

TOWN COUNCIL MEETING

JANUARY 8, 1991

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TOWN COUNCIL MEETING

JANUARY 8, 1991

7:00 P.M.

A meeting of the Wallingford Town Council was held on Tuesday, January 8, 1991 at 7:00 P.M. in the Robert Earley Auditorium (Town Council Chambers) of the Wallingford Town Hall and called to Order by Chairman Albert E. Killen at 7:05 P.M. Answering present to the Roll called by Town Clerk Kathryn J. Wall were Council Members Bradley, Duryea, Gouveia, Holmes, Killen, Parisi, Solinsky and Zandri. Councilor Papale arrived at 7:08 P.M. Mayor William W. Dickinson, Jr. arrived at 7:08 P.M. Town Attorney Janis Small and Comptroller Thomas A. Myers were also present.

The Pledge of Allegiance was given to the Flag.

Mr. Bradley moved that the following items be placed on the Consent Agenda; 2a, 2b, 2c, 2f, 5 & 6.

Note for the record that Item #5 should read, "Note for the Record Anniversary Increases (10)".

Mr. Zandri asked that Items #2b & 2c be removed from the Consent Agenda.

Mr. Gouveia asked that Items #6 & 2f be removed also.

Mrs. Duryea had a question with Item #2c and asked that it also be removed from the Consent Agenda.

Mr. Killen requested that Item #2a be removed as well.

ITEM #2a Consider and Approve a Transfer of Funds in the Amount of \$1,945.00 from Parking Lot Improvements Acct. #001-5200-199-9904 to Maintenance of Heating System Acct. #001-5150-500-400 - Public Works Dept.

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

Mr. Gouveia inquired if this was going out to bid?

Mr. Deak responded, no.

Mr. Killen asked if the small balance remaining in the account was being held there for other purposes?

Mr. Deak answered yes for unanticipated expenditures that may arise before the end of the year.

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

ITEM #2b Consider and Approve a Transfer of Funds in the Amount of \$2,000 from Vibratory Plate Compactor Acct. #001-5030-999-9937 to Maintenance of Vehicles - Car Pool Acct. #001-5050-500-5010 - Public Works Dept.

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

Mr. Zandri asked what the total cost of the compactor was?

Mr. Deak responded that it was \$4,900, they already had \$2,100 for a total of \$7,000.

Mr. Zandri: When you estimate the cost for budget purposes on these things, how do you come up with the dollars? Do you solicit prices first?

Mr. Deak: Yes. I received approximately 10 bids and estimate them.

Mr. Zandri: Do you take the low price?

Mr. Deak: I take the middle price.

Mr. Zandri: For a small item it seems like there is a lot of leeway in there.

Mr. Deak: I have four compactors. Back in 1985 I purchased one for \$750.00.

Mr. Zandri: During budget time I will have to try to remember to ask questions on this.

Mr. Killen: Why do we need the money for the car pool account?

Mr. Deak: I have 12 car pool cars. They have \$3,000 allocated for a total of \$250.00 each car. I have one transmission failure which cost almost \$700.00. I can provide a breakdown of all the expenses. These are all old cars with mileage up in the 80 - 90,000 miles range.

Mr. Killen: We may be pouring more money into those cars than may be worth it. I would think twice before putting \$700.00 worth of transmission work into a car.

Mr. Deak: But it is still much cheaper than buying a new car.

Mr. Killen: I would like to know who has the cars and how many people need them constantly. I see people driving our cars that I didn't even know lived in Connecticut, let alone Wallingford.

Mr. Deak: I will provide that information for you.

VOTE: All ayes; motion duly carried.

ITEM #2c Consider and Approve a Transfer of Funds in the Amount of \$9,898.00 to Boom Mower W/Tractor Acct. #001-5030-999-9926 with \$6,248.00 being transferred from Snow Plow Truck Acct. #001-5040-999-9901 and \$3,650.00 from Tractor Rotary Mower Acct. #001-5031-999-9901 - Public Works Dept.

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

Mr. Solinsky asked what type of truck Mr. Deak purchased?

Mr. Deak responded that it was an international.

Mr. Parisi asked if that was due to the low bidder?

Mr. Deak stated that it was the one that met the specifications and that it was put together from components. He got a good engine and transmission.

Mr. Zandri: What was the budgeted amount for the snow plow and the mower?

Mr. Deak: The snow plow truck was budgeted for \$90,000.00 and somehow the price came down. There was a savings for the one truck. The mower was budgeted for \$52,000.00 and came in at \$48,300.00.

Ms. Papale: Did you buy more than 1 truck?

Mr. Deak: We only purchased 1 truck.

Ms. Papale: Have you purchased a boom mower before?

Mr. Deak: This is the first time we are purchasing one that cuts the grass on the side of the road with a boom. I had an idea of the cost but sometimes when you get the bid in you get bum figures from these people.

Mr. Gouveia: Has the equipment been delivered?

Mr. Deak: Not yet.

VOTE: All ayes: motion duly carried.

ITEM #2d Consider and Approve an Appropriation of Funds in the Amount of \$20,000.00 from C.R.R.A. Tipping Fees Account #001-5060-600-6540 to Yalesville School Asbestos Removal Acct. #001-5230-999-9901 - Public Works

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

Mr. Gouveia: I'm confused with this one. Originally it was budgeted for \$460,000.00 and then there was a transfer for \$68,700. Expended to date \$53,098 and encumbered it shows \$320,000.00 and the new purchase order states \$220,000.00.

Mr. Deak: I have more purchase orders than just that one.

Mr. Zandri: Is there an estimate on what you plan to save on tipping fees?

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Mr. Deak: Not yet. I will be able to tell after I have finished with some of my projects within the next 6 months.

Mr. Zandri: How are we being billed by C.R.R.A., monthly?

Mr. Deak: Yes, by weight.

Mr. Zandri: Why are we encumbering it all in the purchase order?

Mr. Myers: The encumbrance should be a representation of the monthly billing times the months of the fiscal year. If the billing were \$10,000/mo. you would encumber \$120,000/yr. It is then adjusted accordingly if the bill is higher or lower.

Mr. Zandri: Is that normal procedure?

Mr. Myers: Yes.

Mr. Zandri: In order to issue the purchase order the money has to be encumbered?

Mr. Myers: Once the purchase order is issued the money would be encumbered because we have a commitment on those funds. We are estimating that we will spend that amount of money.

Mr. Zandri: Doesn't that automatically take place when you have a line item that specifies that particular purpose?

Mr. Myers: The difference is the encumbrance, it shows a commitment to part of the line item.

Mr. Zandri: To me, the line item shows the commitment.

Mr. Myers: No. You can have more than one purchase order on a line item.

Mr. Deak: I have three different vendors for that line item.

Mr. Zandri: This is a guessing game because we are being billed differently each month.

Mr. Myers: It may be true now, but as time wears on it would become much more accurate a reflection.

Mr. Zandri: I think that the encumbrance in this particular account is very confusing only because we are getting variable bills on a monthly basis.

Mr. Deak: Not on the residential disposal. On the Town disposal, yes.

Mr. Killen: I feel that the encumbrance should be an actual purchase order for "X" number of items times a specified amount, but they are not because we are experiencing things being unencumbered. An encumbrance is only a good tool when we have a specific order

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of an item(s) at specific price(s). The only thing that this Council has to work with are the figures in front of us which supposedly reflect how much was put in, how much was transferred, encumbered, and what the balance is. When they don't reflect actually what they say they do, then we are out in left field.

Mr. Myers: Mr. Deak may have a dilemma because it is a relatively new process. The encumbrance should be as factual as the Dept. head knows it to be.

Mr. Gouveia: Is it customary for a 15% contingency for a project of this nature?

Mr. Deak: Yes.

Mr. Gouveia: I am concerned with the statement on the bottom of the bid proposal. I don't know if this was written in after the bids were received or before. It reads "these are just estimates the contractor is responsible for confirming exact amounts". Was this written after the bids were received?

Mr. Bradley: It was after the bid.

Mayor Dickinson: What they have done is provide estimates as to what they think the cost is. If there is a variance from that it has to be adjusted.

Mr. Gouveia: That could change the bottom line.

Mayor Dickinson: Yes.

Mr. Gouveia: I would be interested to know what the other proposals show. This one is just a few dollars less than another proposal.

Mr. Myers: Everyone proposed uniformly on the specifications.

Mr. Gouveia: It seems to me that Mystic Air Quality's letter dated December 4, 1990 states that this will not do all the asbestos removal or containment at the school. It reads "Please note that the removal project was scaled down in size to only asbestos materials that were in advanced deteriorated condition when it was learned that the Ben Haven School may move out next year."

Mayor Dickinson: This conforms, to my knowledge, with the asbestos projects in the other schools where we have not removed all asbestos, only that that was fractured. Otherwise, what was encapsulated was left as long as it was secure.

Mr. Gouveia: I don't want to have the other half of the work done six months down the road.

Mayor Dickinson: Depending what will be done with the building, any construction in there could necessitate much larger asbestos removal project.

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Mr. Solinsky: I thought that I had read that one of the reasons for the change was due to the fact that if we remove the majority of it while the building was unoccupied it would be a lot less costly. That is why we reduced part of the project.

Mr. Killen: It is possible.

Mr. Bradley: Has Ben Haven made a commitment as to whether they will stay or move out?

Mayor Dickinson: They are on a month to month basis at this point. I haven't felt that the Town is in a position to really renew any lengthy lease. What their exact plans are, I really don't know.

Mr. Bradley: That depends upon the feasibility study and the outcome?

Mayor Dickinson: That certainly is a factor, yes.

Mr. Killen: Keep in the back of your minds that, in the final analysis, it will end up back in our court. No matter what it is we will decide whether or not we will want to continue to lease to Ben Haven or give it to the Board of Education.

VOTE: All ayes; motion duly carried.

ITEM #2e Consider and Approve an Appropriation of Funds in the Amount of \$65.00 from Remove Oil Tank Acct. #001-5030-999-9939 to Yalesville School Maintenance of Building Acct. #001-5230-500-5100 - Public Works

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

Mr. Gouveia asked what the term "remove from service" means. He asked if it simply meant shutting it off?

Mr. Deak: Yes, you have to disconnect. It is presently shut off.

Mr. Gouveia: A simple thing like this, going back to July, 1990, the Mayor is writing notes back and forth, I think that the Mayor should be worrying about more pressing problems than a water heater. Six months on this? Not only that but two inspections from the State?

Mr. Killen: I agree. I had the same question. Why didn't we just send someone in with a hacksaw and cut the pipes?

Mr. Gouveia: The person involved with the school states that they have never used it nor had any intention of doing so to begin with.

Mr. Killen: We would have been notified had something gone wrong. We are always liable.

VOTE: All ayes; motion duly carried.

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ITEM #2f Consider and Approve a Transfer of Funds in the Amount of \$1,000 from Parking Lot Improvements Acct. #001-5200-999-9904 to Maintenance of Heating System Acct. #001-5200-500-5400 - Public Works

Motion was made by Mr. Bradley, seconded by Mrs. Duryea.

Mrs. Duryea: Was this the original heating system, were there any improvements to the system when the building was remodeled? There seems to be problems throughout the Town Hall. I have spoken to you about it before. I'm still getting complaints.

Mr. Deak: It is a very complicated system and it is very expensive to maintain the system. This is a new system.

Mrs. Duryea: How do you control the heat so that people are not freezing in one room and too warm in another?

Mr. Deak: Each room has a thermostat controlling the temperature.

Mayor Dickinson: There are 5 furnaces. The difficulty is that the building is large and the northern side is very different from the southern side. The effort was in putting in 5 furnaces was to avoid having one system labor to try to deal with the many differences. It is not an uncomplicated system, some of it is computer controlled. Some people prefer cooler temperatures and others who prefer warmer temperatures. Satisfying everyone in one office can be difficult. There are great differences in outside temperatures from one side of the building to another. That accounts for some problems.

Mr. Deak pointed out for the cost of a service call is \$80.00.

Mr. Gouveia: Was there ever a "punch list" done on this project?

Mr. Solinsky: Yes. At the completion of the project letters were sent to every department head. They were requested to fill out any problem they were experiencing. Those problems were addressed and taken care of.

Mr. Gouveia: The \$8,000.00 that we spent on the air conditioning this year, what was that spent for?

Mr. Deak: Four inspections on the heating system. It is very time consuming to check all the thermostats and systems at \$72/hr.

Mr. Solinsky: The furnaces are four years old and will require some maintenance.

VOTE: All ayes; motion duly carried.



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PUBLIC QUESTION AND ANSWER PERIOD

Mario Tolia, 69 Pond Hill Road stated that he did not wish to cause a problem but there is a piece of property on S. Colony Street that has to be in some sort of a violation. He checked with Planning & Zoning who informed him that it was in the hands of the Town Attorney's Office. He asked the Town Attorney what was being done with the DeMartino property that is beginning to look like a junk yard. It is the old flea market property (formerly Barkers).

Atty. Janis Small: I have not been working on it, I believe that Atty. Mantzaris has been. You may place a call to him to check on the status of the situation.

Mr. Peter Gouveia, 39 Lincoln Drive Ext. asked if CBT was still one of the managers of the portfolio in the pension plan?

Mr. Myers responded that a separate subsidiary of CBT known as Constitution Capital is a portfolio manager for a portion of the Wallingford Pension Fund. Those funds, however, are held in trust. They are separate from the Connecticut Bank & Trust assets. They are accounted for separately and they are not co-mingled with other funds and assets of CBT. They will not be affected at all.

ITEM #4a Consider and Approve the Settlement of a Claim Against the Johns-Manville Corporation for Asbestos Application - Town Attorney's Office

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

Mr. Holmes asked if this was the going rate of settlements for municipalities?

Atty. Small responded yes. She felt that any attempt to try to obtain additional funds would be futile.

Ms. Papale asked that her memory be refreshed on this issue.

Atty. Small stated that it was all the asbestos cases which forced the Manville Corp. into bankruptcy court in the early 1980's. There are claims throughout the country against them. A panel was set up to sort through the various claims to try to assign values to everyone's claims so that as many people as possible would receive something. It falls short of what you are entitled to but you will receive something.

Mr. Gouveia pointed out that the company started using asbestos in their insulation in the early 1970s. The school was built around that time. They knew there was a threat to humans but still went ahead and produced the insulation. He asked how much the Town has spent at Sheehan School for asbestos management?

Mr. Myers responded that if he remembered correctly, in 1984 it

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cost approximately \$750,000.00 for asbestos removal. He stated that the Town bonded \$612,000.00 for Sheehan High School in 1980.

Mr. Gouveia: Was that money spent?

Mr. Myers: At least that amount.

Mr. Solinsky: Was that claim just for Sheehan school? Do we have any medical claims from employees that we are trying to recoup?

Atty. Small: I am not sure if it was just for that school. Not to my knowledge, we are not faced with medical claims.

Chris Capot, Record Journal Reporter stated that Mr. Chichowski told him last night that the Town spent a total of \$1.9 million on all the asbestos work. The State reimbursed the Town approximately 63% of that.

Mr. Bradley: Is there a chance that we may not receive the \$164,000.00?

Atty. Small: No, that is the amount of the cycle, the total we are getting for the cycle. I suppose that there is a possibility that we may be getting more.

Mr. Killen: Did anyone make a comparison to similar claims as far as settlements?

Atty. Small: We could make some inquiries on that.

Mr. Killen: Please do and let me know.

VOTE: All ayes; motion duly carried.

ITEM #4b Consider and Approve a Budget Amendment in the Amount of 164,075.00 to Estimated Revenue Recovery of Expenditures Department of Law Account #1065-060-6300 and to Contingency; Reserve for Emergency Acct. #8050-800-3190 - Town Attorney's Office

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

VOTE: Killen, no; all others, aye; motion duly carried.

ITEM #4c Consider and Approve a Transfer of Funds in the Amount of \$55,000 from Contingency; Reserve for Emergency Acct. #8050-800-3190 to Professional Services Acct. #001-1320-900-9010 - Town Attorney's Office

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

Mr. Bradley's questions centered around the Zoning Board of Appeals case. He asked why the minds have changed now with regards to paying for Atty. McManus's invoice when Atty. Mantzaris specifically stated that Atty. McManus should not be retained, and certainly not paid since the ZBA did so against his advisement? He asked if the authorization of the Council to file the appeal more or less con-

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cluded that payment is due to Atty. McManus?

Atty. Small: At the time that Atty. Mantzaris and I discussed with you (the Council) taking it up on appeal we had at it that way. We looked at it that if you voted to take the appeal that was authorizing the trial work down below. In discussing it afterwards and we had been doing some research on whether or not they could make a claim for those fees, we had some discussion as to, if we did permit the appeal and we permitted the same attorney to prosecute the appeal, was he or was he not entitled to be paid for the trial work? If there were to be a lawsuit with regard to those fees, that is one argument that he could assert. Whether it would be successful or not, it is hard to say. We would argue that we didn't because we did not authorize that work, we specifically did not authorize that work, the ZBA was told that. The other arguments with respect to whether or not they are entitled to have those fees paid, I would think would dominate any type of lawsuit. I think that Atty. Mantzaris and I came to the conclusion logically, that since we did go through that process of approving the appeal and Atty. McManus's prosecuting the appeal on behalf of the ZBA that, doesn't it make sense that he should be paid for the trial work? Up until the time that we discussed it with you, our position was that we did not think that the ZBA should come to us and expect our department to pay for it since our department did not authorize it. At that time we envisioned the ZBA coming before the Council and explain what they had done and why requesting that you give them the funds to pay the bill. That is what we had initially contemplated. That is why we came to the conclusion stated in the letter. That doesn't mean that if there were any litigation that it could be part of an argument as to whether or not we received any benefit from the services? I don't know that we necessarily did by his representation at the trial level. It could create one more issue, but it was not something that we had thought about when we talked to the Council about taking it up on appeal.

Mr. Bradley: My concern is that they did meet with Atty. Mantzaris, they did seek legal representation, they were told that it would not be authorized but they went ahead with it. That is in violation of the Town Charter. It is a Board that is appointed by and reports to this Council and no one is here from the ZBA tonight. In going through their minutes I didn't see any approval by the ZBA of this issue. I have seen, after the fact on October 15, 1990, the authorization of payment of McManus's bills. Again, no one is here from this Board tonight to justify this.

Atty. Small: I believe that the Chairman acted on his own and sought ratification by the Board afterwards.

Mr. Bradley: What does Atty. McManus mean by the term indemnify?

Atty. Small: When payment is refused most likely the Chairman would have to sue the Town for indemnification that he is not liable for the bill. He is liable to McManus for the bill, but the Town is liable to him to pay for reimbursement.

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Mr. Bradley read Chapter XV, Section 7(d), page 32 of the Town Charter as follows: "The several departments, commissions, officers and boards of the town shall not involve the town in any obligation to spend money for any purpose in excess of the amount appropriated therefor until the matter has been approved and voted by the council, and each order drawn upon the treasurer shall state the department, commission, board or officer, or the appropriation against which it is to be charged".

Mr. Parisi: If that section of the Charter has been applied in this instance, I can think of an instance last year when that same section did not apply.

Mr. Killen: What is your point?

Mr. Parisi: How can it flip-flop?

Mr. Killen: We assume that it is supposed to apply to everyone. I think that we have had it happen in the past where someone has not brought it to someone's attention, it doesn't change the intent of the law.

Mr. Parisi: It was brought to someone's attention. I am just curious as to what the ruling will be. I agree with what is being said.

Ms. Papale: What instance are you referring to?

Mr. Parisi: The computer situation. There were two people of the Town that spent money when it was never determined that it was authorized to be spent. Yet, that section of the Charter would not apply to them. Yet, it was proven beyond a doubt.

Mr. Killen: Why wouldn't it apply to them?

Mr. Parisi: I don't know. No one would apply it. I kept trying to get someone to apply it but no one would.

Mr. Zandri: I believe those dollars were authorized through the Board of Education?

Mr. Parisi: No. It was never authorized by this Council to be spent. It was not an educational item. I cited that section, but yet, it did not apply. I could never get it to be applied. I tried very, very hard to get anyone to apply it.

Ms. Papale: Do you have the price that was charged the Planning & Zoning Commission for the trial work by their attorney?

Atty. Small: It is approximately \$14,000. Once Atty. McManus agreed to reduce his bill, they were pretty much on par. It does not differ substantially. He lowered his fee when we stated that the going rate paid by the town was \$110.00/hr. as opposed to \$140.00/hr.

Ms. Papale: How did they ever think that they were going to pay

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for this?

Mayor Dickinson: When there was an effort to hire an attorney, Adam Mantzaris called and wrote to Vincent McManus indicating that we would not be responsible for any bill. He, in addition, had at least two conversations with the Chairman and maybe other members of the Commission indicating that the Town would not be responsible for the hiring of an attorney. The Commission went ahead and we see the results. There was clear communication to all parties that the Town was not authorizing this.

Ms. Papale: If the Council votes not to pay Atty. McManus, he will take the Town to court?

Atty. Small: The Chairman of ZBA will end up suing the Town. Our office will very vigorously oppose any such action.

Ms. Papale asked about the \$5,000 charge for the appellate work.

Atty. Small stated that it is in progress and their (the attorney's) briefs should not require too much additional work because it has already been briefed down below (on the invoice). The basic research has already been down. It is a basic estimate for concluding the appellate work.

Mr. Gouveia: Atty. Knott is representing P & Z?

Atty. Small: Yes.

Mr. Gouveia: And you anticipate the cost will only be \$5,000?

Atty. Small: Approximately.

Mr. Gouveia: So the definitive answer that we are looking for could only be had for \$5,000?

Mr. Killen: Yes.

Mr. Gouveia: I have added up all the numbers you have identified, including the outstanding bills, and come up with a total of \$44,041. Then you identified future needs, do you plan to use the remaining \$11,000 in your account towards the rights and deed issue without coming before the Council?

Atty. Small: That has gone to trial and I imagine that we will be getting one hefty bill sometime in the near future. He was approved by the Council, I don't understand?

Mr. Gouveia: Because when it was approved, I voted against it and I would have to vote against this based on that information. In other words, if I think that any of this money that we are going to transfer is going to be used for the rights and deed issue, I would have to vote no on it.

Atty. Small: I think that we have a debate as to whether it comes

Mr. Gouveia: The great ramifications. No sense in setting a budget, ever.

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out of our budget or the P.U.C. budget which, from my discussions with Adam, our position is that it should come out of the P.U.C. budget. I would expect that the issue as to this bill is going to come before you again. It is going to be in excess of \$10,000. I can assure you of that. The likelihood that we use the remaining \$10,000 to pay a portion of this bill is probably a small one. If you are that concerned about it we can make sure that it is addressed with you.

Mr. Gouveia: Can I get an assurance from you that you are not going to use any of the \$11,000 to pay any part of this bill at all without coming before the Council?

Atty. Small: I don't think that we have a problem doing that. It will be resolved with P.U.C. and come before the Council one way or another

Mr. Gouveia: I have always took the position that I would vote against the ZBA unauthorized legal fees, but Planning & Zoning lost the case and not only that but we authorized the appeal because you asked us to in the best interest of the Town. I also feel that from conversations that I have had that the Town may be legally bound to pay those fees and I certainly would not want Mr. McManus to use this as a test case simply because I feel that we are not on solid ground legally.

Mayor Dickinson: I disagree legally with any representation that the Town of Wallingford must pay the bill of an attorney that is not authorized in the appropriate manner under our Charter. I believe that firmly. I can understand the different circumstances here, I am not opposing the payment of Atty. McManus but I would ask that the Council pass a resolution to reiterate for all of our Boards and Commissions that absolutely no one is authorized to hire an attorney unless they have funds in a budget to do so. Whereas this case may not result in someone being personally liable, the next one hopefully will. We cannot allow this type of thing to go on. It makes a mockery out of budgets. Ct. law, I do not feel at this point, justifies that there is an obligation by the Town to pay a bill under these circumstances.

Mr. Gouveia: My understanding then is based on out of state law not CT. law?

Atty. Small: CT. cases have not been clear, they haven't gone as far as we would end up going in this particular case. Some cases may give us some good assistance, but the general rules in this area of law, as stated in some out of state cases, do suggest that there is an argument to the contrary, but as I said before our office's position is that we would certainly defend any type of lawsuit quite vigorously. This is a unique case. If you want to make this a test case we can do that.

Mr. Gouveia: You do realize the ramifications if we do make this a test case and we lose?

Atty. Small: I certainly do.

Mr. Gouveia: The great ramifications. No sense in setting a budget, ever.

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Mayor Dickinson: Which is why I feel in the long run the sanctity of budgets has to be upheld. Look at the State level. If the Attorney General of the State of CT. can look at the State Constitution and say "I have Constitutional duties to investigate or pursue this case, there isn't any money in my budget, but too bad. I have to meet my Statutory duties". Every State officer could do that.

Mr. Gouveia: I agree.

s. Papale: When Atty. McManus accepted this case to represent the ZBA, was he aware that there were no funds available for his fee?

Atty. Small: Adam Mantzaris stated to Atty. McManus that it was not authorized. A letter was sent to that effect. Atty. McManus certainly knew that our department was taking the position that it was not authorized.

Mr. Parisi: Someone would have taken it wouldn't they?

Atty. Small: I'm not saying that Atty. McManus is the only lawyer out there that would have taken it. I'm sure that they could have gone to other attorneys in the area.

Mr. Parisi: I think that we should pay Atty. McManus but I also think that we should call the ZBA before this Council to be reprimanded publicly to impress upon them exactly what they should not have done.

Mr. Killen: I have tried time and time again from the time that we had our meeting with the joint boards, we were going to get together. I am not going to waste my time on that.

r. Parisi: I did not mean to imply any short....

Mr. Killen: I know you are not picking on me. I would do so if I thought that we were going to gain something. I think we need to look inwardly. We appoint these people, we re-appoint these people. How they act reflects on us. It is up to us to bring them to heel. If we don't do so, then it is time for us to turn it in.

Atty. Small: I think the idea of the resolution is a good one. Perhaps our department can draft one for review. It can stress legal aspects of their conduct. We would like to participate in that also if that is what you decide to do.

Mr. Holmes: I hope any resolution of that type would contain language that would emphasize the point that whoever goes out and spends the Town's money will be personally liable for this. I understand that it is in the Charter but I think that not everyone is familiar with the Charter requirements, and if they are and they still elect to go against it, then it is even more serious. What makes this instance a particularly bad one is that our legal department advised them not to do it. I think that we should seek the resignation of the person who spent the money without authorization to do so.



Ms. Papale: Didn't the entire ZBA vote on it, not just one person.

Mr. Killen: After the fact.

Mr. Holmes: If the nine of our voted to take the Town's Pension Fund and spend it somewhere else, just because the nine of us voted to do it does not make it right. They knew from day 1 that they were doing the wrong thing and they went ahead and did it regardless of the outcome of the case, it is not right.

s. Papale: You are blaming the Board not Atty. McManus?

Mr. Holmes: The people signing their name saying, yes, we will hire you and pay you are the ones who are at fault.

Mr. Zandri: Have we finalized the authorization for Atty. McManus to appeal?

Atty. Small: Yes.

Mr. Zandri: Is there any way to get out of that?

Atty. Small: You can always fire your attorney.

Mr. Zandri: To have him try that case, does that hurt our position on this overall case?

Atty. Small: I think that it creates another argument for him.

Mr. Zandri: Shouldn't we be looking down the line for future problems and trying to avoid them at this point in time?

Atty. Small: If you are talking about this particular case, if his payment is going to be denied and there is going to be a lawsuit on it, then perhaps it out to be talked about. You could always fire our attorney.

Mayor Dickinson: There are two important issues here, one being the nature of the appeal and it was felt by the Town Attorney's Office that the appeal was a very important one for the future functioning of the two commissions and perhaps for the Town. The other issue of course is our Charter and how commissions should function. I think swallowing a little the disappointment and the issue over the violation of the Charter, we should emphasize the nature of the appeal and it probably is not a reasonable course of action to fire someone who won at a trial court level and now is taking it on appeal. We will have the commission saying that now their chances of winning on appeal are jeopardized and that effects the substance of what the whole appeal is about. But, the issue of the Charter, the internal functioning of commissions and the budget, etc., is a separate issue and I think that by setting out through a resolution what action would be taken should anything like this occur again, forewarns everyone and does not jeopardize the appeal which the Town Attorney's Office feels is

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important. If we didn't care about the appeal, that would be one thing, but I hate to through any kind of question mark into the handling of the appeal and not allow that to be something that we can point to in dealing with the commissions and say this issue was/was not resolved, whatever, but not allow some subsidiary issue of the best attorney to represent being thrown into it and no one satisfied. I think that you can handle it both ways but I do think that a resolution or direction has to be taken for any future action by a commission and make it clear that there will be direct consequences.

Mr. Zandri: Do we have to vote on these items as a block, or can they be voted on separately?

Mr. Solinsky: What are the rights of the Planning & Zoning and the ZBA to protect their regulations or their charge legally? I thought that P & Z have the duty by Statute to protect their regulations even if they have to go to a court of law.

Atty. Small: Given a position they would do exactly what the ZBA did. They have the same feeling that they have the authority to do this. It hasn't occurred yet, but I believe that they are of the opinion they don't need permission either. It is not necessarily exclusively with the ZBA, it just happened that the circumstances were that the ZBA went ahead and did it.

Mr. Solinsky: By statute do they have obligation to pursue it?

Atty. Small: The question is whether or not they could just do that any time that they want to without any other authorization of the Town. Our position is, no they cannot. Their position is, yes they can.

Mr. Holmes: They can protect their ground if they do so through the proper channels.

Mr. Zandri: That is what we have Town Attorneys for.

Mr. Killen: We are faced with a former Town Attorney, if he should or shouldn't have known, who should have known? This Town itself in regards to this building, paid out a sizeable chunk of money because a youngster found a way up and fell through a skylight. We had a lot of options open, we could have leveled the building had we anticipated that, we could have put armed guards on or if we had had enough foresight, we could have asked the mother to abort the child at conception. We don't have that kind of foresight is my point, no one does. Yet, constantly lawyers are handing us this line, we knew and he knew and he should have known and he shouldn't have taken the case. Atty. McManus took the case, good for him, as far as I am concerned, I am guided by the laws here. I don't necessarily like them, but I am guided by them. I follow them. I can't go along with this.

Brian McDermott, 359 N. Elm Street stated that it is a shame that

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the P & Z and ZBA Boards cannot get along or solve their problems without taking them to court. The use variance powers were taken away from ZBA because there were problems with them granting use variances several times before. The ZBA then sued the P & Z for taking those privileges away. Mr. McDermott was against the powers being taken from ZBA in the first place (Mr. McDermott is a member of the P & Z Board). He felt there were better ways for these two Boards to work out their differences than in court wasting the Town's taxpayer's money. He was under the impression that the Council approved the invoice from Atty. McManus. He stated that there were two options to consider. The first option being that the Council could vote to approve payment of Atty. McManus's invoice and then the appeal must be fought otherwise \$14,000 has been spent for nothing, and second, the Council to vote not to approve payment and have the Boards try and settle their differences out of court. He felt that the ZBA were wrong in the way they handled this matter but felt that they were faced with a situation where they felt that they had no other choice to do the things, they were trying to find an answer, they were not successful with staff in trying to guide them in the right direction as to what their rights were and therefore felt they had no other option but to take it to court.

Mr. Killen explained that many years ago a special Town Council Meeting was called with both the P & Z and ZBA Boards and the Chairmen were present and exhibited what appeared to be a life long friendship attitude towards each other. They saw no differences and agreed to get together afterwards to discuss what differences there could possibly be. Mr. Killen followed up with telephone calls with the Chairs to track the progress to no avail. This is as far as it has come. It has become a turf fight. It is not doing the Town any good.

Mr. McDermott explained that both Boards have the same hired staff. He felt that perhaps the Council should address the staff of both to their direction. It may be an issue of the staff being told that they are the staff of both Boards equally and they should equally help and advise both Boards. Not to leave one out to figure out for themselves, as appears to be the case in this situation where they felt they had no other choice but to go to court, which was an unfair and unusual situation for that Board.

Mr. Killen: You can advise all you want, but if that person feels that they are being left out, they will go ahead and do as they see fit. There is no reason in the world why this Council should tell that those people what their rights are. We had a gentleman down from Hartford, an expert in law, on at least two occasions if not three. There are copies in everyone's files as to what the duties of both Boards are. Immediately after receiving the duties from this gentleman, I have read through the cases that have flowed through and I can see that we wasted our time and money in paying him for coming down here. It went right back to, "I serve on this Board and we have the right to do...", I can't cope with that type of thinking at all.

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Mr. Killen: All that has to be done is for any department head, board or commission to write to the Town Attorney and seek a written opinion on any matter pertaining to law having to do with their respective office. That is all that has to be done. You are covered no matter what happens. If too many people get the impression that they will not get the opinion that they want, therefore they will not seek it, does us no good.

Mr. McDermott was under the impression that the money was approved to pay for Atty. McManus's bill. He reiterated that the Boards should be able to settle their differences out of court. He asked the Council if the P & Z Commission had to vote on approving the appeal?

Mr. Killen stated that it was the decision of the Council.

Mr. Gouveia: I think that we should weigh the impact of the actions that we may be taking. The Department of Law has authorized the payment to Atty. McManus. Also, they have authorized that ZBA retain Atty. McManus for the appeal. We need to think about that. It is one thing to call for a resignation and another to think about these things. I am not speaking for or against the resignation, remember what the Department of Law has done so far. I agree with the resolution that the Mayor spoke of except that, what has a greater power, the Charter or a resolution? I think that the Charter is a much greater power than any resolution that we could pass. I don't know, are we going to pass a resolution every time someone breaks the law of the Charter?

Mayor Dickinson: Peter, I suggested the resolution as a means of warning because someone can argue that we are all supposed to know the Charter, but these are people who are part time commissioners and I can understand and extend some latitude for that. In this case there was forewarning.

Mr. Gouveia: Just in case they are not cognizant of the Charter, is that why you are saying that?

Mayor Dickinson: In case there are commissioners who are not familiar with provisions such as removal from office, I think this would be a means of reminding.

Mr. Gouveia: I have no problem with that. I think it is a good practice.

Mayor Dickinson: In this case it is going beyond what is necessary, however, since all parties were notified ahead of time that this was not authorized. This is not a case of confusion, it is a case of direct communication.

Mr. Holmes: There has to be a price paid for an action like this.

Mr. Gouveia: I have no problem with that except for the action that the Department of Law has taken since. I don't know what it will

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do to the case.

Mr. Parisi: In their minutes that were given to us of October 15th, Item #2 "If such payment is not approved that we will authorize indemnification of the Board", it was a three-part motion made by Gail Powell. They knew what they were doing. That is why they should have a public reprimand. We don't want it to happen again.

Mr. Gouveia: I don't have a problem with a public reprimand or with what Mr. Holmes suggested, I am only saying to weigh all that is in front of you because something has happened since that. The department of Law has authorized certain things. I don't know if that has weakened your position. That is all that I am saying.

Mr. Parisi: That is why I said a reprimand. It comes and goes and is done with.

Mr. Gouveia: What the Mayor suggested is better than a reprimand.

Mr. Parisi: As long as something is done, I don't think that it should be allowed to pass. Can we vote Mr. Chairman?

Mr. Solinsky: Janis, do you know why Adam did not authorize this in the beginning (the action)?

Atty. Small: I think he had a discussion with them concerning the legal issues, I don't know how much you want to talk about publicly because it can become an issue later.

Mayor Dickinson: In part, the reason for disapproval was that Adam represented that he intended to discuss with P & Z the nature of the regulation that they had passed. He disagreed with the constitutionality of the wording of it and was going to work with them to change the regulation. That was ignored and the action was taken prior to the time that the regulation was worked on. He represented that his office was going to take up the issue with P & Z and he disagreed with it as a matter of law and was going to address it and there was no need to hire an outside attorney. That was a large part of his reason to tell them there was no need...the difficulty for them was that the appeal period was running so that ZBA was being advised that if they didn't bring suit the appeal is going.

Mr. Solinsky: It is unfortunate that way that this has transpired. It is kind of bittersweet, we won but we have this other thing to deal with. I feel as some of the others have spoken that we should pay this and then go with the resolution or reprimand, however we decide.

Mr. Killen suggested taking the transfers one at a time.

Mr. Bradley: If we subtract that \$14,210.00 off of the \$55,000.00 it leaves a transfer of \$47,790.00 or we can break it down into two transfers, one for \$47,790.00 and the other for \$14,210.00 if people want to vote separately.

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Mr. Zandri: One of the concerns that I have had in the past is having what resembles a contingency in the law account for hiring attorneys. One of my arguments has been that I don't see any reason why when cases come up that they cannot be discussed and passed before this Council for authorization of transfers of any fund and I think that would give us a better handle on whether or not these things should or should not be pursued.

Atty. Small: I don't necessarily disagree with you. I have some concern about the whole process for seeking payment etc., I think that we can look into that and have some discussion around how it should work and what potential problems there are.

Mr. Zandri: I don't have a problem with voting on the individual items but I do have a problem with there being a cushion in that account. I prefer to take them individually.

Mr. Bradley made a motion to Transfer \$14,210.00 from Acct. titled Contingency; Reserve for Emergency #8050-3190 to Acct. titled Professional Services Acct. #1320-9010 to pay Atty. McManus, seconded by Mr. Parisi.

Mrs. Duryea: Not only did they disregard what the law office advised but the office was also trying to settle it out of court which they also disregarded. I do not go along with that at all.

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

Mr. Bradley made a motion to Transfer \$1,125.00 from Acct. #8050-3190 Contingency; Reserve for Emergency to Acct. #1320-9010 Professional Services, seconded by Mr. Holmes.

VOTE: Killen, no; all others, aye; motion duly carried.

Motion was made by Mr. Bradley to Transfer \$1,207.00 from Acct. #8050-3190 Contingency; Reserve for Emergency to Acct. #1320-9010 Professional Services, seconded by Mr. Parisi.

Mr. Zandri asked if this case was ongoing, will there be more?

Atty. Small responded that it is wrapping up. This is the insurance aspect of it. The court in Hartford in the Torrington case issued a ruling which was not in our favor. Both the Town's attorney and the attorney for the insurance company was somewhat dissatisfied with the decision. They felt that it did not address certain areas and he did not acknowledge that he listened to the arguments that we specifically made. We asked permission to file a brief in that case and address the court. Both of them have required the judge to either clarify his judgement or let them speak to him again. That will take care of it.

VOTE: Killen, no; all others, aye; motion duly carried.

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Motion was made by Mr. Bradley to Transfer \$27,500 from Acct. #8050-3190 Contingency; Reserve for Emergency to Acct. #1320-9010 Professional Services, seconded by Mr. Parisi.

Mr. Zandri questioned the authorization for Atty. McManus to fight the case. If we denied payment, that could present a problem.

Mr. Parisi asked how can you terminate Atty. McManus and not Atty. Knott?

Mr. Killen was not sure they were intertwined and referred the question to Atty. Small.

Atty. Small responded that at this time we are up on appeal, there has already been trial work, ZBA was successful in trial work, she could not recommend switching attorneys at this point in time. If effects us in terms of a possible lawsuit?, it already has and she did not feel that the termination is going to make any difference with respect to that argument.

VOTE: Zandri & Killen, no; all others, aye; motion duly carried.

Motion was made by Mr. Bradley to Transfer \$11,000 from Acct. #8050-3190, Contingency; Reserve for Emergency to Acct. #1320-9010, Professional Services, seconded by Mrs. Duryea.

Ms. Papale asked Atty. Small if this money was going to be put into the law department's budget and not come before the Council prior to using it?

Atty. Small stated that the practice has been that the department has always come before the Council and will continue to do so with any major litigation. Sheriff's fees and court fees as well as stenographer fees tend to eat away at the budget. The funds will also be used for these other expenses.

VOTE: Gouveia, Zandri & Killen, no; all others, aye; motion duly carried.

ITEM #6 Approve and Accept the Minutes of the November 27, 1990 Town Council Meeting.

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

Mr. Gouveia asked that a correction be made to Page #14 regarding comments attributed to him, the next to last sentence in the middle of the page that reads... "there if very little" should read "that means very little".

VOTE: Killen passed; all others, aye; motion duly carried.

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Mr. Parisi stated that even though the Council voted not to pay Atty. McManus, it will proceed to a lawsuit which will end up costing the Town a lot of money.

Mr. Gouveia pointed out that Watergate also cost us a lot of money.

Motion was made by Mr. Bradley to Adjourn the meeting, seconded by Mrs. Duryea.

VOTE: All ayes; motion duly carried.

There being no further business, the meeting was adjourned at 9:31 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