Charter and there was no necessity for that rush to judgement because there is nothing shown here that anyone was going to be injured by waiting a little while. To do what the Charter says very plainly, when any board/commission has a question, they write the Town Attorney for a legal opinion and when they have that legal opinion to guide them they are home free. Any court would uphold that kind of argument.

Mr. Gouveia: I tried to give the members of the ZBA the benefit of the doubt and perhaps I stretched my logic a bit in doing so but again, I here people saying that the bill should be paid because the job was done. I do not agree with that at all. I have also heard people say that the bill should be paid because if we go to court we will lose. I could buy that. But I just have one more question of Adam. Did you emphatically tell them at a meeting or over the phone or what have you on Monday, October 2nd that they did not have the right to appeal and therefore you would not fund that appeal?

Atty. Mantzaris: On Monday, October 2nd? I don't have any recollection tonight of what I said on Monday, the 2nd.

Mr. Gouveia: In your letter of November 16th you said "as I informed you by telephone on the day that the appeal was commenced" that was on Tuesday, correct?

Atty. Mantzaris: That was on Tuesday morning.

Mr. Gouveia: That was before the appeal?

Atty. Mantzaris: I don't know when during the day the appeal was filed. I know I called Ray in the morning on Tuesday the 3rd.

Ray Havican: I did not hear from Adam, I tried to reach him at the office, he was not there, in talking to Vinny he had to get the papers in by noon. We had to make a move and it was already 9:30 a.m., something like that, and following up with our discussions with the board we then went with Vinny as our attorney. We did not hear anything from Adam. Then I called him, I guess it was 20 minutes after I had done that and I said, "we did not hear from you, we made a decision because....."

Mr. Gouveia: You could have filed the appeal up until 3:00 p.m. couldn't you?

Ray Havican: Not as far as I know. He had to move on it to get all the papers put together.

Mr. Gouveia: I beg for your indulgence but I have to recap this. It is extremely important to me. On Thursday after you tried to convince Adam that there were reasons that you became aware through this Attorney Byrne that perhaps you had a case. Adam said that he would look into it, that he would look at the statutes, he would

contact Atty. Byrne and then he would get back to you.

Mr. Havican: And he would also contact P&Z.

Mr. Gouveia: Is that a yes?

Mr. Havican: That is a yes.

Mr. Gouveia: Adam, is that a yes?

Atty. Mantzaris: Yes, I said that I would look into talking with Byrne and Professor Tondroll and I would look at the cases, I don't recall that I said that I would talk to P&Z but that first part I recall.

Mr. Gouveia: Did you ever mention to them that they should come before the Council because you did not have funds in your budget to fund it?

Atty. Mantzaris: No.

Mr. Gouveia: And then on Tuesday, you never got back to them until they called you on Tuesday?

Atty. Mantzaris: I say that I got back to Ray on Monday, he says no, Gail says no also, I don't have tonight any recollection of my talking to either one of them on Monday. I can recall presently tonight that I talked to them on that Thursday and on Tuesday. My recollection is I talked to them a second time but I can't now tonight recall having had that conversation.

Mr. Gouveia: This may seem trivial, but to me it is not trivial at all. This is the bone of contention here. If they were led to believe that perhaps you would support their appeal and indeed you had a budget that you could fund their appeal and they waited for you to call them until Monday. In fact, they didn't get a call and they really tried to call you, I think it is very important. You are not sure if you called them or they called you.

Atty. Mantzaris: On Monday I am not sure, on Tuesday I am sure. I can't recall tonight. My recollection is that I met with Ray on Monday evening in my office and I called Gail at home. I can't remember what I said.

Mr. Gouveia: What is your advice to the Council on this bill?

Atty. Mantzaris: I think that I want to go back to something that the Mayor said earlier. It happens to me a lot of times as an attorney. This is the first time that something has happened that I can recall in the 16+ years that I have been in the office. Frequently in law business the first time I come across a particular issue, it gets fumbled. The next time it doesn't happen. I learn a lot from the first time I tackle an issue until the second time. I don't think this will ever happen again. I think

that the Mayor's recommendation is well taken, Janis has been able to compromise with Mr. McManus, I don't think it will represent a condemnation of what has happened, our agreement that the ZBA had the right to do what it did, it did not, but it may be time to put an end to this issue and go forward from here. I agree with the Mayor.

Mr. Gouveia: When you file an appeal, where is it filed?

Atty. Mantzaris: The October appeal was filed with the Superior Court in New Haven.

Mr. Gouveia: Does this come to the Town Clerk's Office at all?

Atty. Mantzaris: It is served on the Town Clerk on the Town.

Mr. Gouveia: I have a copy of what was served to Kate Wall on October 3, 1989 at 2:30 P.M. That does not mean that it was filed at 2:30 P.M. on October 3rd does it, in court?

Atty. Mantzaris: No, it could have been recorded in court after October 3rd, I am not positive, it could not be filed before it.

Mr. Gouveia: So the conversation that Ray was talking about was before 2:00 P.M. and this was not filed until 2:00 P.M. You know that you called Adam on Tuesday the 3rd, Ray?

Mr. Havican: I called him late Monday to get an answer and he said that he had been in court and had not had time to review it but he would call me first thing Tuesday morning. If I remember correctly I called his office at 8:30 A.M. Tuesday morning and he was not there. I then made a decision, we polled the group and made a decision to go with Vinny because he had to get the paperwork in. After we did that I told Adam because we had not heard from him and we had to make a move and this is what we did.

Mr. Gouveia: What time did you talk to Adam on Tuesday?

Mr. Havican: 10:00 A.M., vaguely, I am not sure.

Mr. Gouveia: At that time you still had not filed the appeal?

Mr. Havican: We told Vinny to go ahead.

Mr. Gouveia: But he still had not filed the appeal. He does not live in.....thank you Mr. Chairman.

Mr. Killen: If you people had voted in advance of Tuesday morning, what is the difference if Adam got a hold of you, you had already voted to take that action.

Mr. Havican: We were waiting for Adam to come back with some sort of an answer.

Mr. Killen: Had you voted on it already or do you call a special meeting after talking with Adam?

Mr. Havican: We had an unanimous agreement of our board to pursue the appeal. This was at our meeting....

Mr. Killen: You took the action before talking with Adam. You made everything sound like you were waiting to hear from Adam but in reality you had already voted to take your action. What was your motion when you voted to take your appeal?

Mr. Havican: I am not sure but it was the first meeting that we had after it was published in the paper and we voted then to appeal the decision, we were not going to let it ride and be cast in concrete.

Ms. Powell: The first time we ever heard that we did not have the right to appeal was when we went to Adam to ask him to move forward for an appeal for us. We went to Adam and asked for the meeting because we, as a body, had voted to take the appeal. On Thursday evening we met with Adam for the purpose of requesting him to appeal the regulation enacted by P&Z because we felt that it violated a State Statute on two counts. We met with him for quite a long time discussing that. It was when he said we don't have the right to appeal initially, that was the first time we heard we didn't have that right. That is why we asked him, do we have the right to appeal?

Mr. Killen: You persisted and went forward after Adam told you you did not have the right to appeal. Where did you get the impression that you had the right to appeal when Adam said no?

Ms. Powell: At the end of the meeting after we had explained to him that Atty. Byrne and others had said to us that we did have the right to appeal.....

Mr. Killen: The difference being that Atty. Byrne and the other attorney could not tell you that you could use Town funds. They can only give you an opinion.

Ms. Powell: The primary question that needed to be answered was, did we have the right to appeal or not? That was an unanswered question when we left the office that night. We did not know at that point. We had been advised by experts in the field that we did. Adam said that he would consult with those experts and get back to us.

Mr. Killen: I have gone and read the sections on this, I am aware that if there is a P&Z then there must be a ZBA. Any board such as yourself only has to go through the Charter to find that any board or commission may ask the Town Attorney for a legal opinion and he must submit it to them in writing. Then you would have known whether or not you had the power. With that answer from him you would have had nothing more to worry about. You had the Mayor or the Town Council after that point.

Ms. Powell: On the fifteenth day we did not have a definitive answer. We filed the appeal and we were still waiting on Adam. I told the Mayor that when we spoke that Tuesday night. Two options still remained open, there was still room for dialogue at that point.

Mr. Killen: You are stating a generality of that law which could have been struck down at any time within 15 days.

Ms. Powell: I did not want a test case to occur to make the appeal. Then you have a resident in the middle of the whole thing and the first question asked when it comes to court is, "well you didn't argue the regulation when it was enacted so why are you here now?". My point was to argue the question and try to settle it up front rather than get behind the elephants when the parade has gone through town, I'm sorry.

Mr. Killen: Your understanding of the law leaves a lot to be desired.

Mr. Holmes: I would like to call the question.

Ms. Wall: When the payment for \$14,210.00 came in front of the Council on January 8, 1991 it was attached to other figures. The entire transfer was for \$55,000.00. \$14,210.00 was taken off of that figure and that transfer was then processed. I signed it and the comptroller initialed it saying that it was a new figure. The \$14,210.00 did not go through.

Mr. Killen: I don't want this Council to go forward without a transfer. We will need the comptroller's o.k. and the need to know where the funds will come from. Janis, should we go forward with this this evening contingent upon the money being available and the comptroller signing off on it or should we put this on strictly for another meeting dealing with the transfer?

Atty. Small: I think you can vote it contingent upon the comptroller certifying that there are funds to pay it.

Mr. Zandri: That was my suggestion.

Mr. Bradley amended the motion to Consider and Approve a Transfer of Funds in the amount of \$15,000 to pay Atty. McManus's bill in the lawsuit of ZBA vs. P&Z contingent upon the comptroller signing off on the funds, seconded by Mr. Holmes.

Mr. Phil Wright of 160 Cedar Street stated that if the Council is going to be swayed because of what Atty. McManus said, then he thought the Council ought to get a legal opinion from the Town Attorney and the Corporate Counselor that are being paid to give the Town legal opinions. This has gone too far. P&Z gave the Council nothing but facts, the rest of the information has been nothing but innuendoes and confusions.

VOTE: Holmes, Parisi & Solinsky, yes; all others, no; motion failed.

The Chair declared a 10 minute recess.

ITEM #4 Discussion Regarding the Arbitrator's Agreement Concerning the New Yalesville Firehouse

Motion was made by Mr. Bradley, seconded by Ms. Papale

Mr. Bradley had asked the Town Council Secretary to research the formation of the Building Committee for this project. No record could be found as to the formal appointment. She did find a letter dated June 3, 1986 from the Chief of the Yalesville Fire Department to then Chief McElfish. He asked the Mayor to shed some light on the situation. Was it the Fire Department that arbitrarily established the committee?

Mayor Dickinson stated that he thought it was a general understanding that the volunteers who would be using the building would have an on-going roll in what was done and when it would be done. The significant amount of the work was accomplished by them. They performed all of the landscaping.

Mr. Bradley: There was an understanding between the Town Council at that time and.....

Mayor Dickinson: I believe so. On the prior moves for Cook Hill North Farms and East Wallingford it a similar situation where the volunteers were very directly involved in the process of construction of a new facility.

Mr. Bradley: The point I am trying to make here, and maybe the secretary can correct me if I am wrong is that we did research minutes and could find no Town Council approval of a committee other than this letter from the Fire Department.

Mayor Dickinson reiterated that it was the volunteers who came in and requested funding and a new facility. Approval was granted upon their request in order for a new company station to be built. They were requesting the Town finance a new station and he was not sure under those circumstances that it is necessary to establish a formal building committee.

Mr. Bradley asked if building committees normally receive formal approval from the Town Council?

Mr. Killen felt that since they would have to get funding he assumed they would have to get approval from the Council.

Mr. Holmes: We usually select them.

Mr. Bradley: The minutes of the Town Council Meetings don't show any of this transpiring.

Mr. Gouveia: I vaguely remember them before the Council proposing to form their own committee made up of the firemen from that particular building. There was no Council approval or formal committee formed. This was back in 1986 or 1987.

Mr. Zandri: The volunteers are the group looking for the funding, the assumption is that they came before the Council and received funding therefore, they were to go ahead with the construction. If the dollars were authorized then you don't need any other authorization than that.

Mr. Gouveia: The Town formed a building committee for the Police Department. The firemen proposed that they would form their own committee and the Council did not object to it.

Mr. Bradley referred to pages 4 & 5 of the arbitrator's report where it states that the Town Deputy Engineer is relaying to the Town Attorney a package of documents for review and possible termination of the contract. He asked the Mayor what was transpiring and if he had knowledge of what was going on at that time.

John Costello, Town Engineer made a statement that he felt may answer some of Mr. Bradley's questions. He stated, "In view of the derogatory statements made by Mr. Bradley about me I would like this opportunity to tell my side of the story".

When the Fire Department requested that the Engineering Department prepare the plans and specifications for a new fire station for Yalesville just as the Engineering Department had done for the Cook Hill and East Wallingford Volunteer Fire Stations, and also for the expansion of the North Farms Fire Station, I had to make a decision. Since those buildings apparently came out O.K. and since the two individuals primarily responsible for the preparation of the plans and specifications were still employed in the Engineering Department, I agreed to let those individuals work on this project.

I personally have no experience with building designs, which are normally done by architects. Actually, there is very little civil engineering design in a one story building this size. The only civil engineering design work in this building was the design of the wooden roof trusses, which for this project was done by a professional engineer working for the roof truss manufacturer. Outside expertise was obtained by the Engineering Dept. for matters relating to the mechanical, electrical, heating and air conditioning aspects of this project.

If the plans and specifications were prepared by the same individuals and the work was inspected by the same individuals, why did this project turn out so differently than the other fire stations. The difference has to lie with the contractor. The Cook Hill and East Side Volunteer Fire Stations were both constructed by the C.F. Wooding Co., a local contractor with an excellent reputation for quality workmanship. Unfortunately, due to the current recession, the Wooding Co. is no longer in business. With the benefit of hindsight, it is obvious that the low bid process in this case did not result in the best job for the town. It would have been in the town's best interest to negotiate with the C.F. Wooding Co., particularly in view of their performance on two other fire stations, rather than solicit an unknown low bidder.

While a confrontational attitude may have developed between the contractor and the town's Project Engineer, I personally found the contractor's "like it or lump it" attitude intolerable. By the end of September 1988, we had reached an impasse with the Contractor, the town would not pay him anymore money until he completed the project and he would not return to the site until he received payment for the work done. When it became obvious that his attitude would not change and that he would not complete the job to the town's satisfaction, I recommended that we terminate his contract and submit all outstanding or unsettled issues to arbitration, as provided for in the contract. To complete the job, identify unsatisfactory work, and document the town's position in upcoming arbitration, I also recommended that we hire an experienced construction manager. My recommendation to hire a construction manager was not accepted and the arbitrators noted that in their decision.

February 7, 1991

The difficulty of working with this contractor was recognized very early in the contract by the town's Project Engineer. He notified the Town Attorney accordingly and informed him that it might be necessary to terminate the contract. The Project Engineer also notified the contractor early in the contract of his contractual responsibility to properly supervise his subcontractors. Poor workmanship by the subcontractors on this project is responsible for the major problems we have with the building today.

The bids for this project were opened on September 10, 1987; however, since no funds were appropriated at that time, the contract was not signed until December 15, 1987. At least two months of good construction weather were lost because the funds were not appropriated prior to receiving bids. Instead of starting work in late September when the leaves are starting to turn and weather conditions are ideal, the contractor was not able to start work until late December when weather conditions are at their worst. I am convinced that bids received have no bearing on the amount of funds appropriated for a project. If the bids received are close to the appropriation, then the estimate upon which the appropriation was based was a good estimate. As a result of current economic conditions, the bids we are receiving are considerably below the appropriation.

The arbitrators found fault with my request that the volunteer firemen prepare a list of incomplete or unsatisfactory items. Since the Engineering Department was acting as the agent for the Fire Department and since the volunteers were the ultimate occupants of this building, it seemed reasonable to me to ask them to prepare such a list. The volunteers consider the fire station to be their second home and, as a result, may have been a little overzealous in listing such minor items as scratches, dents and mismatched wall paints; however, we had contracted for a brand new building and not one slightly used or abused. By the same token, if the majority of the items were of minor nature, why didn't the contractor correct or complete all of them or the items that would have been required.

Furthermore, the contract required the contractor to notify the Owner when the building was ready for a final inspection and prepare a punch list of incomplete items as a result of that inspection. At the arbitration hearings, the Contractor admitted he had not read that part of the contract.

The arbitrators noted that at one point in time, despite the fact that the building was 97% complete, as of August 31, 1988, which the arbitrators considered to be substantial completion, the town was withholding \$142,000., or more than 25% of the contract price. They considered this to be confiscatory and punitive. We received payment requisition #7 in mid September, 1988 and the Project Engineer left shortly thereafter for employment elsewhere. After reviewing the project files and becoming familiar with the status of the project, I recommended payment of requisition #7 in October, 1988; however, the funds for this project were not in an Engineering Department account and payment was not made until December, 1988. The Fire Chief was reluctant to authorize payment because of the complaints he was getting from the Yalesville Volunteers. The mayor was reluctant to authorize payment because he wanted to be sure that enough funds were retained to complete the work or correct any deficient work. All logical reasons from the town's point of view but not from an arbitrator's.

In February 1989, we received a letter from the contractor's attorney with 24 change orders totaling almost \$40,000. in extra charges and \$3,000. in credits. Since I was unable to get a consensus from the three (3) individuals most knowledgeable about the project, I refused to authorize payment for any change orders. We eventually settled for \$15,600. in change orders during arbitration. Under the circumstances, I would do the same thing again although the arbitrators questioned my actions.

The arbitrators concluded that the town's failure to hire an experienced construction manager to bring the project to an orderly conclusion combined with the delays in payment to the contractor to be a breach of contract and an exhibition of bad faith. As previously mentioned, my recommendation to

February 7, 1991

hire an experienced construction manager was not accepted and I recommended payment of requisition #7 two months prior to the actual payment.

Prior to entering into arbitration, we attempted to resolve this matter through mediation with a retired Superior Court Judge. At that mediation session both sides verbally settled on a payment of \$60,000. to the contractor as a reasonable settlement for all outstanding claims. However, we did not believe the mediator had given due consideration to our claims for incomplete or unsatisfactory work and we did not believe the Town Council would agree to a \$60,000. settlement in view of the complaints, being received from the Yalesville volunteers.

After twelve (12) days of arbitration, the arbitrators awarded the contractor a total of \$93,438. which consisted of \$42,850. for the contract balance plus change orders; \$1,828. for interest on late payments; \$13,760. for extended office overhead; and \$35,000. for attorney fees. The \$93,438. was about one-half of the contractor's ultimate claim for compensation. The arbitrators offset this award by \$14,150. as compensation to the town for the remedial work required at the fire station. The net award to the contractor was \$79,288. Because the arbitrators believed the town breached the contract, they assigned all the arbitration costs, \$28,255., to the town. The total cost to the town as a result of this arbitration process is therefore \$107,543. Of that total, 73% or \$78,843., can directly be attributed to what the arbitrators consider to be the town's breach of contract.

Although I believe we received a very fair hearing from the arbitrators assigned to this matter, I have come to the conclusion that the arbitration process is tilted in favor of the contractor. When you read the arbitrator's report, you get the distinct impression that the Town of Wallingford was totally and solely responsible for the problems encountered on this project. The arbitrator's report goes into considerable detail about what the town did or did not do or should have done; however, little mention is made of the fact that the roof

trusses were installed without proper bracing (which has since been corrected), or that the roof and south wall leak, or that the air conditioning and heating units do not work or were improperly installed, or that ground faults were not installed in the electrical system as required by the building code, or that the building joints were not properly sealed, or that the aluminum siding was not properly installed. To me these are serious deficiencies in the contractor's performance. In such a situation, what other option does the owner have except to withhold payments due the contractor.

During the course of the arbitration, the Town Attorney submitted three (3) legal memoranda. The first one dealt with the contractor's claim for Attorney's fees and reminded the arbitrator's that a claim for attorney's fees, according to Connecticut law, may only be based upon a statute providing for recovery of such attorney's fees or based upon a contractual provision providing for liability for such attorney's fees. The contractor's claim for arbitration did not allege a contractual right nor specify any statute entitling him to claim such attorney's fees. The arbitrators awarded the contractor \$35,000. in attorney fees.

The second legal memorandum requested that the arbitrators deny the contractor's claim for delay or extended home office overhead damages because the construction contract between the parties specifically and clearly protects the town from any such claim by the contractor. The memorandum noted that, according to Connecticut Law, where the language of a contract is clear and unambiguous, it should govern and that it was not within the arbitrator's power to make a new and different agreement. The arbitrators awarded the contractor \$13,760. for extended office overhead.

February 7, 1991

The third legal memorandum requested that the arbitrator's deny the contractor's claim for interest on money retained by the town. Section 11 (I) of the General Conditions states "The Contractor agrees that no interest shall be due and payable from the Owner on any percentages retained or on any other sums deducted and withheld from the partial payments or the final payment as provided in the Contract." The arbitrator's awarded the contractor \$1,828. in interest on withheld payments.

For legal reasons which Adam can better explain, we were unable to submit in evidence a letter from the roofing manufacturer stating that the roof was not properly installed and was therefore not covered by the manufacturer's guarantee. A subsequent letter stated that corrective work had been done and the roof was now covered by the manufacturer's guarantee against defects in manufacture. No one working for the Town of Wallingford witnessed any corrective work and the fact that roof shingles are still blowing off the roof raises serious questions about the second letter and the corrective work referred to therein.

I have been the Town Engineer in Wallingford for 9½ years now. During that time, the Engineering Department has prepared plans and/or specifications for over 60 separate construction projects, some large and some small. We have worked with 30 different contractors on these projects. All of these projects were completed to the town's satisfaction, all payments were made on time, and no contract was breached or had to go to arbitration, except for the Yalesville Volunteer Fire Station. In the 36 years that I have been working as a Civil Engineer, this was my first experience with arbitration.

What are the lessons to be learned from this experience. First and foremost, in my opinion, is the fact that the Town Engineering Department, despite requests to do so, should not undertake architectural projects nor should they undertake mechanical, electrical, or air conditioning projects. Secondly, in projects of this nature, more consideration should be given to negotiating a contract price with qualified local contractors rather than

soliciting a low bid from an unknown contractor. Thirdly, on projects of this size, i.e. over \$500,000., a full time inspector should be assigned to the project rather than assign inspection to a town employee as a collateral duty. Fourth, in view of the importance attached by the arbitrators to prompt payments to the contractor, payments should not be processed or approved by a committee. I am sure the former Town Attorney, now Corporation Counsel, could add a lessor or two to this list. This concludes my statement but I would like to complement Adam for his dogged determination in pursuing this matter throughout the arbitration process.

Bradley did not have a problem with what transpired from the lawsuits but with the settlement that the Town had to make. His comments concern Town procedure. The problem he did have, since John is a Dept. Head and since Mr. O'Connell did work for John and John knew he was on that project acting as contract manager and knowing that his department did not have that expertise, why did John allow it to happen?

Mr. Costello replied because of the track record with the previous 2 fire stations. The project engineer did the same job on the other two fire stations and they turned out fine.

Mr. Bradley then asked what type of reporting was Mr. Costello receiving from Mr. O'Connell as the project proceeded?

Mr. Costello: I would ask how things were going, he would answer, fine. I was aware there were problems in the beginning and I thought they were all straightened out. We didn't fully comprehend all the problems until after we terminated the contractors contract and had someone else come in and inspect the building.

Mr. Bradley: You did not have any concerns with Mr. O'Connell being on this project? Did you raise any concerns with anyone in administration?

Mr. Costello: I had no concerns with Mr. O'Connell being on this job.

Mr. Bradley: Were there any outstanding problems while the bills were being paid out over your signature?

Mr. Costello: No.

Mr. Bradley: Nowhere along the whole process?

Mr. Costello: There were problems with working with this contractor and his attitude.

Mr. Bradley: Did you bring this to anyone's attention?

February 7, 1991

Mr. Costello: No.

Mr. Bradley: Was there any reason why?

Mr. Costello: Who's decision is it to have the Engineering Dept. get involved in this project?

Mr. Costello: We were requested to assist the fire department in preparing the plans and specifications by the Chief, I believe.

Mr. Bradley: On page 8 it mentions several exhibits, #41 & 43 to be exact, were the result of a walk through of the project by a knowledgeable construction representative of the Town. Was the Building Department brought in through the walk-through?

Mr. Costello: They were after September of 1988. In October, 1988 the Building Department made an inspection for a Certificate of Occupancy.

Carmen Spiteri, Building Inspector: We went when we were called for inspections. I don't recollect walking through with the volunteers or the contractor.

Mr. Bradley: On page 8 it states that Chief Mik acknowledged that he was lacking in construction expertise yet he and his committee were allowed to create and dictate exhibits 41 & 43 and have the Town officials and Engineering Department adopt these creations as a valid close-out punch list.

Mr. Costello: That is the arbitrator's interpretation of the evidence presented to them. I am denying that that was considered to be a punch list. It was a list of incomplete or unsatisfactory items. Many were very minor in nature. A punch list, I guess, overlooks the minor stuff and concentrates on major items.

Mayor Dickinson: The arbitrators were looking for substantial, more substantive matters than paint chipping. The key facts that I felt were completely discounted in the arbitrator's report was the Certificate of Occupancy. They dismissed that as the Town didn't need it at any specific date, they could move in at any specific time and yet in September and October of 1988 we did not have a Certificate of Occupancy. The contractor took off. Occupancy, he was under contract to supply the building with one. He never obtained it yet the arbitrators completely dismissed that as, "oh, well, the Town did not have a specific date they had to go into the building, that is no big problem". To me, that is a major factor. When this problem came to me in the fall when the Town Attorney got involved, the issue was, what are we going to do for the winter, the heating system was not operating. If we can't get the contractor back, that building could suffer damage during the winter and then we will be liable because we didn't mitigate the damages. We hired someone to go in and start the heat. The

contractor did not come back. A return to work was negotiated by the Town Attorney but the contractor still never came back. These factors have to be kept in mind when reviewing this matter.

Mr. Bradley: On page 10 it states that the building exceeds 5,000 sq. ft. but yet the plans were not stamped by an architect or engineer as required by Ct. State Statute.

Mr. Costello: That is correct.

Mr. Bradley: Why?

Costello: Why what?

Mr. Bradley: Why weren't they stamped?

Mr. Costello: They were not prepared by a registered architect.

Mr. Bradley: But that violates Ct. State Statute. Were you aware of the State Statutes? Who's responsibility was it to see that it was stamped?

Mr. Spiteri: I was aware of it and when Mr. O'Connell came in for the Building Permit application, I told him he would need stamped plans due to the 5,000 sq. ft. overage. He made the change in length to the building.

Mr. Bradley: Where does the arbitrator draw his conclusion on the 5,000 sq. ft.?

Mr. Costello: On the evidence submitted.

Mr. Spiteri: I have never seen this arbitrator nor heard from him or this Town Council on this fire station.

Bradley: In looking at the bonding appropriation, on one side we have a building that is bonded based on the measurement of 5,000 sq. ft. and now you are saying that the prints show that the building is under 5,000 sq. ft. Did anyone measure the building?

Mr. Spiteri: I did.

Mr. Gouveia: Why does the arbitrator state that the building exceeded 5,000 sq. ft.?

Mr. Costello: It is his conclusion based on the facts that the contractor presented. Don't take the report as gospel.

Mr. Gouveia: Whoever presented the Town's evidence did not do a very good job.

Mr. Killen: We approved an ordinance with the understanding that it was going to be a 5,000 sq. ft. building, you are now telling us for the first time that it was less than 5,000 sq. ft.

Mr. Bradley: On page 10 it notes that, "it is also noteworthy that in the course of construction inspections none of the Town's building inspection personnel noted or made comment on the code and safety violations which were later the subject of various memorandums promulgated by the Town's expert witness Stuart Purvis".

Mr. Costello: The Town's building inspection personnel didn't testify at all in the arbitration, how did he make that statement?

Mr. Bradley: Adam, did you defend this?

Atty. Mantzaris: Yes.

Mr. Bradley: Do you recall what that statement was based on?

Mr. Gouveia: Go back to page 8 and it may tell you something. Again, if exhibit 41 & 43 were the punchlists, if you read down below it says, "it is noteworthy that a review of exhibit 41 & 43 disclose that they are totally lacking in addressing the electrical items which were reviewed in an inspection October 31st. Nor does exhibit 41 & 43 address the Certificate of Occupancy". It seems that if there were a problem with any of those items it should have been written in that so-called "punch list" that you don't call a punch list.

Mr. Spiteri: Those electrical items were G.F.I.s (ground fault interrupters) that were not installed by the original electrical contractor. During our last inspection that was on my list of items that needed to be rectified. Whoever did the work needed to come in and get an electrical permit because they cannot work on another contractor's electrical permit. No one ever came in. The next thing I knew, the fire department moved in to my surprise. The building was 90% complete. My electrical inspector could not sign off on the Certificate of Occupancy until the permit was taken. Months went by and I got a hold of Clark again to remind him that someone had better get in there. It got to the point where I had threatened to close them down. Then someone came in for the electrical permit.

Mayor Dickinson: For the arbitrator to say that the Building Dept. didn't come out and point out these deficiencies, that is not the function of the Building Dept. They issue the Certificate of Occupancy. In fact, they didn't issue one because the contractor did not provide a building that deserved one.

Mr. Bradley: You mean to tell me that you wait for the walls to be closed up before you do an electrical inspection?

Mayor Dickinson: No. I believe that Carmen was talking about work that was performed by the volunteers or contractor pursuant to their request because the original contractor never did the work.

Mr. Costello stated that it is the responsibility of the contractor

to see to it that his electrical contractor did the work properly, not the Engineering Department and not the Building Department. He did not supervise the sub-contractors.

Mr. Spiteri: My inspectors saw the work and could not o.k. it until the permit was taken.

Mr. Bradley: The arbitrator also makes reference that a verbal "o.k." was given for a Certificate of Occupancy. Adam, can you address this, who gave the verbal o.k. for the C.O.?

ty. Mantzaris: I don't know who testified regarding that.

Mr. Costello: I believe that it was former Chief Mik.

Mr. Gouveia: That is a direct quote. He got it from somebody.

Mr. Spiteri: No one asked me about any of this. I don't know anything about all these stories I am hearing.

Mr. Gouveia: It is all in the arbitrator's report, didn't you read it?

Mr. Spiteri: Just this evening.

Mr. Gouveia: Its all here in the report. According to the arbitrator there were never any documentation to the violations.

Mr. Costello: That is not true. There was a memo sent to the contractor's attorney listing the items necessary for a C.O.

Mr. Gouveia: There were not listed on the punch list?

Mr. Costello: No, the contractor was responsible for carrying one. He never did.

ty. Mantzaris: Stuart Purvis testified specifically that the heaters in the apparatus bay room did not have dampers. He considered dampers, draft regulators and there were other parts of those units not installed according to the manufacturer's specifications. Purvis considered that to be a safety violation. As he did the following: a missing brace in the ceiling trusses, the chimneys were not of the manufacturer's recommended height, the furnace in the utility room was lacking an access door to see if it had a damper door, the chimney in the utility room, you couldn't see if it was installed correctly because the connection was above the sheetrock. Purvis considered all of the above to be a safety violation. At the end of the hearing the arbitrator said to me, it was not on the record and in so many words, "if the Town's expert is saying that all these things are wrong, how the hell did your inspectors pass this building?". When I came back from the hearing I had a meeting with Carmen and the electrical inspector and the other inspectors and I presented the same issues to Carmen and Carmen

answered, and I thought correctly, and I gave these answers to at the next session, that when he inspected he did not climb up into the attic section to see if the trusses were installed properly. He felt that was the responsibility of the person who was overlooking the construction.

Mr. Spiteri: I did not say that Adam.

Atty. Mantzaris: Maybe I said it.

Mr. Spiteri: A lot of those items Mr. Purvis was wrong on. I told him that and I told you that. He was not legitimate.

Mr. Gouveia: That came through in the report. He was over reaching.

Mr. Bradley: Was the C.O. issued in December of 1989?

Mr. Spiteri: Yes. Don't quote me on the date.

Mr. Bradley: Were all the violations corrected prior to the C.O. being given?

Mr. Costello: Everything that was on the list as a result of their inspection was taken care of. What Stuart found was in addition to what was found on the list.

Mr. Bradley: A C.O. was issued despite that?

Mr. Spiteri: Stuart Purvis considered them safety violations, I didn't and my men didn't.

Mr. Bradley: Did they inspect these items?

Mr. Spiteri: Yes and they did not consider them violations, all it was talk.

Mr. Costello: Except for the lateral bracing of the roof trusses they are still out there today. The violations are just that in the opinion of the Town's expert witness.

Mr. Gouveia: Not in Carmen's opinion?

Mr. Spiteri: No.

Mr. Gouveia: Do you maintain that when you issued your C.O. there were no violations of any kind, fire, safety?

Mr. Spiteri: None that I was aware of.

Mr. Holmes felt that the arbitrators panel decided this case more on the issue of personalities rather than testimony given. He didn't think that Mr. Purvis' acting abilities are germane to the arguments. He wanted the Town Attorney's opinion on the awarding of the legal fees and office overhead. He was not familiar with office overhead being awarded.

Atty. Mantzaris explained that there is a provision in the specification of attorney's fees in the section dealing with arbitration that the prevailing party, at the discretion of the arbitrator may be awarded his expenses. They interpret that to include attorney's fees. He argued that under our law, if you have permission to pay attorney's fees, it has to say attorney's fees, they did not agree with that. On the delayed damages, there is a provision in the contract that prohibited the contractor from claiming overhead damages. Research of that issue however, courts around the country have engrafted a number of exceptions to that provision. The arbitrator found that the Town acted willfully or maliciously toward the contractor in withholding payment for such a long time and withholding payment of the change order and so forth. They found this to be one of the exceptions to awarding delayed damages.

Mr. Holmes: Have we paid this off?

Atty. Mantzaris: Yes.

Mr. Holmes: We may have made some technical errors but I feel more comfortable with the Town withholding money rather than paying the contractor off and then going after hem to collect. As I read this it is nothing more than a condemnation of the personalities involved rather than the facts of the case.

Mr. Zandri: Is there a mechanism in place for removing a contractor like this one from our bidding list?

Mr. Holmes: You can throw out the low bid based on deficiencies of previous work.

Mr. Zandri: The problem is that someone else going out to bid may not be aware of this particular group. Do we have a list of bidders that we have had problems with that can go out to any group or committee that will be going out to bid for a project?

Mr. Killen: I think that the Purchasing Agent is supposed to have such a list.

Mr. Zandri: When we establish a project and go out to bid and have a price for it, who has the authority from that point on to change the project?

Mr. Costello: Contract documents give the authority to the Town Engineer.

Mr. Zandri: Are the change orders due to a problem with the original design or different requests?

Mr. Costello: Additional work over and above the contract.

Mr. Zandri: Give me some examples.

Mr. Costello: An extra catch basin, piping, etc. with road work.

February 7, 1991

Mayor Dickinson: It could be substituting one item for another. It could also cost less.

Mr. Zandri: Wouldn't you "hash" out all the construction details prior to going out to bid? Materials, fabrications, etc. I can appreciate change orders on a \$15 million project. I don't see building a fire house being all that complicated.

Mr. Costello: The change orders were only 3% of the original price that was not a big change. He requested \$40,000.00 worth of changes of which we settled on \$13,000.00.

Mr. Spiteri: It is almost impossible to put a price on a building.

Mr. Killen: These people have it within their purview to ignore CT. law, we can't go a step further than that?

Atty. Mantzaris: Their interpretation was not against CT. law. In arbitration we are stuck with what they (courts) find. I thought our side was more persuasive, but they didn't.

Mr. Killen: It was not bad faith if the building was not completed.

Mr. Gouveia: On what basis did we first go to mediation and then arbitration?

Atty. Mantzaris: Mediation was suggested by the American Arbitrators Association we were on our way to arbitration already in April of 1989. We went to mediation in December 1989. Arbitration hearings started in April of 1990. Mediation seemed a way to solve the issue without a full trial but it didn't happen.

Mr. Gouveia: What were the reasons we went to arbitration?

Mr. Costello: The contract provides arbitration to settle dispute. We withheld payment. The incomplete and deficient work, at that time, did not effect the C.O.

Mayor Dickinson: The C.O. was issued after work was performed by contractors hired by the Town, people who did work for the Town other than the contractor in question. All of the work that enabled the volunteers to move in in April was not done by the contractor. He didn't come back. As of February 5th I have an inspection report signed by Mike Lamy and he states, "occupancy appears to be in compliance at the time of inspection, 148 Hope Hill Road, Yalesville Fire Department".

Mr. Gouveia: Is it customary to withhold 30% of the payment if the job is 97% complete?

Mr. Costello: No. That was why the contractor was "squawking".

Mr. Gouveia: Could we had avoided this if we withheld enough to cover the....

Mr. Costello: Yes, that is what you should do.

Mr. Gouveia: Why wasn't that done?

Mr. Costello: Because the Fire Chief did not process the payment requisition despite the fact I recommended payment because of the complaints he was receiving from the volunteers. The Mayor suggested that we not pay him and hold back enough funds until he finished or corrected the deficient work.

Mr. Solinsky felt that the Town had been taken and that there was more fiction in this story than the arbitrator realizes.

Mr. Zandri: Will future contracts be void of the clause that states if there are any disputes it will be handled through arbitration?

Mr. Costello: It was for a while but we put it back in.

Mr. Zandri: Take it out.

Mr. Costello: I think it is set up by contractors to benefit them and get them money.

Atty. Mantzaris: We are not doing it anymore in large construction projects.

Mr. Bradley asked who hired Mr. Purvis and why was he brought in?

Atty. Mantzaris replied that he hired Mr. Purvis for purposes of the trial. He first called Justin Williams to represent the Town but he refused and suggest Stuart Purvis who had been the project manager on the central fire station. He had 45 years in the building business. He inspected the building many times.

Mr. Bradley: And the Town went in with this list of violations hoping they would win it?

Atty. Mantzaris: Exactly.

Mr. Bradley: Then why was the C.O. issued?

Mr. Costello: The C.O. was issued first then we went into arbitration and hired Stuart Purvis.

Mr. Bradley: Either way there were violations there. With 45 years experience he must have some credibility yet the C.O. was issued. What kind of exposure do we have now if the roof comes down and kills someone?

Mr. Spiteri: Mr. Purvis has 40 years experience, my department has over 150 years of expertise. I know what the story is. I would like to go up there with Mr. Purvis and have him point out these violations that are so dangerous.

Mr. Bradley: I think for the protection of the Town it should be done if they so exist.

Mr. Spiteri: I will get someone from the State Building Department to come with me so we will have someone impartial.

Mr. Bradley: That is a good idea.

Mr. Killen: If we are so fragmented here, I can imagine what we sounded like to the arbitrators. There was no denial of the facts that were put before them.

Mr. Spiteri: I agree with you there.

Mr. Mark O'Connell, 281 Ward Street: I have a couple of statements and then a prepared statement. First of all I am proud of the stature that I have gained by becoming the Public Works Director for the Town of Portland and I have a couple of people to thank for that. One is the former Town Engineer, Gerald Dabs for whom I worked for for a considerable length of time and another person is John Costello who is before you tonight. It bothers me to watch John be subjected to what he is being subjected to when he, in fact, gave me the responsibility of the project which I assumed and he allowed me to assume that and I think that it has enhanced my career tremendously. Secondly, a lot has been said in the arbitrators report regarding a confrontational attitude between the project engineer and the contractor on the contract. The Town of Wallingford gave me some \$600,000.00 to build a fire station. I developed specifications for that fire station very similar to the plans and specifications developed for the Cook Hill and East Wallingford fire stations. In this particular instance we had a building committee. We did not have one for the other two. The confrontational attitude described in that particular report is no more of a confrontational attitude than I witnessed here tonight in the previous meeting and it was to ensure the Town of Wallingford got their \$600,000.00 worth of construction which I was opposed to on a daily basis. The report also indicates that a contractor performed very little of the work on his own and sub-contracted a majority of it. Those sub-contractors went unsupervised and attempts to get the contractor out to the job were fruitless to the point where near the termination of the job after I left he never showed up at all. That explains the attitude. I was trying to protect the Town of Wallingford to ensure that they got what we planned and specified. The third statement I have is a prepared statement and it says, "I commend the Government of Israel for their forbearance and extreme patience in restraint in the Persian Gulf conflict. Unfortunately, in the Yalesville Fire Station Conflict when a missile is fired at me such as the one that Mayor Dickinson fired when he admitted on January 24, 1991 in the Record Journal that the Project Manager, Mark O'Connell did not keep good records, my pride of accomplishment and dedicated service to the Town of Wallingford will not allow anything but retaliation. As I read the biased press articles I notices another case of typical Wallingford politicians pointing fingers at each other criticizing

those that worked hard to bring a project to conclusion on time and in accordance with the plans and specifications which were developed instead of directing their efforts at the real problem. Instead of commending those individuals whose efforts were to ensure that the building was constructed with the guidelines of their system, or determining what the real problem was that existed, Mayor Dickinson and other Wallingford politicians chose to take the easiest solution, blame someone and the Mayor's criticism in this case was directed at someone who is no longer employed by the Town of Wallingford. As long as we are talking about the real problem why don't we address it. The purchasing rules and regulations established by the politicians in the municipality creates situations where contractors must be engaged because they are the lowest qualified bidder. If one politician in Wallingford opened their eyes every time they drove by beautifully constructed projects like the Judd Square Condominium conversion performed by Judd Square Associates or the Parker Place conversion constructed by the Ahern Development Corporation or any one of the many projects in which local contractors have invested millions of dollars back into their community or looking around at their own Town Hall conversion to see how an old, dilapidated school building was converted into a functional, municipal building, they might realize that the Town of Wallingford is blessed with an abundance of talented contractors capable of constructing projects like the Yalesville Volunteer Fire Station with their eyes closed. Yet, a review of the bid list for Yalesville Volunteer Fire Station and many other project bid lists will determine that not one of the bidders is from the Town of Wallingford. This is the same Town Council that lays blame and points fingers at innocent, hard working employees of the Town of Wallingford yet rejects a plea from a department head to award a road construction project to a local road contractor known by everyone to be one of those whose workmanship is first class or better, for all the difference in bidding of a little over \$200.00. The local contractor employees local help, pays local taxes and purchases materials locally and the Town would have gotten their difference back ten fold. Concerning Mayor Dickinson's comment regarding the fact that "Mark Connell did not keep very good records", he may have simply forgotten that in his busy schedule that in 1985 he presented me with the Fire Department's Outstanding Citizen Award for all my efforts in the construction of the East Wallingford Volunteer, Cook Hill Volunteer and North Farms Volunteer Fire Stations and many other projects I have assisted the Fire Department with that I am very proud of. Two of those projects were very successful because they were constructed by the C.F. Wooding Company of Wallingford, one of the finest and most cooperative contractors that I have worked with. I would hope that an in-depth look at the arbitration decision by Mayor Dickinson, Wallingford's politicians and the Record Journal would enable them to retract the misfired missiles and aim them at the real target, the system itself, rather than publishing a totally biased, derogatory article in an attempt to discredit those who work so hard to comply with, thank you.

Mr. Gouveia: After talking here today and after reading the arbitrator's decision, I am not really surprised at all that the

arbitrators arrived at the decision that they have arrived at. The Building Inspector has stated that when he issued the C.O. there were no violations. It seems to me that Wallingford did not have a case and we hire an expert witness to make a case for Wallingford and it backfired. I only say that because most claims made by the the Town expert witness were either did not exist or if they did, most of them were resolved in the course of the contract, case in point the roof. I am not surprised at all that the arbitrators arrived at this decision.

Mr. Costello: There is some truth to what you say, there is just one correction. The roof problem was not corrected until after arbitration was over and the Town hired another contractor to go up and install the roof braces.

Mr. Zandri: How far along was the job before it was determined that there was going to be a major problem with the contractor?

Mr. Costello: I think that Mark first notified the Town Attorney in March of 1988 after the contractor had started in January of 1988.

Mr. Zandri: What percentage of the job was completed at that time?

Mr. Costello: I will guess and say 10%.

Mr. Zandri: Was there any thought of stopping the job at that point because of the confrontation you were having with the general contractor?

Mr. Costello: No, we thought we could work everything out.

Mr. Zandri: When you hire a general contractor, and most do hire sub-contractors to work on their buildings but the general contractor is usually on that site almost every day that project is going on.

Mr. Costello: The contract specifications require him to have a superintendent there when the sub-contractors were working.

Mr. Zandri: My point being, that if he wasn't obviously on site by the things that were said here tonight, that would be justification alone, in my eyes, to stop that project. That is my observation.

Mr. Gouveia: I regret that the two of you view this effort as a confrontational one.

Mr. Costello: I don't see how we could view it any other way Mr. Gouveia.

Mr. Gouveia: You have to understand that we have a report by the arbitrator which, if you read it as an average citizen, you would be shocked.

Mr. Costello: I said that in my statement. You would think that the Town of Wallingford is totally and solely responsible for the problems on this project upon reading that report.

Mr. Gouveia: I am appalled that we received this report back on January 4, 1991, that is when the arbitrator's rendered their decision, and I am appalled that since.....the Town Engineer is mentioned here, the Building Department is mentioned here and I am surprised that neither of you were called to the Mayor's Office or to the Town Attorney's Office and explained some of this. I am sure that they would be interested in knowing if, in fact, these things re true.

Mr. Costello: The Town Attorney certainly was well aware. You needed more than a report.

Mr. Gouveia: That is what this is here tonight. I feel that you should have been given an opportunity to present your case.

Mr. Spiteri: That is exactly how I feel. The arbitrator never talked to us.

Mr. Gouveia: We needed to get some answers and this is the process. I regret that both of you view this just as a confrontational type of thing when, in fact, what we wanted to know an answer from you...

Mr. Costello: How could we look at it any other way when Councilman Bradley said that the "Town Engineer and the Building Department in his esteemed opinion were not qualified to build or design an outhouse"?

Mr. Gouveia: If these allegations were true.....

Mr. Costello: He didn't have the whole story, he had half the story.

Mr. Killen: John, are you?

Mr. Costello: No, I am not.

Mr. Killen: O.K., that is all that counts. Take it easy, take it slow.

Mr. Parisi: It sounds like tonight that this is the first time that we heard there was a problem at the Yalesville Fire House, we have had several meetings in the past two years that discussed problems down there. This is not the first time and we all didn't get this report, Mr. Gouveia. Some of us had to ask for it.

Mr. Gouveia: Why didn't you get this report?

Mr. Parisi: I don't know, I had to ask for it. I would like to ask you why I didn't get it.

Mr. Parisi: Mr. Chairman, I had to ask for my copy.

February 7, 1991

Mr. Killen: Maybe everyone had to ask for their copy, I don't know how anyone got theirs.

Mr. Gouveia: I got it from the Town Attorney's Office.

Mr. Parisi: My point is that there have been many, many Council meetings whereby we discussed the problems at the fire house. It is not that it just came up during this arbitration.

Mr. Killen: Let me point out one thing ladies and gentlemen so that we make sure that the blame goes all the way around, we voted to pay this arbitration award and later on we decided to go into the facts, o.k., so we can blame ourselves by not getting the facts before we do and so...there is enough blame and enough half truths and what have you in the arbitrator's decision and we would have to call them in to get the other side of the coin, we could go on like we did with P&Z and ZBA so unless we are going to resolve something, what do you say we call it quits?

Mr. Gouveia: All along in those meetings I was led to believe that the Town was on the right side of the issue here. I felt all along that we were going to win this case, I really did.

Mr. Parisi: We were told tonight that, in fact, there are certain cases like this that don't win. Adam, you said that you learned something on this too, didn't you? We made another decision tonight that we may win or lose on, it will probably go on forever unfortunately.

Mr. Gouveia: Again, I regret that this couldn't be viewed as anything other than confrontational.

Mr. Costello: In light of Mr. Bradley's comments, it couldn't be viewed any other way.

Mr. Gouveia: If these were in deed true facts we would have a big problem.

Mr. Parisi: I am not saying there was anything wrong with calling these gentlemen here tonight. I am saying that it sounded like tonight was the first time that we talked about it.

Mr. O'Connell: The Hartford Courant this morning carried an article that indicated something with regard to a town that I am very familiar with now and last night during a meeting about this time our Finance Director was applauded by both sides of the teacher's arbitration case for presenting one of the finest presentations that either side had ever seen on behalf of the Town of Portland to try to ward off a 9 1/2% increase by the teachers in arbitration. If you read the Hartford Courant the teachers got 8%, so that sums up what arbitration is all about.

February 7, 1991

Mr. Bill Miller of Cromwell: I used to work for the Town of Wallingford and I know John Costello personally and I know Carmen personally. I think that Mr. Bradley owes both of them an apology for the comments he made. I think it should be forthcoming.

Mr. Costello: Thank you very much Bill, no apologies necessary just consider the source.

Joel Casista, Cheshire: I work out of the Engineering Department. I have been here for a few years and several years before that with the D.O.T. It is, right now, hard to walk on any job in this Town without being asked if I have built any out houses lately. I don't think I have to tell anyone here that we can joke all night about that but it is embarrassing and it impunes not only myself who does inspect for this Town, but the whole Engineering Dept. and the Building Dept. There are many reasons that that job went sour. Most of them dealing with the contractor. If, in fact, we could learn anything from the problems that arose, it might be to tighten up what we can do as this Town in rejecting, disqualifying and in fact while bids are in progress, ceasing bids for contract work with the ability to have the backing to do it. The Engineering Dept. and the Building Dept. work under undue stress on that job. When we tried to shut the job down, the contractor just took off. When we held payment, which is the only leverage you have, he never came back. We had no way to get this contractor back into town to not only correct what we had found bad during construction, but to go on and complete the project, to make it workable for all of us and you. We must have the backing necessary so when I go out there to shut a contractor down for not doing something according to specifications, I don't have to worry that, well I will have to sit in front of some board and answer and lose. It is tough to have to be out there and to get to a point where you have lost control of a contract and have to shut him down, but it is unforgivable to have gotten to that point and then lost anyway because you were not backed and in this case for many different reasons and the arbitrators themselves who made this thing look like there was no inspection of any kind out there and all we did was drive up and harass this man. I can't believe that anyone on the Council would have believed that that could have happened. So in regard to what you said that you wanted us here to discuss it and find out, that is great. But to allowed those things to be put in the paper the way they were only led us to believe that we were coming here to be blamed for an arbitrator's award. So I say that probably in the future we might have a better rapport and understanding where you might if you are concerned about something, come to a department, ask some questions, but to do it like this and to have those statements read in the paper, there is no other way for any of us to come here and believe that this is just an informational meeting to learn something from this, we have to do a lot of work and this was not the best avenue to do it. Thank you, Mr. Chairman.

Mr. Bradley: The only thing that I have to say is, as a Council-person, I am a part-time person and believe me, I get a lot of

calls on engineering problems, septic tank problems, on building problems and I have seen what goes on. I have been involved in what goes on and I have had it up to here. And they may be the exception but when I see foundations being built under a house that a building permit has been issued and there is a complaint made about sub-standard materials being used, and people have inspected it and o.k.'d it and see what people go through to the Building Department, to the Mayor. When I report flooding, Public Works reacts. They send follow-ups to the Town Engineer. No response.

Mr. Holmes left for work at 11:00 P.M.

Mr. Costello: Can you cite specific examples?

Mr. Bradley: Yes I can.

Mr. Costello: I wish you would.

Mr. Killen: Gentlemen, gentlemen....

Mr. Costello: I have had enough of this windbag...

Mr. Killen: O.K., let's hold it here gentlemen....this is very acrimonious, we are getting absolutely nowhere, we are not going to prove anything, I would entertain a motion to adjourn, please.

Mr. Bradley: So moved.

Mr. Parisi: Second.

VOTE: Holmes was absent, all others, aye; motion duly carried.

There being no further business, the meeting adjourned at 11:30 P.M.

Meeting recorded and transcribed by:

Kathryn F. Milano
Town Council Secretary

Approved by:

Albert E. Killen, Chairman

Date

Kathryn J. Wall, Town Clerk

Date