

TOWN COUNCIL MEETING

DECEMBER 8, 1998

6:30 P.M.

AGENDA

Blessing

1. Pledge of Allegiance and Roll Call
2. Correspondence
3. Presentation of Awards to the 1998 U-14 State Cup Champions, Wallingford Nightmares
- Mayor
4. Consent Agenda
 - a. Approve and Accept the Minutes of the November 5, 1998 Special Town Council Meeting
 - b. Approve and Accept the Minutes of the November 10, 1998 Town Council Meeting
 - c. Approve and Accept the Minutes of the November 17, 1998 Public Speaking Meeting
 - d. Approve and Accept the Town Council Meeting Schedule for Calendar Year 1999
 - e. Consider and Approve Tax Refunds (#357 - 377) Totaling \$4,747.71 - Tax Collector
 - f. Note for the Record Anniversary Increases Approved by the Mayor
 - g. Note for the Record Mayoral Transfers Approved to Date
 - h. Consider and Approve Accepting a Bilingual Education Grant Award in the Amount of \$3,626 - Board of Education
 - i. Consider and Approve a Transfer of Funds in the Amount of \$300 from Office Expenses & Supplies Acct. #6010-401- 4000 to Rental of Polling Places Acct. #6010-601-6130 - Registrar of Voters

- j. Consider and Approve a Transfer of Funds in the Amount of \$1,200 from Regular Salaries and Wages Acct. #012-9000-101-1000 to General Assistance Acct. #012-9000-600-7010 - Youth & Social Services
 - k. Consider and Approve an Appropriation of Funds in the Amount of \$700 to Youth Projects Acct. #012-9000-600-6600 and to Other Revenue Acct. #012-1040-700-7010 - Youth & Social Services
 - l. Consider and Approve an Appropriation of Funds in the Amount of \$605.33 from Revenue Highway Safety Acct. #1050-050-5883 to Police Overtime Acct. #001-2005-101-1400 - Department of Police Services
 - m. Consider and Approve an Appropriation of Funds in the Amount of \$14,750 from State Grant Public Health Acct. #1040-050-5505 of Which \$850 is Transferred to Office Copier Acct. #3010-999-9901 (new acct.); \$2,500 is Transferred to Personal Computer & Printer Acct. #3010-999-9902; \$400 is Transferred to Capital Acct. TV/VCR Acct. #3010-999-9903 (new acct.); \$350 is Transferred to Office Expenses and Supplies Acct. #3010-401-4000; \$7,650 is Transferred to Health Promotion Program Acct. #3010-601-6010 (new acct.) and \$3,000 is Transferred to Purchased Professional Serv. Lead Testing Acct. #3010-901-9001- Health Department
5. Items Removed from the Consent Agenda
 6. PUBLIC QUESTION AND ANSWER PERIOD
 7. Discussion and Possible Action on Hiring an Outside Professional Appraiser to Evaluate the Potential Tax Revenue to the Town Should the Proposed Power Plant be Constructed on the Pierce Generating Site as Requested by Councilor Thomas Zappala
 8. Discussion Regarding Renovations to the Community Pool Bathhouse as Requested by Councilor Stephen W. Knight
 9. To Conduct a PUBLIC HEARING, Consider and Act on the Following Proposed Ordinance:

An Ordinance Establishing Assessments for the Fox Run Drive Water Line Extension Project - 7:45 P.M.

To Conduct a PUBLIC HEARING, Consider and Act on the Following Proposed Ordinance:

An Ordinance Appropriating \$85,000 to Extend Water Lines to the Fox Run Drive Area and Authorizing the Issue of \$85,000 Bonds of the Town to Meet Said Appropriation and Pending the Issuance Thereof the Making of Temporary Borrowings for Such Purpose - 8:00 P.M.

11. Consider and Approve a Transfer of Funds in the Amount of \$30,000 from General Purposes Acct. #001-8050-800-3190 to Professional Services Acct. #001-1320-901-9003 - Town Attorney
 12. Presentation by the Town Attorney Regarding the Settlement of Pending Garden Road Litigation
 13. SET A PUBLIC HEARING for January 12, 1999 at 7:45 P.M. to Consider and Act Upon A Proposed Ordinance Entitled, "An Ordinance Appropriating \$2,574,000 to Acquire Eighteen Properties on Garden Road and to Settle Flooding Claims Relating Thereto and Authorizing the Issue of \$2,574,000 Bonds of the Town to Meet Said Appropriation and Pending the Issuance Thereof the Making of Temporary Borrowings for Such Purpose
 14. Consider and Approve the Hiring of Outside Legal Counsel for Representation of the Town in Negotiations with Stone & Webster Development Corp. And Pennsylvania Power & Light with Respect to the Merchant Power Plant - Town Attorney
 15. Executive Session Pursuant to Section 1-18a(6)(B) of the CT. General Statutes to Discuss Pending Litigation Involving Dellavecchia v. Factory Built Homes and Town of Wallingford
 16. Executive Session Pursuant to Section 1-18a(6)(B) of the CT. General Statutes to Discuss the Pending Claim of Robert Kohl v. Town of Wallingford
 17. Consider and Approve the Settlement of Dellavecchia v. Factory Built Homes and the Town of Wallingford - Town Attorney
 18. Consider and Approve the Settlement of a Pending Claim of Robert Kohl v. Town of Wallingford - Town Attorney
- Executive Session Pursuant to Section 1-18a(6)(D) of the CT. General Statutes to Discuss the Purchase, Sale and/or Lease of Property - Mayor

TOWN COUNCIL MEETING

DECEMBER 8, 1998

6:30 P.M.

SUMMARY

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... PUBLIC HEARING and Adoption of an Ordinance Appropriating \$85,000 to Extend Water Lines to the Fox Run Drive Area and Authorizing the Issue of \$85,000 Bonds of the Town to Meet Said Appropriation and Pending the Issuance Thereof the Making of Temporary Borrowings for Such Purpose	19-20;20-23
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14. Approve the Hiring of Outside Legal Counsel for Representation of the Town in Negotiations With Stone & Webster Development Corp. And Pennsylvania Power & Light with Respect to the Merchant Power Plant - Town Attorney	36-43
15. Withdrawn	
16. Withdrawn	
17. Withdrawn	
18. Withdrawn	
19. Withdrawn	

TOWN COUNCIL MEETING

DECEMBER 8, 1998

6:30 P.M.

A regular meeting of the Wallingford Town Council was held on Tuesday, December 8, 1998 in the Robert Earley Auditorium of the Wallingford Town Hall and called to Order by Chairman Robert F. Parisi at 6:31 P.M. All Councilors answered present to the Roll called by Town Clerk Rosemary A. Rascati with the exception of Mr. Zappala who arrived at 6:47 P.M. Mayor William W. Dickinson, Jr. arrived at 6:41 P.M., Town Attorney Janis M. Small arrived at 6:42 P.M.; Comptroller Thomas A. Myers was also in attendance.

At this time Chairman Parisi wished everyone a happy holiday season, a very prosperous new year and a very safe holiday season. He stated, if you drive, don't drink; if you drink, don't drive; that is on behalf of all of my colleagues and myself.

The Pledge of Allegiance was given to the Flag.

ITEM #2 Correspondence

Mr. Rys read a Proclamation into the record proclaiming December 1998 as Drunk and Drugged Driving (3D) Prevention Month. (Appendix I).

Mr. Renda reminded everyone to wear their seatbelts and to make sure their children are strapped in as well.

Since the Mayor had not yet arrived at the meeting, the Council passed over Item #3 until the Mayor was in attendance.

ITEM #4 Consent Agenda

ITEM #4a Approve and Accept the Minutes of the November 5, 1998 Special Town Council Meeting

ITEM #4b Approve and Accept the Minutes of the November 10, 1998 Town Council Meeting

ITEM #4c Approve and Accept the Minutes of the November 17, 1998 Public Speaking Meeting

ITEM #4d Approve and Accept the Town Council Meeting Schedule for Calendar Year 1999

ITEM #4e Consider and Approve Tax Refunds (#357 - 377) Totaling \$4,747.71 - Tax Collector

ITEM #4f Note for the Record Anniversary Increases Approved by the Mayor

ITEM #4g Note for the Record Mayoral Transfers Approved to Date

ITEM #4h Consider and Approve Accepting a Bilingual Education Grant Award in the Amount of \$3,626 - Board of Education

ITEM #4i Consider and Approve a Transfer of Funds in the Amount of \$300 from Office Expenses & Supplies Acct. #6010-401- 4000 to Rental of Polling Places Acct. #6010-601-6130 - Registrar of Voters

ITEM #4j Consider and Approve a Transfer of Funds in the Amount of \$1,200 from Regular Salaries and Wages Acct. #012-9000-101-1000 to General Assistance Acct. #012-9000-600- 7010 - Youth & Social Services

ITEM #4k Consider and Approve an Appropriation of Funds in the Amount of \$700 to Youth Projects Acct. #012-9000-600-6600 and to Other Revenue Acct. #012-1040-700-7010 - Youth & Social Services

ITEM #4l Consider and Approve an Appropriation of Funds in the Amount of \$605.33 from Revenue Highway Safety Acct. #1050-050-5883 to Police Overtime Acct. #001-2005-101-1400 - Department of Police Services

ITEM #4m Consider and Approve an Appropriation of Funds in the Amount of \$14,750 from State Grant Public Health Acct. #1040-050-5505 of Which \$850 is Transferred to Office Copier Acct. #3010-999-9901 (new acct.); \$2,500 is Transferred to Personal Computer & Printer Acct. #3010-999-9902; \$400 is Transferred to Capital Acct. TV/VCR Acct. # 3010-999-9903 (new acct.); \$350 is Transferred to Office Expenses and Supplies Acct. #3010-401-4000; \$7,650 is Transferred to Health Promotion Program Acct. #3010-601-6010 (new acct.) and \$3,000 is Transferred to Purchased Professional Serv. Lead Testing Acct. #3010-901-9001- Health Department

Motion was made by Mr. Rys to Approve the Consent Agenda as Presented, Items 4a-m, seconded by Mr. Farrell.

VOTE: All ayes; motion duly carried.

M #5 WithdrawnITEM #6 PUBLIC QUESTION AND ANSWER PERIOD

Pasquale Melillo, 15 Haller Place, Yalesville stated that many citizens are concerned about the Town's position regarding the proposed auto auction on Northrup Road especially since the Town, itself, has located the Recreation Center in a commercially or industrially zoned area. Mr. Melillo feels that the Town violated its own Planning & Zoning rules by locating the Town department at the Fairfield Boulevard location. He stated that many residents that he has spoken to feel the same. He and others feel that if Mr. Orsini is denied his auto auction application he will sue the Town. If he sues the Town he may use the issue of the Recreation Center against us. He suggested that the Council get together with the Planning & Zoning Commission to discuss this matter.

Emil Lawrence, 1149 S. Curtis Street wanted to state for the record that he does not have a rat problem on Yale Avenue as one individual eluded to at the last meeting. That same individual also stated that there could possibly be a rat in some of the resident's wells in the area. Unless a rat had a pick and a shovel they could not possibly get into the wells. The gentleman also stated that Greenbacker's could have been polluting the resident's wells. Greenbacker's left the area long ago and if you listen to our sanitation office she stated that the bacteria will die off after thirty days. Also the man alleged that the girl scout camp area was not polluted. That feeds the south branch of the Meetinghouse Brook and native trout have been in their for years and they will not live in polluted water.

Pasquale Melillo, 15 Haller Place, Yalesville stated, I am very concerned about the Wooding/Caplan Property. The real estate market is as strong as it has ever been so we should do our best to take advantage of that situation and get all of our properties fixed up to their maximum potential and consider either selling or leasing them.

Mayor Dickinson stated, there is no new information on the Wooding/Caplan property. Interest has been expressed by several parties and they are continuing to discuss possible plans that would include the Town; plans for the development of that property. If we can involve the neighboring property owners as has been discussed...if that can come to reality it will be the best possible benefit to everyone.

Mr. Melillo asked, what is going on with the American Legion Building?

Mayor Dickinson answered, the Council approved a request for proposal and that should be published in the near future if it isn't out already. We hope to get responses from interested parties.

As Lube, 15 Montowese Trail stated, in listening to the different things that are being discussed and the monies that we have already spent; I am talking about the \$2 million on the pool, the Recreation Center, the \$4 million we just spent on open space, the \$4-5 million they are talking about to acquire land for a golf course and the course, itself, and the \$4-7 million to restore the dam; we are talking about big numbers. I haven't even mentioned the senior center; what are they talking about, \$2 million for the center? At the same time we have these things facing the Council and the town; the point that Mr. Melillo was making about the American Legion Building it is seemingly casual...two months we have taken to even get it to market seems to be a terrible lack of concern. I asked about this well over a month ago so I went to the Purchase Department where I was told, over one month ago, there was already a rough draft (of the R.F.P.) and the final draft would be forthcoming very shortly and my name and address was taken and I was to be immediately notified as soon as this was available because I did know of some people who were interested in the building. You (Council) have a responsibility for this even though you have said, "go ahead and sell it", that does not mean you're done. You should be following up on this to see whether or not what you want done is being, in fact, done, The Fitzgerald-Durham property, can we have a status report on how negotiations are coming between Wallingford and Durham on that piece?

Mayor Dickinson replied, the Town of Durham....

Mr. Lube interrupted the Mayor to ask, why doesn't the Council know?

Mayor Dickinson replied, because they are not full-time people. They entrust the Administrative staff to handle duties on a day to day basis. They would not receive correspondence from the Town of Durham, town offices, regular full time offices would receive that correspondence; the Town Attorney or my office or any other office that might be involved. That is why the Council cannot possibly know day to day what is the status of a given matter or what piece of correspondence may have come in in the last day or so. Typically, yes, they would depend upon Administrative offices.

Mr. Lube responded, in preparation for a meeting, I would think that they would ask; place some telephone calls....

Mayor Dickinson replied, then they should know ahead of time what the questions are because out of all the Town of Wallingford, an expenditure of an annual budget of some \$90 million; to expect them to walk into a meeting and know the answer to any possible question to be asked, asks a lot of any individual.

Mr. Lube answered, only those areas for which they are responsible. What is going on between the two towns?

Mayor Dickinson answered, the Town of Durham corresponded with us, they are interested and are in the process of obtaining an appraisal. We are waiting on their appraisal.

Mr. Lubee asked, at the time we approved a \$3.8 million purchase for open space, the Council indicated they were desirous that that property be sold and applied and there was an effort at that time to also include the Simpson Street School building as an asset to be sold. Mr. Zandri had raised the subject of selling the Simpson Street School and applying the proceeds.....

Mr. Rys stated, there was no vote on that.

Mr. Lubee replied, I did not say there was. I said that there was an expression of interest in doing that and it was deferred until something was done to confirm there was no other use for the building and I am wondering what the Council has done to investigate that subject?

Mr. Parisi responded, I have had some discussions with the Mayor on it.

Mayor Dickinson stated, Council members have discussed it with me. Contact has to occur with another party at this point but what was discussed at a recent meeting was, a neighboring property owner expressing interest in sale of property. That was discussed and there is further inquiry to be made on the subject. There is nothing of substance to report right now.

Mr. Lubee asked, if we have a party interested in Simpson School and a group interested in the Wooding property, do we not have the responsibility to expose this property to the open market to be certain that the sale price is, in fact, the best obtainable price? Why do we just hang on these people?

Mr. Parisi replied, we can't just do that because we also have to consider the impact on the neighborhood, too.

Mr. Lubee was of the opinion that limitations could be put on the types of usage.

Mr. Parisi replied, the minute you start qualifying is the minute you start slowing the process down.

Mr. Lubee answered, it doesn't mean you can't do it. Right now we are doing nothing.

Mr. Rys stated, it is just your opinion, sir; it is just your opinion.

Lubee continued, lastly, with regards to the Senior Center; Dianne Saunders' last report to you was that she had intentions of bringing in a recommendation from the architect at your late June meeting as to whether or not it would be most practical to expand the present facility or build a brand

w facility. Your next meeting is now late December and I am wondering, what has happened in the interim other than the fact that one of the intended purchases is unavailable?

Mr. Knight responded, you can easily dismiss that, that there is some other problem with one of the other properties but that is a critical issue and I would hope that you understand that having followed this particular matter as closely as you have. At this point there are times when matters, and they are into a very sensitive area and mode, the committee and people in the Town Attorney's Office are working as diligently as possible to overcome the obstacle and that is as much as can be discussed at this time. As liaison to this committee, I have spoken to them on more than one occasion and I can tell you it is our intention and the committee's intention to make a report out to the Council regarding what has been done in the past six months, at the first meeting in January.

Mr. Lube asked, do you think the architect's recommendation will be available at that time?

Mr. Knight answered, absolutely.

Mr. Zappala stated, I missed the meeting at which the Durham property was discussed and I have been trying to express my opinion on it. I know you are waiting for Durham to make up their mind. I feel it is in our best interest to put up a for sale sign on the property for I feel the Town of Wallingford will benefit from it since there is another party interested in the land and I think we should get the best price possible for the land. If Durham chooses to pay the price, we should sell it to Durham. We should put up a sign and get the best price for the taxpayers of Wallingford.

ITEM #3 Presentation of Awards to the 1998 U-14 State Cup Champions, Wallingford Nightmares
- Mayor

At this time Mayor Dickinson introduced and presented awards to the fifteen athletes, Assistant Coaches, Bob Besch and Roman Mrozinsky, Carla Besch, Manager of the Wallingford Nightmares.

Coach Dennis Tosney, thanked the Mayor and Town Council for the support they have given the children of Wallingford. He also thanked Henry McCully (Director of Public Works) and his staff for making the playing fields of Wallingford the "finest fields and facility in the State". This team has won this championship two years in a row. This is the last time these children will play together as a team because there are younger children waiting in the wings to become members of the team. Every one of the players must maintain a certain grade point average to remain on the team. Every one of the players is either on the honor roll of their school or their grades are at or above "B" average. (plause).

The Mayor was presented a trophy to display in his office for one year.

EM #7 Discussion and Possible Action on Hiring an Outside Professional Appraiser to Evaluate the Potential Tax Revenue to the Town Should the Proposed Power Plant be Constructed on the Pierce Generating Site as Requested by Councilor Thomas Zappala

Mr. Zappala stated, it is time for us to look at the serious part of the project; revenues to the Town. I don't want them (Pennsylvania Power & Light) to tell us how much revenues we should get from this project, we should hire someone who specializes in this type of work to give us an expert interpretation and Pennsylvania, Power & Light (PP&L) should pick up the cost of having that study done.

I would like to put that in a form of a motion, seconded by Ms. Papale.

Mayor Dickinson stated, until we know what the size of the plant is, we have no way of knowing what we would be appraising. We would need information in a timely manner but right now there is nothing to give to anyone to analyze. It is untimely to hire someone now. I don't have a problem with the concept of obtaining that information when it is necessary.

Mr. Zappala stated, the P.U.C. (Public Utilities Commission) is making the contract negotiations with _____ company on the power plant and I would like this proposal to be part of the negotiations of the contract; that we would hire someone we choose, qualified to give us the correct value of the plant, instead of them providing the information to us. If you remember, when they were presenting this project to us they told us how much we could get in revenues from this project.

Mayor Dickinson stated, you mean the developer; we absolutely would be looking to verify all key figures and projections utilized by the developer in constructing the project and developing the property....all of that we would want to be sure that what we were being told was correct. I don't have any problem with that. Right now, we are going to have a report regarding hiring an attorney but we don't even have a contract to give the attorney at this point. The developer is supposed to get us one; we don't have it yet. Once we have that and as the information must be evaluated, the experts necessary to evaluate it will have to be hired and provide us with information. I fully agree with you, there. I just don't think right now we are in a position to hire an appraiser.

Mr. Zappala agreed to wait until the project comes to be. He stated, it should be the wish of this Council that when it does come, we will hire the expertise necessary to provide us the information. It was not too long ago that Tom Myers (Comptroller) hired an expert to appraise the new wing of the Bristol Myers Squibb building because we were not qualified to do so ourselves.

Mr. Farrell agreed with Mr. Zappala stating, although it may be a little premature, it is not a bad idea to signal the Council's intentions to the P.U.C. and to the Mayor that the Council does need some hard figures on this so that it does not get too far down the pipeline before some of these key

Questions get answered. It may be a symbolic vote but it puts everyone on notice that this is something that we want done at the appropriate time.

Mayor Dickinson reminded everyone that an appraiser appraises the detailed or constructed entity and then tells what he or she thinks it is worth and we have to have at least a complete specification of what equipment and improvements will be made on the property before anyone could appraise it. With that understanding I don't have any problem with it.

Mr. Centner asked if the motion will be clarified with any time/date or will it just be left open?

Mr. Parisi stated, there is an intent there; we are all in agreement.

Mr. Centner asked, is this a motion in the form of a recommendation then? Is that what this is?

Mr. Parisi stated, he is echoing the feelings of the Council, in general. Is there anyone who disagrees?

Mr. Centner stated, in order for me to vote on this, I would like it to be worded as a recommendation. Is it either a recommendation or a date.....

Mr. Parisi stated, you can vote on it if you want to, it doesn't carry any more water voted on than it does if it is not voted on. But if your pleasure is to vote on it, I don't have a problem voting on it. Is there a motion made and seconded to make a recommendation?

Mr. Zappala answered, yes.

Robert Sheehan, 11 Cooper Avenue stated, at your meeting two weeks ago you created a job as an appraiser. I am all for getting the best people for the best job but if we are filling a position within the town and it is a new position and it seems to coincide with this, we are going to be pretty close to that, maybe our qualifications for the job can be raised a little bit. In the Assessor's Office we had a gentleman in there who basically took care of all of Bristol Myers' additions, etc. and assessed a value to them. He is no longer an employee. Somewhere out there we should be able to hire someone who could do this in-house, not just for this project but for other projects to come. When you hire someone else, it is an expenditure of Town money; it is a good expenditure sometimes but I think we are still paying for people in the Assessor's Office, correct? Since June we have had outside help, temporary individuals, more or less in charge and doing the work in the Assessor's Office. Are those people still there?

Thomas Myers, Comptroller, answered, yes, on a part time basis.

Sheehan asked, have we filled any of those positions?

Mr. Myers answered, no, we are in the process of advertising and filling (them).

Mr. Sheehan asked, are we advertising the new position that was created two weeks ago at the meeting here?

Mr. Myers answered, the job that was discussed two weeks ago was an existing position; it was one of the two positions that is vacant. The Personnel Director and I re-worked the job description because we did not feel that the job description, in a lot of the cases, accurately described what the duties for that particular position, Property Appraiser, were so we updated the job description and that is what the Council voted on; an updated job description for an existing job description. That position is vacant and it has just gone out for advertisement.

Mr. Rys pointed out, like attorneys and doctors, there are specialized areas appraisers work in. The appraiser that works for the town most likely does not have the expertise in power plants or other areas and that is why we sometimes have to go out and hire a specialist. I would consider this a specialist position.

Mr. Sheehan replied, I agree with that but we had an individual who took care of Bristol Myers. When it comes to taxes, I seriously doubt this generating facility will come anywhere close to generating the taxes that Bristol Myers does to this town; that was done in-house.

Mr. Rys asked the Town Attorney, didn't we hire a specialist for Bristol Myers?

Attorney Janis M. Small responded, yes. The type of analysis that the Council is likely to want in terms of this proposal is beyond determining the value of the real estate. It is going to be a consulting firm who analyzes all of the numbers and does an analysis as to whether or not overall it is a good financial deal for the town. The expertise is beyond an assessment or real estate appraisal; it is an analysis of the deal, itself and there are consulting firms out there that analyze all of the numbers and tell you whether the numbers make sense. That is the type of analysis you want before making a decision. If we need to do an analysis of the value of the real estate, itself, it is possible that the expert I have in Bristol Myers has done some similar work; I can ask him but there are people out there. We are talking about going well beyond the value of the real estate in terms of getting advertise assistance.

Mr. Lube stated that he wanted to speak in support of comments made by Mr. Zappala, Mr. Farrell and Attorney Small as well. To include in Mr. Zappala's motion the word "appraiser" is somewhat misleading and not intended. A financial consulting firm is far more apropos. It will probably be a

major accounting firm that would have the expertise necessary to fulfill what your needs are going to be. You are dealing with Stone & Webster who are real pros and God knows, in this area we are real amateurs. You are going to need all of the professional advice you can get and the cost is irrelevant. There are so many multi-millions of dollars involved. The request by the Town Attorney, Item #14 on the agenda, is related to this. To take this one step further, however, you need a financial consultant, you need a financial analyst, you need legal advice but you also need environmental advice. An environmental engineer is going to be needed because most of the public opposition is at that particular area and that is where you should have yourselves on a firm foundation by having a recommendation from an environmental engineer telling you exactly what is really going to transpire, not what Stone & Webster tells us or what we think is going to happen.

Mr. Parisi stated, I can assure you that we will seek all the special and qualified guidance that we think we need.

Pasquale Melillo, 15 Haller Place, Yalesville stated, Mr. Zappala should be commended for bringing this up, putting it on the agenda and encouraging everyone to get in on this. Too often, decisions are made after the fact and many times the various departments and agencies of the Town do not use the proper foresight the way they should.

Mr. Melillo next questioned the term of the exclusive three month contract the P.U.C. had with Stone & Webster. Has the term expired?

Mr. Parisi stated, the contract has been extended. It was covered at the last meeting.

Mr. Melillo stated that he would like to see as much competition encouraged in the area as possible.

VOTE: All ayes; motion duly carried.

ITEM #8 Discussion Regarding Renovations to Community Pool Bathhouse as Requested by Councilor Stephen W. Knight

Mr. Knight stated, the purpose for introducing this item was, during the public hearing when the money for the pool construction was voted upon there was considerable discussion regarding the condition of the bathhouse and what it was going to become of the bathhouse in the project. At the time there was a motion made to adjust the.....there was a considerable amount of discussion with regards to the bathhouse; how extensive the renovations might be. As a member of the original committee, I am aware that the bathhouse was a sore point with many of the people who answered our survey. I thought it would be illuminating to the Council and also help with the direction of the final steps of the construction if we had discussion with regard to the bathhouse. A number of

25,000 or \$250,000 was thrown up somewhere, somehow without any detail attached to it ...atsoever having to do with this bathhouse. I was pleased to have the opportunity to accompany John Thompson (Town Engineer) and Tom Dooley (Director of Parks & Recreation) to the bathhouse a couple of weeks ago. Subsequently, we also met to review the plans for what work is going to be done at the bathhouse and to see if most of it that was going to be done in the original project was adequate. At this time I would like to turn the discussion over to Henry and Tom to hear what is going to be done and what is recommended.

Mr. Dooley explained, the \$225,000 figure was given to him by TLB (contractor) for an expanded bathhouse and complete renovation of the inside so that the bathhouse would come up to a State certifiable standard to meet the bather load which Community Pool would be able to handle when it is opened. That figure is for a full blown out renovation expanding the size of the building. Presently, as it is, TLB is going to fix the walls, floors (which are currently in disrepair) and essentially clean up the bathhouse to make it aesthetically pleasing. They are not going attempt to do the ceiling or the lighting of the facility or the side windows that are up on top of the walls. Upon review of the bathhouse Mr. McCully felt that his crew (Public Works) could take care of most of the work and bring it up to a very acceptable standard by the opening of this year; painting, cleaning, masonry work and, at some point new lighting, clean up the floor and make it very acceptable.

Mr. McCully stated, just to clarify, there was no exterior work included in the bid for the bathhouse. There is a gutter that needs to be repaired; I have taken my maintenance people down there; we have taken a look at it. We are not looking at a real lot of work here that could be accomplished over the winter and I discussed the situation with the contractor. We will do some minor modifications that are not included in the bid and when they go to do the final painting, it will all be painted together. I also feel that the bathhouse will be clean, it will be very acceptable for opening day and it will also give, rather than pump lots of money into that, it would give Mr. Dooley an opportunity to evaluate how the current bathhouse performs with the expected crowds that are going to be coming to the new pool. It will be clean, we will have a newly painted pool and it will be very acceptable for its purpose next year.

Mr. Knight continued, I would like to, for the public's information in the event that it wasn't real clear, Community Pool is exempt from almost all State standards because of a special act that was passed by the State Legislature several years ago. With regards to meeting State standards, the fact is, we don't have to meet State Standards so that is the reason the bathhouse renovations, such as it is, can be scaled back as extensively as it is intended to be. What work, if any, needs to be done; I assuming and would like to think that all this work can be accomplished by the time the pool is reduled to open. Is that a realistic assessment?

McCully answered, repairs to the existing gutters; there is the unsightly louvers, secondary louvers at the shower areas....they have 2 X 4's that have been put up there many years ago to stop vandals from crawling in. I propose to remove that; about a twenty foot long area by two feet high; remove that and put in a couple of Lexan windows and an exhaust fan on both the Girls side and Boys side. By having the exhaust fan we can dress up.....it almost like double situations that you have in their that go into the attic. It is simply to dress it up. We are not going to be putting in any new ceilings, they are being painted under the contract. Some pricing will be obtained for fluorescent lighting; the wiring is there the amperage needs to be checked in the breaker panel box. There is minimal painting that can be done on the outside, clean up the bricks, etc. I do not think it is a real big problem for me.

Mr. Knight stated, the item was brought here so that we all understood where we were heading with regard to this particular component of the new renovation of Community Pool. I am pretty satisfied that we are going to address what was a major problem with the pool; has been a major problem with the pool over the past ten years. In discussions I have had with Tom Dooley and Mr. Parisi as well, it would seem that maintaining the bathhouse in this condition, the condition it's turned over to the Parks & Recreation Department in June, if we maintain it in such a condition will eliminate a major tackle to a lot of participation and its activities.

Mr. Zappala stated, if I remember, the Friends of Community Pool (Committee) felt that the bathhouse was not that bad, it just needed to be cleaned up quite a bit and would be suitable for what we wanted to use it for unless the crowd gets really big and we may have to expand it. I am glad that it is going to be taken care of.

Mr. Dooley stated, Mr. McCully and I have discussed the hiring of a custodial crew to go in during the course daily to make sure it is clean. We used to have high school and college kids cleaning on a somewhat sporadic and intermittent basis but I think by putting the service out to bid it will make a big difference.

Mr. Zappala asked, wasn't doing the inside of the bathhouse part of the bid?

Mr. Dooley answered, yes, parts of it. That will be taken care of this winter.

Mr. Zappala stated, if we have to do anything else in the future (to the bathhouse) that will be in addition to what we already decided we were going to do.

Mr. Dooley stated, if we make a decision beyond what was done this year, it will be a capital expenditure.

Zandri stated, one of the things that Mr. Knight mentioned is that Wallingford is exempt from meeting State regulations regarding anything associated with this pool project. My question is, does the existing bathhouse meet the State requirements for the size of the pool that we are planning on completing?

Mr. Dooley answered, no, it does not. It will meet A.D.A. (American with Disabilities Act) requirements but not the State mandate with regards to the size of the pool and the bather load.

Mr. Zandri stated, that is one of the reasons why I brought this item up when we first discussed this a few months back. Here we are spending almost \$2 million to attract more people to utilize this facility in the Town and I think we are being very short-sighted by not putting the additional dollars in to make what I feel is one of the most important components of the pool, the bathhouse, for the residents of this community. I thought one of the reasons why Mr. Knight was putting this item on the agenda tonight was to actually make that recommendation at this point in time. I am very disappointed that we are not being pro-active as far as moving on this bathhouse. I think that what will happen is, we will open this pool next year, it is going to attract a lot of people and they are going to be disappointed with the bathhouse that we are introducing this pool with. It is too bad that we could not have done this right from the beginning.

Mr. Renda asked, is the bathhouse to be expanded?

Mr. Dooley answered, no.

Mr. Renda stated, I live a few doors down from the pool but was never an active swimmer. I am not afraid to admit that I don't know how to swim. My wife made an attempt years ago to teach me. How many bathrooms are in the facility?

MR. Dooley answered, you have four private stalls in the Women's facility and three private stalls and two urinals in the Men's facility.

Mr. Renda asked, that will meet the demand once that pool is open?

Mr. Dooley answered, I don't know what the demand is going to be. It has served us well in the past...

Renda stated, I don't know if you are going to have a concession stand but people are in the habit of bringing in juices and such. Once the kids get active it is a constant.....once one starts it sets off a chain reaction and we have to be able to handle that.

Dooley stated, I believe it will be fine.

Mr. Centner stated, I do remember the situation when we discussed it and we actually voted this renovation to start. The bathhouse was, indeed, a critical part of the discussion however, I am just making my statement clear and I am going to hold that position; I prefer that we embark the way it is discussed tonight; clean it up, go forward with it and see what kind of a turn out that we have and if it turns out to be an impediment to the flow and the use of the facility then we will improve and expand in the following budget year. The vote was not unanimous but it carried and I am going to keep with that position until I know otherwise.

Wes Lubees , 15 Montowese Trail asked, is this the original bathhouse?

Mr. Dooley answered, I don't know.

Ms. Papale answered, yes.

Mr. Lubees pointed out that the pool was donated to the Town by a service organization and they probably did not have a lot of money to spend but they put a bathhouse in which was supposedly adequate for that time which was how long ago?

Mr. Dooley answered, thirty-five years.

Side comments corrected the age of the facility to be forty to forty-five years of age.

Mr. Parisi stated, the object is, if you go down and look at it now it is a construction site. What we determine tonight is that it is going to be cleaned up and made presentable and acceptable. I think that is where we are and let's leave it that way.

Mr. Lubees responded, I don't want to.

Mr. Parisi responded, that's O.K. if you don't want to but that is what we are going to do.

Mr. Lubees asked, has anyone drawn up a bill of particulars as to where our present facility deviates from the State standards?

Dooley answered, no sir, we have not.

Mr. Lubees asked, wouldn't that be worthwhile looking at?

Mr. Dooley stated, going through this process it was determined that since our pool was "grandfathered" and we were not going to be State certified, that we were not going to move our bathhouse in a direction to accommodate bather load. The reason we are not in the proper numbers as determined by the State is, the physical size of our pool can accommodate a maximum number of people. Given the fact that if the pool were to receive that number of people on any given day, according to State numbers, our bathhouse, according to them, would not be able to handle that load comfortably. We have never even come close to reaching the maximum number accorded us by the State on any date that I have been here over the past sixteen years.

Mr. Lube stated, if it turns out that the present facility falls short of what demands dictate, when you come back before the Council, it may be constructive to be able to look at and examine what the State would recommend, in relative to what we have.

Pasquale Melillo, 15 Haller Place, Yalesville asked, what is the worst that can happen if the State says that the bathhouse is too small?

Knight explained that the Special Act of the State Legislature exempts the pool from State regulations. In order for the State to "clamp down" on Wallingford, they would have to repeal the legislative act.; that is how exempt the pool is. It is exempt to conforming to all of the design standards set forth in the CT. Public Swimming Pool Design Guide except for the water filtration system and the State is fit to be tied.

Mr. Melillo asked, can we be sure that the State cannot shut down this bathhouse?

Mr. Knight stated, the question should be asked of the State legislators who had the Special Act passed.

Mr. Melillo stated, if the State claims that the bathhouse is not big enough....you claimed that they could shut us down....

Mr. Zandri stated, I did not say that. What I said was, the Town is exempt from the State rules. My question was, does the existing bathhouse accommodate or meet those rules for what we would need for a bathhouse for this size of this pool and the answer was, no. That is my only concern; that we be opening up this new facility and the bathhouse is going to be inadequate.

Mr. Melillo, asked, doesn't it make a lot of sense that since we are working on this pool in so many ways and it has been closed for quite some time, once it is opened up more people are going to be attending than usual, don't you think it would be the smart thing to go ahead now and make the bathhouse bigger?

Mr. Parisi explained, the opinion we had the last time we voted on this was that we would clean it up and present it and if it warranted it, we would expand it, if it didn't and was sufficient, it would stay the way it was. That was the decision that was made.

Phil Wright, 160 Cedar Street stated, I wish you had never put this on the agenda tonight, Mr. Knight. We have learned absolutely nothing other than the fact that it does not meet the State standards. What have we really learned here? I hope we have learned one thing; I have not heard anyone say it but I assume what ever you are going to do, is within the amount of money that has been approved for this project.

Mr. Parisi stated, that is exactly what we are talking about. You are right.

Mr. Wright stated, I have not heard that mentioned yet.

Mr. Parisi stated, as far as I am concerned, it is understood. Are we understanding that?

Dooley stated, it will be done within the amount of money that has been allotted for this project.

Mr. Wright stated, except that, the one thing that I did hear was, the construction company is going to do one part and Henry (McCully) is going to do the rest. Is that correct?

Mr. McCully stated, we can clean up the lights, paint the ceilings and clean it up and just leave it the way that RAC (construction company) leaves it and that would be it; it would be done under the amount. We are simply going to do some minor things that were not included in the contract.

Mr. Wright asked, why, in God's world, do you guys (Public Works) always have to get your hands in everything that we send out to contract? Why can't we just do it; hire somebody, give them specifications and let them come in and do it instead of Public Works getting their paws on it?

Mr. McCully replied, since it was not included in the contract and we have a very small contingency on this project and we would like to get it through, we prefer not to come before this Council for any more money. It is a minor item and Public Works forces are very capable of doing this additional work. We are not talking about a lot of work here. I don't know how else....we are using Town forces to benefit the people of Wallingford.

Mr. Wright replied, Town forces don't come for nothing.

Mr. McCully answered, they come a lot cheaper than the contractor would.

Mr. Wright stated, I am not so sure. By the time you get all finished, if you let out a real solid contract that you couldn't get it done cheaper by going outside. I am not convinced.

Robert Sheehan, 11 Cooper Avenue asked, is this a separate contract from the original contract?

Mr. Parisi answered, no.

Mr. Sheehan stated, then evidently, it is not going to cost that great an amount of money because you did not have to waive the bid, it must be under \$2,000.

Mr. Parisi stated, it is just a minor, enhancement that will take care of it nicely.

Vincent Avallone, 1 Ashford Court stated, to follow along the line of what the State standards are that concerns me a little bit, are there any kind of standards that might dictate how many urinals there have to be? I would be concerned that there would not be enough.....

Parisi answered, it doesn't mean totally oblivious to any control; there has to be a sanitary....

Mr. Dooley explained, it has to do with maximum bather number that the facility can hold.

Mr. Avallone asked, is that the physical size or.....

Mr. Dooley answered, physical size.

Mr. Avallone asked, do they determine, if there is going to be 1,000 people then you have to have twenty urinals, etc.?

Mr. Dooley answered, I don't know what the maximum number is that has been determined for this new pool. It used to be 750 for the old Community Pool. Based upon that number there is a certain number of urinals and facilities that have to be available within the bathhouse.

Mr. Avallone asked, does it meet those standards?

Dooley answered, no, it doesn't.

Mr. Avallone stated, we need to get specific. You can't just say it doesn't meet State standards.

Mr. Dooley explained, the bather load is going to be reduced with the new pool.

Mr. Avallone stated, if a certain number of people can use this facility and if the maximum number of people do use it, I sure would hate like heck to have people go there and one of the standards that this bathhouse doesn't meet is, there aren't enough urinals. It doesn't take a rocket scientist to figure out that if there aren't enough urinals and people have to go, where young kids might be going. I think that is an important standard that you should consider.

Mr. Knight replied, with regard to what you are talking about, the standard that the State sets is a ration of the square footage of the pool to the number....and the figure of how many bathers per square foot the pool, itself, can accommodate. Community Pool has not come within ten percent in that number in the last twenty years. What is a little misleading and I certainly don't want to appear to be blasé to a reasonable health standard but the fact is that the standard that is outlined for the bathhouse specifications in the CT. Public Swimming Pool Design Guide has to do with the gross size of the pool. The fact is that Community Pool is probably, with maybe one or two exceptions, the largest public pool in the State of Connecticut. It is out-sized. It is so out-sized that some of the standards, which is why the legislators were comfortable about having a special act passed, is because of the size of the pool and that so many of the specifications are drawn up as a ratio to the size of the pool, that they were comfortable in getting Wallingford's particular situation under a special Act. I don't think it was anyone's intent to try to deviate from reasonable health standards but the fact is, we have this gigantic pool and I do feel that we probably will have adequate urinals and other facilities for the load that we get. We still will not fill that pool.

Mr. Avallone stated, you feel the estimates of the people that you feel will be using that pool, the numbers match up with what State standards are for urinals or stalls or what ever? It would meet State standards for the number of people that you are estimating? Is that correct?

Mr. Knight answered, my estimates in terms of State standards, do I think.....yes, I do, I think that is a reasonable assumption on my part that we have an out-sized facility and bathhouse that had served it for forty years plus.....

Mr. Avallone stated, I am not on the committee and I am not going to vote on this, I would like to know that the people who are going to vote on this issue considered at least that one fact. This is the first time I have commented on this whole Community Pool thing. It is the first thing that came to mind when you said it doesn't meet State standards; health certainly comes into mind. I would hope that you considered that.

At this time Mr. Parisi announced that he was convening the Public Hearing on the \$85,000 Fox Run Drive Water Line Project Appropriation and Bond Ordinance and the Fox Run Drive Water Line Assessment Ordinance. The Ordinances which are the subject of the public hearing are available to the public and may be obtained at this meeting from the Town Clerk.

ITEM #10 To Conduct a PUBLIC HEARING, Consider and Act on the Following Proposed Ordinance:

An Ordinance Appropriating \$85,000 to Extend Water Lines to the Fox Run Drive Area and Authorizing the Issue of \$85,000 Bonds of the Town to Meet Said Appropriation and Pending the Issuance Thereof the Making of Temporary Borrowings for Such Purpose - 8:00 P.M.

Motion was made by Mr. Rys to Read the Title and Section 1 of the Proposed \$85,000 Fox Run Drive Water Line Project Appropriation and Bond Ordinance in Their Entirety and To Waive the Reading of the Remainder of the Ordinance and Incorporate its Full Text Into this Meeting, seconded by Mr. Farrell.

VOTE: All ayes; motion duly carried.

Mr. Rys read the Title and Section 1 in their entirety into the record at this time (Appendix II).

Robert Sheehan, 11 Cooper Avenue asked, what is the assessment part of this? What is the dollar figure?

Mayor Dickinson answered, the amount of the appropriation is \$85,000. The portion of the assessment is not exactly known at this point but would be somewhat approximated by the dollar figure; \$85,000. The actual assessment won't be known until the project is complete.

Roger Dann, General Manager of the Water & Sewer Division stated, the proposed ordinance includes portions of work that is assessable and portions that are not assessable. Based upon the assessable portion of work, the estimate we have communicated to the residents who are involved in this is approximately \$4,400 and is subject to change upwards or downwards, based upon the final project costs.

Mr. Sheehan stated, I don't see why the \$85,000 bond issue for this amount of money doesn't just come out of the general fund or capital and non-recurring budget. At the start of this fiscal year, within six weeks of it, the Board of Education alone made budget amendments in excess of \$200,000 and that came right out of their pocket. Now you are going to tell me, "along the way we probably won't bond the whole thing and we probably won't bond it period" If we are not going to do that, let's do it up front and take \$85,000., set up an account titled, "Fox Run Water Project" put the \$85,000 in there and when the bill comes due, pay it.

Wayne Lefebvre, 8 Fox Run Drive stated, my fellow residents of Fox Run Drive and I petitioned the Public Utilities Commission for two compelling reasons to have town-supplied water brought to us.

It was the potability problems our neighbors have experienced; it is something that comes and goes at various levels and the value of our property is becoming less due to the public knowledge of the potability problems. We would appreciate your support and the bonding issue.

Mr. Centner asked Mr. Dann, we spoke earlier of this project and that it would just require extending the water trunk up to the nearest intersection; do you have a dollar figure on that now? I forgot how many feet it was and you had mentioned that the division would cover that cost.

Mr. Dann answered, the total project footage is estimated to be 900 feet. Of that 165 feet is pipe which we are installing in order to bring the main out to the intersection of West Dayton Hill Road and extends beyond what is extremely necessary under our rules and regulations in order to provide service to all of the properties involved in this project.

Mr. Centner asked, is there a rough dollar figure on that?

Mr. Dann replied, if I can break down the \$85,000 ordinance into assessable and non-assessable pieces that might help give the answer you are looking for; the assessable cost within that would be \$1,400.; the non-assessable portion being \$23,600. Those numbers include contingency amounts which I hope we won't need, therefore the overall value of the assessable as well as our own cost would be somewhat lower than that.

Mr. Zandri stated that he would like to make a motion to amend the ordinance in Section 3, paragraph A, where the assessment presently reads, "100% of the cost of the project to be paid by the residents". I would like to modify that to read, "75% paid by the residents and 25% paid by the Water Division", seconded by Ms. Papale.

Mr. Parisi stated, we are not there yet. We have to finish this phase first then you can do that.

Mr. Parisi declared the public hearing on the Fox Run Drive Water Line Funding Ordinance closed.

Mr. Parisi stated, we will now begin the public hearing on the Fox Run Drive Water Line Assessment Ordinance.

ITEM #9 To Conduct a PUBLIC HEARING, Consider and Act on the Following Proposed Ordinance:

An Ordinance Establishing Assessments for the Fox Run Drive Water Line Extension Project

At this time Mr. Rys read the Assessment Ordinance into the record (Appendix III).

Bonding Attorney Joseph Fasi stated, there were two assessment ordinances that were provided; there was a revision to the assessment ordinance that was sent at a later time and I believe you read the prior version and there was a change to the actual assessment ordinance that is before you in Section 3, A. Section 3, A., should read, "the total amount of all assessments including the assessments on Town land and assessments whether or not deferred shall be equal to 100% of the cost of the project." That did not change. The language, "100% of the cost of the project" means administrative costs and all costs paid to plan, construct and issue debt to finance the project including temporary service, if installed. And here is the part that changed, "minus the cost of any water main installed in excess of the footage required to provide service to the individual properties pursuant to the rules and regulations of the Water Division."

There was some confusion since the entire Council did not have a revised ordinance (dated 12/3/98).

Atty. Fasi stated that the revised ordinance was mailed to all parties just as the original one was and included a cover letter that instructed that the original document should be disposed of.

Centner asked that the revised section be read into the record once again.

Atty. Fasi complied with Mr. Centner's request.

Mr. Parisi stated that he had a revised ordinance.

Atty. Fasi stated, the second package of documents were sent out December 3rd. It may be that the recipients...maybe your package was sent out earlier and you did not receive a second package, I don't know.

Mr. Parisi called for public comments on establishing the assessment ordinance.

Phil Wright, Sr., 160 Cedar Street asked, how can you vote on something like this? If you don't have it in front of you it is not a legal document. You should not vote on it.

Mr. Parisi explained, there were four lines that were changed, otherwise it is pretty much in context. We would not do anything if it was wrong.

Zandri made a motion to Amend the Ordinance in the sections where it requires the residents to pay 100% of the assessment to read, "the residents to pay 75% of the assessment and 25% to be paid by the Water Division, seconded by Ms. Papale.

Atty. Fasi stated, the motion is fine but let's get a motion to adopt the ordinance on the table first before we do that.

Mr. Farrell moved the ordinance, seconded by Mr. Centner.

Mr. Parisi called the public hearing closed at this time.

Motion was made by Mr. Farrell to Move the Ordinance Appropriating \$85,000 to Extend Water Lines to the Fox Run Drive Area and Authorizing the Issue of \$85,000 Bonds of the Town to Meet Said Appropriation and Pending the Issuance Thereof the Making of Temporary Borrowings for Such Purpose, seconded Mr. Centner.

Mr. Zandri stated, this is getting more confusing. Are we on the Assessment Ordinance or the Funding Ordinance?

Mr. Parisi responded, the Assessment Ordinance; no, the Funding Ordinance, the Assessment Ordinance. I am confused.

Atty. Fasi stated, the Assessment Ordinance is the ordinance that has been moved in chief. The amendment is in order.

For clarification, Mr. Zandri's amendment applies to all sections of the Assessment Ordinance which lists the percentage the residents will pay towards the cost of the project.

Atty. Small stated, this is the same ordinance as the Seiter Hill Ordinance and under the State Statute unless the 25% represents Town use of the water line, it violates the State Statute to attribute that cost to the Town. The Statute provides for 100% unless the Town actually uses a percentage of it. Unless the 25% reflects the Town's usage, you cannot pass the amendment.

Mr. Zandri stated, I won't get into a debate on this but I disagree with counsel.

Mr. Parisi stated, I understand your disagreement, I can't rule.....I have to have a vote on it.

Mr. Centner stated, although on earlier programs I favored a Town contribution where I felt the Water Division was getting some value, in the call out here on this particular one where they are going to subtract out the value of the entire pipe and what it cost to install it, that leaves, therefore, just the residents receiving water and I don't see the division getting any other value out of it therefore I will not vote in favor of this amendment.

Robert Sheehan, 11 Cooper Avenue stated, I am very confused. You had an ordinance which you read on and it was seconded appropriating \$85,000. You did not vote on that. Now you are taking Mr. Zandri's amendment to the assessment ordinance which is entirely different. How can you discuss two ordinances and then vote on one? There is a motion on the floor isn't there for the \$85,000 ordinance and that motion was seconded. It requires a vote before you do anything else.

Atty. Fasi stated, these are two related ordinances. It is very appropriate to have a public hearing on both ordinances, one after another, and then to bring it back to the Council and then have the Council vote on it and that is what we are doing. In this point in time the public hearings are both closed. There is only one ordinance that has been moved and seconded and that is the Assessment Ordinance and that is what we are voting on now. After that you can vote on the Funding Ordinance.

Mr. Sheehan stated, I don't mean any disrespect toward the bonding attorney but every time there is an ordinance, it is very confusing and he gets up and he tells you (Council) what motion to make. Somewhere along the line that should be taken care of before it gets to this junction because he works the Town and I am a citizen and I can't get up and say to you, "I think you should make the motion.....and you say, fine" Sitting out here it gets very confusing. It is happening all the time and I am getting a little tired of it. If you have to vote an extra vote, fine, so what's the big deal?

Mr. Parisi stated, Mr. Sheehan, I have to agree with you and I apologize that this is so confusing. It has been confusing for me, too, and I will be the first one to admit...I want to say though that we have been trying to get onto some set procedure that takes care of this over a fax machine and Mr. Fasi has worked very diligently at it but we just can't.....the way we discussed is the way we will do it next time.

Mr. Farrell stated, a while back I was one of the people who stated that Attorney Fasi should be in attendance when one of these ordinances were before us. There is a service in having him here; we don't want the selling of our bonds down the road to be loused up by some technical defect.

VOTE ON AMENDMENT: Papale, Zandri and Zappala, aye; all others, no; motion failed.

VOTE ON ASSESSMENT ORDINANCE: All ayes; motion duly carried.

Motion was made by Mr. Farrell to Move the Funding Ordinance as Presented, seconded by Mr. Centner.

VOTE: All ayes; motion duly carried.

ITEM #11 Consider and Approve a Transfer of Funds in the Amount of \$30,000 from General Purposes Acct. #001-8050-800-3190 to Professional Services Acct. #001-1320-901-9003 - Town Attorney

Motion was made by Mr. Rys, seconded by Mr. Farrell.

This request is being made to not only fund the completion of environmental testing on the Cooke properties in the amount of \$15,000 but to also meet the other demands of the office with regards to appraisal services.

Mr. Farrell asked, is all of the recent movement on the part of the Town to purchase open space the reason for the drain on this account?

Atty. Small responded that is the key component of why the funds are being depleted.

Farrell asked, this account gets used to do our due diligence on a lot of the investigation of the properties; hire professionals, give us background materials so that we can make a legitimate decision?

Atty. Small answered, that is correct. This is the primary account I take the money out of.

VOTE: Centner and Knight were absent; all others, aye; motion duly carried.

ITEM #12 Presentation by the Town Attorney Regarding the Settlement of Pending Garden Road Litigation

Town Attorney Janis M. Small introduced Attorney Kenneth Mulvey, the attorney hired to represent the town in litigation pending in Superior Court since 1993 regarding this matter.

At this time Attorney Small outlined a proposed "total package" settlement which includes a buy-out under the State program. It encompasses the total package and not just the settlement of the particular litigation. She stated, you may recall that there are certain property owners who are not of the litigation but those numbers for the purchase of their properties are contained in my memo which outlines all the numbers. In June of 1992, the flooding occurred on Garden Road. Many homes were flooded and upon investigation it was determined that the benchmark used to determine the base flood level ratio was not correct. That flood elevation had been marked by FEMA (Federal Emergency Management Agency). The Garden Road subdivision was approved and that incorrect benchmark was used in the approval process. After the flooding of 1992 the Town and State entered into negotiations with the property owners for the purchase of their homes. There is a State buyout

program which provides for the purchase of the properties and the State participates in the total cost of that by paying one-third of the cost. At the time those negotiations were ongoing the litigation was started and the negotiations failed at that time, partially because the Town and State wanted 100% participation and there wasn't at that time 100% consent of all the property owners on Garden Road. Litigation proceeded over the course of the years; allegations were brought that the Town acted negligently in approving the subdivision particularly in light of the history of flooding known to have occurred in that area. The case has been pre-tried by four different judges over the course of the past year or so. A substantial amount of time has been spent with several of these judges. In the process of those discussions, each judge believes the best alternative was for the buyout to be implemented. At that time the plaintiffs indicated their willingness to proceed with the buyout program. I contacted the State, the State was still willing to proceed with the buyout program and eventually I contacted those persons who owned property on Garden Road but are not part of the litigation and they are also in favor of the buyout program. The buyout program provides for the purchase of the homes at fair market value. As part of the process the properties have been appraised and the numbers are reflected in this memo. Those appraisals have been forwarded to the State and are under review by the State at this time and at this point in time the State is also in the process of drafting agreements for Town and State to enter into and I believe the property owners which will be forwarded to us for review. The program provides, in addition to the payment for fair market value, the program provides for the payment of moving expenses and what the State refers to as a mortgage differential. The mortgage differential is....the program provides that if the homeowner purchases another home which is similar to the home they currently have and the new home provides for a higher interest rate then they are entitled to a mortgage differential under this specific program. The combination of the moving expenses and the mortgage differential reach a maximum potential payment to each homeowner of \$22,500. We would hope that the interest will stay the way they are through this program then we would not expect that to be a major factor but it is factored into these numbers that are presented to you. The State will also reimburse one-third of that cost also and if the Town were to decide to demolish the homes after purchasing them, the State will participate in one-third of that cost and that cost at this time is estimated to be \$170,000. The way the State program works is, once the Town approval is in place and the State Bond Commission acts on this approving it, it then goes to the Attorney General who, in turns, signs off on all agreements and then the program can proceed. The State program requires that the Town front 100% of the cost and then be reimbursed. We can be reimbursed on a monthly basis if we choose; we can submit the actual bills to the State and they will reimburse us as we go along if we choose to do it that way. It is expected that the State Bonding Commission will probably act on this in February. It is possible that they could do it by the end of January. I think that is very optimistic but it is still a potential possibility. The memo I forwarded to you outlines the dollars, the purchase of all eighteen properties at fair market value of \$1,947,000., the maximum potential on the moving and mortgage differential totals \$270,000., estimated demolition costs of \$170,000. which totals the buyout portion of the program at \$2,387,000., the Town's share being \$1,591,413. and the State's share being \$795,587. With respect to the litigation,

payment for personal property damages and other damages totaling \$262,000 of which the Town's insurance carrier is paying \$175,000. This brings the total payment between the buyout and the litigation on the Town's responsibility to \$1,678,413. This agreement would be subject to the Town's passage of the bond ordinance and if there were a referendum, to the outcome of that referendum. It is also subject to the State Bond Commission approval. If either of the approvals fail, the agreement becomes null and void. It is my understanding that if an item gets on a State Bond Commission's agenda, that means it has been approved. If you are not going to be approved, you will not make it to the agenda.

Up until this point in time I have not been given any reason to believe that the State is not willing to go forward and approve the project. I checked within the past week to make sure everything was moving and I was told that it was. The homeowners had an interest in remaining in the properties subsequent to the Town's purchase of the properties, enabling them to have some time to find another place to live and to raise funds in order to do so. As part of the agreement we would anticipate that the closing would happen in the Spring. If the closing were to take place prior to June 15th, then the property owners would be permitted to remain in their homes until October 31st of next year. All risk of loss while they remain in the property would be on those homeowners and not at the Town's risk. The closings do not occur by June 15th, then we would agree to re-negotiate the time for them to get to give them additional time that they may need in order to make everything work in terms of them being able to find another place and move out. Once the approvals are all in place, if that happens February or March, I think at that point in time people would be safe in starting to look for something else. Until they know that the Town's and State's approval is in place, I think it would be premature for them to be looking at this point in time.

Atty. Kenneth Mulvey stated, from a liability point of view I won't address the damages other than to say that this contingency cost related to moving the mortgage interest expense that may rise, that the State mandates that you have as part of the program, I received correspondence from the plaintiff's lawyer today and although you have to be aware and vote that we are taking into consideration the maximum exposure of \$270,000, he believes, in reality, it may only be in the range of only some \$30,000 or so. Most if not all of his clients won't qualify for most of that because interest rates are somewhat lower today than they were back when these homes were purchased so there is no differential involved. It also involves moving into homes that are similar like kind. Many of these people who have lived there over these past five or six years have had some children and may wish to move to something with one room more than what they have; it is not similar like kind so they may not qualify for that. The number that actually has to be expended on that may be far lower than the minimum number we are giving you. We want you to be on notice of that. As to the liability aspect of this case, it is an extremely complicated litigation that has been ongoing for a number of years involving a great number of parties both as plaintiffs and defendants. The issue as to the Town is certainly one of exposure as to what the Town's exposure could be in this claim and as to the future because there is always a potential future risk that this flooding event can occur again. It has

occurred since 1992; it occurred again in 1996 and there was almost a third event back in the Spring of this year, 1998. There is always a risk of future incidents of further personal property damage, damage to the structures and the risk of personal injury could occur in any one of those homes or in the properties either by way of the waters, themselves or even electrocution where water comes in contact with sockets and somebody unfortunately comes in contact with them. There are a number of issues of exposure and that is what it is to the Town. The settlement of this case removes those issues; removes the Town's upward exposure and it is also a means by which the State will participate in the resolution of the case, allowing the case to proceed to trial where we have the potential that a verdict could be rendered against the Town. If a verdict is rendered against the Town it will call upon the Town to pay monies in settlement of that and that won't change the situation on Garden Road. The situation will remain in place. There were other suggestions of alternatives, dikes was one of them that really didn't fit or work with this particular location for a variety of reasons. FEMA was one who, as counsel indicates, was the culprit that started this whole process going by having an incorrect benchmark. From that point people moved by using that benchmark and then a series of events took place over the years during the process of the approval of the subdivision, then the construction of homes on those properties. Certainly, the FEMA benchmark is not a responsibility of the Town, they don't measure it, they don't create it. The problem is that FEMA is a federal agency. It has, by federal law, no legal exposure. The plaintiffs in this case cannot sue them, they cannot collect damages from them, we cannot bring in the US Government as a third party defendant in this case to pay it. Unfortunately the Town, in this instance, and it is an odd set of circumstances that got the Town to this position, it puts them in a position where the Town does become responsible for what someone else did and that would be what FEMA did. This settlement would remove the Town's exposure which could be considerable in this case which is not to say the Town could not win the case but it is a very difficult case in that you will have this case presented to a group of six people as jurors who are not particularly conversant with these matters other than what they learn in the courtroom during the case. They are very complex issues. An overriding factor is that people on juries are people like yourselves and they are not necessarily conversant with these issues but could understand what it is like to come down one morning at 5:00 A.M. and find 3 1/2 feet of water in your living room which is not the fault of these folks (homeowners). Most of the folks who bought these homes are all first time homebuyers into the Town and put together their monies to start out their lives here and now find themselves within a year or year and one half of the purchase with two and three feet of water in their house; water coming in the front door and going out the back and vice versa. This matter has been reviewed at length not only with the Town Council and Mayor but also discussed with a variety of judges who are totally unbiased and independent in their views as well as a special mediator who is a retired federal court magistrate; it was reviewed with him at great length. This would be, by my way of recommendation not just theirs, a very strong resolution of this matter to be considered by the Town to remove its exposure in this litigation as well as any future potential exposures may have and bring this problem to a conclusion for the benefit and safety for the Town and its residents.

Mr. Centner stated, with regards to the process and how we would fund this; it appears as though Council would then approve a bonding ordinance and then we apply for one-third through the State Bonding Commission?

Atty. Small explained, that process is ongoing at this time. It could be stopped at any time. From a timetable, if the bonding ordinance was passed by the Town in January then the State bonding would come shortly thereafter and then contracts would have to be approved.

Mr. Centner asked, is there any certainty that the State Bonding Commission would not recall this bond appropriation? They have the ability to recall bonding and I want to know what assurance we have that we don't put this whole thing together and because of the Patriots stadium requiring an immense amount of Bonding Commission funds that there isn't a chance that they recall funds from bonds placed on other projects around the State. As the Chairman of the Linear Trail Committee, we received \$250,000 Bond Commission money and various State officials have told me to spend that \$250,000 expeditiously so that we could have it reimbursed because there is a risk of recall on that. I would like this package to have assurance that if they say it is a go that it stays a go.

Atty. Small stated, I will talk to the State about that.

Mr. Centner added, as a Town official, my interpretation of our obligation to any type of situation like this is to make the homeowners whole and protect their property from further flood damage, especially this area borne by the river. I would have preferred the option of building a dike to meet the one hundred to two hundred year storm levels and I realize there are still risks involved with failure of a dike down the road or actually a storm that is larger than a one hundred or two hundred year storm, however, all over town we have countless situations where risk is prevalent. The only other reason I favored that avenue is, by value, a dike in that area would also have helped to serve maybe another one hundred homes with increased protection if a two hundred year storm hits. It may also be a less expensive option. Realizing that that (option) is not on the table here, I accept what is in front of me. It is just unfortunate that we were not able to go a little further with that option and maybe further protect other areas in the town.

Mr. Zappala asked, with the negotiations that have taken place to date, whose fault is it? What negotiations have taken place that have resulted in the Town being responsible for the larger portion of the costs? Did we negotiate with the State as far as their portion of payment?

Atty. Small answered, that is just the State's buy-out program. That is the structure of their program. We did, in the past and we are doing it again, approach on a federal level, federal monies for this. We weren't successful the first time around but we are going to try it again and see if there are

additional funds we can get from them. Rosa DeLauro (Congresswoman) was active in this (matter) in the early years and we had no success. We are approaching them all again; I believe the Mayor has already done that to see if we can get federal funds for this.

Mayor Dickinson added, some of the rest of the answer is, some of the other defendants have no assets. The Town of Wallingford is one of the defendants that obviously has assets, we also have the public policy issue of removing people from harm's way. The program for removal has the State involved, not because the State was sued but because the State has a program for buy-out for mitigation and flood circumstances and that is what we are making a part of that is what is the substance of this settlement. The State of Connecticut was not a party in the lawsuit. The defendants in the case were obviously the defendant with the most assets and practically speaking that results in us shouldering most of the monetary burden.

Mr. Zappala stated, in the end we were the one who gave permission to build therefore the responsibility lies with us at the end of the story, so to speak. Did we research to see if we could make FEMA pay anything; more than what they are paying?

Mayor Dickinson explained, FEMA isn't paying anything. We are seeking assistance as Atty. Small indicated from the federal government. A letter has gone out to two U.S. Senators and to Congresswoman Rosa DeLauro's Office highlighting this settlement and our request for our assistance from federal government.

Mr. Zappala asked, so there is still a possibility that the Town may recoup some of its money?

Mayor Dickinson answered, I am hopeful that they will want to assist us given the set of facts and obviously, the public policy issue in question.

Mr. Zandri stated, I want to ask a few questions to make sure I have all my facts straight before I have to vote on this issue. Obviously, it is the attorney's recommendation that the Town settle this lawsuit?

Atty. Mulvey responded, yes it is.

Mr. Zandri asked, are you basing that recommendation solely on the fact that the FEMA maps were wrong?

Atty. Mulvey replied, I am basing that recommendation on the overall status of the case. The FEMA maps are what set the entire process in motion. Once it gets beyond that point which is the lethal point, it becomes a question of fact as to what the Town would have known, what it knew, what it

didn't know, what it did or didn't do and whether that was proper or improper. Once you get to the factual issues such as that, that then becomes a question for the jury, for them to decide what to do or what ever they want to do. It is a compilation of a large, large volume of information but it is the FEMA map that was provided to the Town with the incorrect data that started this.

Mr. Zandri replied, I realize that map started that whole process but all of the departments that work with that map utilized those numbers to work with so I don't see where there were any errors as far as using those figures that the map gave the Town departments.

Atty. Mulvey stated, there is no error in using the figures of the map. The question then becomes, should the Town have known, because there are those who would suggest that this is an area that was prone to flooding over the years prior; should the Town have known that? Who knew it? What, if anything, was done to incorporate that knowledge into the events surrounding the approval of the subdivision and moving forward into the construction.

Mr. Zandri asked, are you saying, in no way was there any mistakes or errors by any boards or departments of the Town in this process?

Atty. Mulvey replied, I think to say that, that's really the issue....that would have to be the position I would take if I litigated the case and that is the position that we have been taking to this point in time, that we did not, as Town, make an error. But that ultimate decision of whether the Town made an error or whether someone in the Town should have done something else or should have had other information at his disposal, that is a question that is going to be for a jury to decide. The jury would then take control of this litigation and they would then be telling the Town of Wallingford what they should pay or not pay. I don't believe that is a point to which Council should allow the matter to go.

Mr. Zandri stated, of course the one board, Zoning Board, had to...was the major player in this thing for us to get started and they are controlled by State Statute as far as being able to deny somebody the right to develop their property. Obviously, they must have been in the position where they could not have denied this particular parcel under State law that they have to follow as far as subdivisions are concerned.

Atty. Mulvey replied, there is a dispute as to that in the plaintiff's claim that they were in a position where they could have denied it or made restrictions on what was to be done with that piece of property. We dispute that but that is going to be an issue that has to be decided by jury; whether that board should have put other restrictions on that or not.

Mr. Zandri stated, I will ask one more time; you are saying there were no mistakes, physical mistakes made by any board or town department?

Atty. Mulvey replied, I am saying that is the position we have taken in terms of our analysis and position on this case; that we do not believe that the Town made mistakes but there are multiple views on that issue. That is the view of ourselves on behalf of the Town of Wallingford; the lawyers and plaintiffs.....the lawyers in behalf of and the plaintiffs themselves have a different view and they have different issues as to what the Town should or should not have done. There are different views with the other parties to this case whether that be the engineers involved, the surveyors involved or the persons who came before the board with the presentation who would be Mr. Verba who was an additional defendant in this case. All of these persons and what unfortunately begins to happen becomes an issue of fingerpointing and everyone starts to looking at "well someone else did this or didn't do this or should have done that" so that although we may be confident in how the Town representatives and employees worked on this overall project, that is an issue that is going to be decided by a group of laypersons who are not familiar with Zoning Board hearings, Zoning Board of approvals, criteria for that and then the criteria for how you issue certificate of occupancies and buildings that go on. It is my recommendation that this Town not allow six laypersons to make those decisions as to what the Town and its employees did or didn't do. It could be very dangerous in this situation and it would not....if the Town was found responsible, it would not necessarily solve this problem that exists there and it would still leave the Town exposed to future claims in other issues.

Mr. Zandri asked, is the Town covered by an insurance policy for actions by its employees that potentially puts the town in a lawsuit?

Atty. Small answered that the insurance company disputes that it would have an obligation to pay on this file, certainly for the purchase of properties but it claims that it does not have coverage for the balance although it is willing to put up \$175,000. I do have that information, I did do the analysis and I don't think that we would be successful. I can give you that analysis; I wasn't thinking about it for purposes of tonight but they do claim that this claim falls within exclusions and my review of it, it appears to me that they have a very good argument that there is no coverage for this claim at all. They did provide a defense and they are willing, in addition to providing the defense to contribute \$175,000 but that is the limit of which they are willing to contribute.

Mr. Zandri asked, so we do have a policy?

Atty. Small responded, we have a policy that they claim that this claim does not, that the claim falls within an exclusion under the policy and if we went to judgment that they, in fact, would not have to pay it; that the Town would have to pay it out of its pocket.

Mr. Zandri asked, what is the limit of that policy?

Atty. Small replied, I would have to check with Risk Management, I am not sure. They would claim that they would not have to pay it. We would then have litigation with the insurance company as to whether or not they would have to pay it.

Mr. Zandri stated, it seems like an awful small amount of money; \$175,000 is all we would be covered for under this?

Atty. Small answered, no, they claim that they don't have to cover it at all. That is their position; that the claim, itself, falls within an exclusion. I can give you that information.

Mr. Zandri asked, if the policy is written in a way that it is supposed to protect the Town when an employee does something wrong in the line of work so that the Town would be covered under that circumstance, then I would think that it would fall in if, in fact, there was a mistake made in this process of the subdivision.

Atty. Small answered, because the claims of the plaintiffs is property damage, flood damage, that is how the insurance companies look at it. That is why the claim is excluded. As one insurance company would not defend at all, the general liability carrier agreed to defend and has paid the cost of that but if it went to judgment they would dispute that they had any obligation to pay it at all. We would then be in litigation with them. They are claiming that it doesn't fit under their policy. Often what insurance companies do is, they believe there is enough there that they have an obligation to provide a defense of which they will pay for but they then declare that they believe an ultimate judgment will fall within their exclusion and they will tell you that you have the risk of having to pay that judgment yourself and that would create the litigation with the insurance company. In order to avoid that fight and bring the case to resolution, they put \$175,000 on the table. You can say that it does not seem like a lot in terms of the total number but you are not going to get any insurance company to participate in a buy-out, it is just not going to happen. It is not going to fall within anything that is covered by them.

Mr. Zandri stated, we are involved in this buy-out because of this whole process. If the terms of the policy is because of an employee making a mistake and this is why we are in this lawsuit, then why wouldn't it be covered?

Atty. Small replied, I will have to get the exclusion letters. They claim, two different insurance companies claim that they would not have to pay this claim if it went to judgment. In my review of it it appears as though they would be ultimately correct. We would be involved in litigation with them but I have done the research and it looks like their exclusions are pretty air tight on these claims.

Zandri asked, so what does our policy cover then? If, in fact, an employee made a mistake that caused the Town to be liable because I, personally, do not hang my hat on the FEMA maps solely and if an employee made a mistake in the line of their duty, we are supposed to have coverage for this, then I don't see why there is a clause in there that would exclude it. If that's the case, why do we have the policy at all?

Atty. Small replied, the exclusion.....it looks at what the plaintiffs claim for damage. That is what is looked at. The plaintiff's claim property damage, flood damage and diminution in the value of their homes and that is not covered under the policy, that is excluded under all the policies, particularly the loss of value in the home is not something that falls within the insurance policy. That is what the insurance company tells you, that they are not going to pay it, that is the end judgment. I don't, in terms of a loss in value of the property, most certainly is pretty standard exclusion. That is what it relates to.

Mr. Zandri stated, I know I am hearing certain explanations here to some of my questions but I would like to say that, during executive session there were other things that were mentioned that convinced me that the Town should settle this case. But from what I am hearing so far this evening, I have my doubts on that right now so I am going to wait on further discussion before I decide how I am going to vote on this issue.

Mr. Parisi stated, this is a report out and we are going to schedule a public hearing.

Mr. Zandri stated, I am going to vote on this sooner or later but there were things discussed in executive session that I don't feel were discussed this evening and I will weigh those facts.

Atty. Small explained, there is litigation pending and we are trying to balance having a public discussion so that it is discussed publicly as to what the agreement proposal is. To discuss, does the Town have exposure, the answer is, the Town has exposure, it is a jury trial for one thing. There are claims made against the Town, there are claims that are disputed, there are certain facts the plaintiffs can point too and say, "see, this supports our claim" and there are certain other facts that we would say do not support their claim. That is what we are talking about and we are trying as best we can in a public forum to balance giving sufficient information but on the other hand, if things fall through we are back in court on this case. We are going to do the best we can to answer your questions and try to keep that balance, that is all we are trying to do.

Zandri stated, I understand where you are coming from but I also have to answer to the public. I am talking about voting over \$2 million of Town funds and I want to make sure that I feel personally that the Town did something wrong and we are liable in this case and it is not just the federal

government. That is where I am coming from and that is what I want the people out there to understand.

Mayor Dickinson commented, I think the chain of events in the beginning should be kept in mind. An applicant came in requesting subdivision approval claiming that it was not in a flood plain. The subdivision regulations of the Planning & Zoning Commission have a flood plain regulation and approval process. Those regulations require a particular type of construction; it requires elevation, elevated homes, it requires a number of things that are not triggered if you are not in a flood plain. At the point the application came in and it did not show on the flood map that this was in a flood plain, at that point a different process takes place. That is the cornerstone, the key to the whole thing. What triggers the flood plain requirements for construction and approval. That threshold was not met because of the FEMA map.

Mr. Zappala asked, are there two empty lots owned by the contractor?

Atty. Small answered, there are two empty lots, that is correct.

Zappala asked, are we paying this guy?

Atty. Small answered, we are buying out the entire subdivision including those two lots.

Mr. Zappala asked, what price tag would you put on those lots?

Atty. Small stated, they were appraised by an appraiser as residential lots.

Mr. Zappala asked, do you know how much it is?

Atty. Small answered, it will take me a minute to find the information.

Mr. Zappala stated, I am curious to know what we are doing to repay this person for what he did to us?

Atty. Small explained, this property owner, the developer, was not the one who brought the plan to Planning & Zoning.

Atty. Mulvey stated, I think the amount on the undeveloped lots was about \$40,000 for each of the two lots but he was not the original person who made application, he bought it from them.

Zappala stated, we should not be paying \$40,000 to him for each building lot when it should be considered a swamp. I think the price is way too high. It cannot be developed and should not have any value whatsoever.

Atty. Small stated, for purposes of the buy-out the property is valued, not taking into consideration the flood issue. All the properties, for purposes of the buy-out, are valued fair market value disregarding the flooding issue otherwise.....

Mr. Zappala replied, we are paying the individuals the fair market value of today.....we should be considering what those lots are worth at fair market value today.....it is absurd. It is out of the question, personally. How could we pay that kind of money for a lot that you cannot build on?

Atty. Small explained, you cannot value the property as if it couldn't be built on. If we did that for all of the plaintiff's homes they would not be getting the fair market value of the property. The fair market value disregards the flooding issue.

Mr. Parisi stated, you have to take it as though it were a good area.

y. Small added, that is Factory Built Homes that did the construction.

Mr. Zappala stated, I think it is wrong, we should not be paying him anything.

Atty. Farrell stated, I know there are a lot of details of this that we do not necessarily like, we do not necessarily like being in this position whatsoever, it happened a number of years ago, unfortunately this Council has to deal with it. My experience as an attorney is that when you have an agreement that ends a lawsuit, that it is not necessarily a deal that makes everybody happy. That both sides go away from the table grinding their teeth in part because they did not get fully what they thought was their due or they had to give away more than what they thought was their due. As much as I am unhappy over this, I do think we need to bring an end to this. One of the key things that has been brought out over and over both tonight and in past executive sessions is that there is continuing liability to the Town down the road if we do not correct this. It may mean big money now but we have a responsibility at this point to preclude the Town from further problems and from further money that gets paid out. As much as I am unhappy and I am grinding my teeth over it, I think it is something, unfortunately that we have got to go ahead with. I think that is the position, unfortunately, that we have to take and as unhappy as we are over this, that this solves a problem and limits the town's future liability which I think is ultimately on the plate; our responsibility on this issue.

ITEM #13 SET A PUBLIC HEARING for January 12, 1999 at 7:45 P.M. to Consider and Act Upon A Proposed Ordinance Entitled, "An Ordinance Appropriating \$2,574,000 to Acquire Eighteen

Properties on Garden Road and to Settle Flooding Claims Relating Thereto and Authorizing the Issue of \$2,574,000 Bonds of the Town to Meet Said Appropriation and Pending the Issuance Thereof the Making of Temporary Borrowings for Such Purpose

Motion was made by Mr. Farrell, seconded by Mr. Centner.

VOTE: All ayes; motion duly carried.

ITEM #14 Consider and Approve the Hiring of Outside Legal Counsel for Representation of the Town in Negotiations with Stone & Webster Development Corp. And Pennsylvania Power & Light with Respect to the Merchant Power Plant - Town Attorney

Motion was made by Mr. Knight, seconded by Mr. Centner.

Atty. Small stated, the Mayor, Raymond Smith (Director of Public Utilities) and I engaged in a rather lengthy process to hire an attorney for purposes of the power plant project. I contacted and spoke to (9) different firms; two firms over the phone indicated that they had conflicts. Many of the larger, more knowledgeable firms does work for Northeast Utilities although some thought they would not have a conflict handling this, Northeast Utilities would not consent and we never even got to the issue as to whether or not the Town would consent so those firms were eliminated. We then engaged in a process of interviewing the other firms. Through our interviews we found that there were additional conflicts with additional firms and it turned out that there is more....the larger firms who have the experience here represent various parties that we did not feel comfortable with. For example, several of the firms represent other potential developers of other projects in the State of Connecticut including one right next door so as we went into the interviewing process we find these things out, we talk about it and we have eliminated those people from consideration. In some cases they may not have a strict legal conflict although I think that we probably concluded that they did. Certainly a perception that people would have if there is a law firm that represents two major projects that some may view compete with each other. We didn't feel that it was proper. In any event, through the process we determined that it was our opinion that we would hire Attorney Robert O'Neill who has done previous work for the Town of Wallingford. He is out of Washington, D.C.; he will retain local counsel to assist him and that will be totally through his own engagement and that would be Roger Kuntz or Tyler, Cooper & Alcorn, they do not have a conflict and neither does Mr. O'Neill. That is basically the process that we went through. It was very lengthy and it was on the council agenda several times when we thought maybe we had a resolution and then did not. But the majority of the firms that we considered and some of whom we liked a great deal we decided had conflicts that we couldn't overlook in terms of this project and that is why we are recommending Attorney O'Neill.

.... Zappala stated, am I to understand that we have hired an attorney from Washington?

Atty. Small answered, yes, he has worked for the Town on prior projects.

Mr. Zappala asked, is Stone & Webster going to be paying for the expenses of this attorney?

Atty. Small answered, no, this is our attorney. He is going to charge an hourly rate of \$225.00 which is lower than his normal rate and lower than most of the other firms that we interviewed. Those firms were around \$290./hr., someone was over \$300./hr., so it actually turns out to be one of the more reasonable rates.

Mr. Zappala stated, as soon as we hire an attorney that means that this contract is progressing to the point that we have to be on guard as to what is happening or we should have an attorney now because it is progressing that much?

Atty. Small answered, we should be at a point where we have an attorney. We have been waiting for the developer to give us documentation to begin reviewing and I think also at this point in time the attorney can give us direction as to what positions we should be taking. Perhaps the attorney should be prodding them along to be moving a little bit more quickly. When you were discussing earlier your item to have an appraisal, some analysis done, in the interviewing process some attorneys mentioned that we want to start thinking about getting consultants on board. So you do want an attorney at this point to start giving you that kind of advice and start moving in that direction and be prepared for the documentation when it comes. If we get an attorney on board at this time and there is nothing for him to do at this time then obviously, he won't get paid for it but I think that we should be at a point where we are ready for him to get some work done.

Mr. Zappala stated, that is what I had in mind actually because I did not know it was that close. I know the biggest problem the company was having was the water sources, has that been resolved yet? Do they have the water source to run the plant?

Atty. Small replied, I don't believe the water issue has been resolved.

Raymond Smith, Director of Public Utilities stated, the answer is no. We have had a number of short meetings; in fact we went up last Thursday to meet with the D.E.P. (Dept. Of Environmental Protection) to find out what their position was. The D.E.P. still has not established their own policy that. The Siting Council is dealing with the same matter; it is a question of whether or not potable water is going to be permitted. There is a push towards dry cooling towers with regard to cooling.

Mr. Parisi asked that the discussion remain on the topic of hiring an attorney for the process.

Mr. Zappala stated, that is the reason I was surprised to see that we are at the point of hiring counsel because I knew that was a problem. I did not realize the problem had been resolved and until we get the water to operate it (the plant) I don't see how there could be a project.

Mr. Smith explained, my office did receive a very preliminary draft of the initial contract from Stone & Webster, it is probably about a dozen pages and about three inches (3") short of what the final documents are going to be but, yes, that phase has started. We are running down a number of paths including the legal issues.

Mr. Zappala stated, as long as we don't pay this guy until he does some work, I have nothing against it, of course.

Atty. Small stated, because they are supposed to be giving us documentation at around this time and if they are supposed to be doing certain things to be finalizing this thing to a point where they are ready to put a proposal in writing, then I think legal advice in terms of getting them moving and making sure that they are doing all that they are supposed to be, is appropriate. We are not paying for anything we are not going to be using. We need to have it in place.

Mr. Farrell stated, when previous Councils and this Council, itself, have went out and hired consultants for large scale projects like this, typically, the Council has been involved in the interviewing and the selection of who that is going to be. I find it somewhat unusual that we were not included in that. If you go back to the Route 5 project, someone from this Council sat on the committee that selected Malone & McBroom. We just hired a vision consultant for the trail that Mr. Centner sat on the committee that selected that. We really have not been given a whole lot of input into this. We are being handed a name tonight on a silver platter. I don't know anything about Attorney O'Neill's qualifications; I have some misgivings because you are telling me that he is going to go out and hire counsel of his own. What does that suggest to me about how qualified he is?

Atty. Small stated, I have been here about ten years and I don't believe the Council has ever participated in the hiring of an attorney by my office. I don't recall a single instance where that has occurred. Secondly, I don't think I have ever gone through such an exhaustive search for an attorney and a very frustrating search because the most qualified firms with a locality right here all turn out to be, to have conflicts. Bob O'Neill, and Ray (Mr. Smith) could tell us the particular projects he has worked on, has done work for the town; he does this all day long. This is his specialty.

Mr. Parisi stated, we don't want to lose sight of the fact that what was done was an administrative function and it is not a Council function; it never has been. The Council is legislative and financial and the administrative process normally does take care of that.

r. Farrell responded, that is nice to say but here we are tonight and all we have on our agenda; all that we have been given is something that just says that this topic is going to be on the agenda. We never know until you announced it now who you were thinking of hiring. We had no resume, we have no background material whatsoever. How are we supposed to make a judgment on this other than to say, "yes, we trust your judgment, Janis"? There is no background material here. I don't feel that I can vote for this tonight given that it is in the dark.

Mr. Parisi stated, probably because you are an attorney, Mr. Farrell, you have that feeling.

Mr. Farrell replied, it is not specifically because I am an attorney. I just feel that any one of you would be as qualified as I would be to sit in and get a feel for whether or not the person has a good grasp of the law; whether they come across as someone you would want the Town to be represented by.

Mr. Parisi answered, this attorney has worked for the Town before.

Mr. Farrell responded, well, I have no feel for that because I have not met the gentleman personally, I am not familiar with him.

Mr. Parisi suggested that the Town Attorney supply a resume or background information to the Council in the future.

Ms. Papale asked Mr. Smith, what work has Atty. O'Neill done for the town?

Mr. Smith answered, he started with the town in 1985 and has been on a number of rate cases. The last project he was involved with was in 1995 when we finalized the CMEEC agreement.

Ms. Papale asked, weren't you on the Council in 1995 Mr. Farrell?

Mr. Farrell answered, no, I wasn't.

Pasquale Melillo, 15 Haller Place, Yalesville stated, the town should organize, having the Town Attorney, Mr. Smith and high ranking members of the P.U.C. get together with Mr. Farrell, who is an attorney, and get him involved in this as far as communicating that way we will have skilled representation from the Town Council, from the P.U.C. and the Town Attorney.

Mr. Parisi stated, one problem with that is, if he (Mr. Farrell) sat on a panel that selected him, he has a potential conflict of interest.

iv. Melillo asked, why?

Mr. Parisi answered, because he picked him. I don't know if it is, I said it was a possibility.

Mr. Melillo responded, I don't think so.

Mr. Parisi replied, what you think doesn't matter. It has to be a legal counsel.

Mr. Melillo took offense to Mr. Parisi's statement that what he (Mr. Melillo) thinks doesn't matter. You are out of line saying that, Mr. Melillo stated.

Mr. Parisi stated, I would rather have the counsel supply his background information, a resume, etc., and let Mr. Farrell look at that and then have him available to make a decision when it has to be made.

Robert Sheehan, 11 Cooper Avenue stated, I am in favor of this. Isn't Stone & Webster and Pennsylvania Light and Power under a timeframe where they have to submit a contract or what ever I want to call it, to the Town?

Mr. Smith answered, they have submitted to my office within the last week an initial draft proposal. They also are proposing to go to the Siting Council shortly after the first of the year to initiate that process.

Mr. Sheehan asked, what is a merchant power plant?

Mr. Smith explained, "merchant" means that it is not owned by the Town. They are merchant developers and they are going out without a buyer and a guaranteed buyer of the energy. It is a risk venture.

Wes Lube, 15 Montowese Trail asked for clarification of the statement made by Mr. Farrell that Atty. O'Neill will be hiring his own attorney.

Atty. Small explained, Atty. O'Neill will be hiring a Connecticut firm who will work under him and it is more at my insistence than anything else in that the magnitude of this project is such that it is beyond any expertise in my office although we are going to read the documents and have comments; beyond any of our expertise. Atty. O'Neill who has an enormous amount of experience since he does this type of work all day long, he is going to be the lead counsel in this but because we are in the State of Connecticut I do want a Connecticut attorney who has some experience in this area beyond mine to make sure that if there is any comment regarding Connecticut law, he has local counsel to do

that beyond me; someone who has some experience in this particular area in the State of Connecticut. That is why he is using that firm. He would be more than happy to rely upon my office but I am not willing to do that because the magnitude of the project is just beyond the capabilities of my office.

Mr. Lube asked, do you think he has someone in mind that you overlooked in your Connecticut search?

Atty. Small answered, no, we know who Roger Koontz is, from Tyler, Cooper. We did meet with him, he does have a degree of expertise in this area; he does not have the particular expertise that Bob O'Neill does but he was involved and has been involved with CMEEC. He does have a level of experience that the combination of Bob O'Neill and Roger Koontz, I am comfortable with and I don't have the concerns about someone passing judgment on Connecticut law knowing that he will be involved in the project but Bob O'Neill's degree of experience with these particular projects is beyond that of the Tyler, Cooper firm. They would love us to give it solely to them but I don't believe that is in our best interest. I think we want someone who has done the nuts and bolts of these types of agreements and feel that they would end up making a good team but the Connecticut lawyer more for my assurance so that I feel comfortable with it. That was a requirement that I made.

Mr. Lube stated, there is a tendency on the part of some attorneys to take it upon themselves the confidence of knowing more than they really do. I can understand why this gentleman O'Neill is probably well experienced in rate cases and contract law, particularly as it pertains to utilities but I wonder if there are that many transactions such as we are about to enter into and whether or not he has any experience in that particular field.

Atty. Small answered, we asked all the attorneys that we interviewed what projects they worked on and Mr. Smith knows about the majority of projects that were discussed. In terms of evaluating when they say, "we worked on this project" we were able to inquire, "what did you do?", "who did you represent?", and because Mr. Smith is familiar with those particular projects, we can do an analysis as to whether or not we thought they had, from working on those projects, the level of expertise we were looking for; Bob O'Neill did have that experience. Other firms that we also liked had that experience but as we discussed with them the project, then we got into the issues of conflict of interest and we disqualified them. It wasn't like we stood out as the only person who was qualified when it came down to an analysis of the different firms once we eliminated everyone because of a conflict. He does have the qualifications and we have been pleased with his work in the past and we confident that he can handle this project.

Mr. Lube stated, your further comments helped a lot, thank you.

Philip Wright, Sr., 160 Cedar Street stated, I am wondering, why didn't we choose Mr. O'Neill to begin with if he has all these qualifications? Why did we go searching all over and then come back to him? It almost seems as though he has it be default.

Atty. Small stated, I don't mean to say that he has it by default. From day one, in terms of interviewing, he has had the qualifications. If an in-state firm had all of the qualifications that we were looking for and no conflict of interest than certainly from speaking as one of the three that did the interviewing, I would be more inclined to choose an in-state firm. There was a firm from Boston that we interviewed who I liked a great deal but when we talked further, that firm is involved in the Meriden project so I threw out the example that they could be quoted in the same newspaper the same day on two different power plant projects and what would the perception of the public be with respect to your representation? It was not, "we are going to hire Bob O'Neill, let's go through this exercise", we were looking for, we knew that there is talent out there, we didn't want to have to go to Washington, D.C. if we didn't have to, did the search.....if we came here saying that we just talked to one guy and we want him to have the job, the criticism would be, "wasn't there any other lawyers out there that were qualified?" I think we did a very good search. All the firms were very interested. Talked to several on the phone and we never got past the phone stage because I identified conflicts. Everyone was very eager to make the presentations. We did not feel comfortable with some of the conflict issues that some of the attorneys felt comfortable with and I don't mean to say that we are giving the position to him by virtue of default; he certainly is qualified. There were other people whom I felt were qualified and would have gotten the job if not for conflict issues.

Mr. Wright stated, we were reluctant to go to Washington, D.C., why?

Atty. Small stated, if the Mayor is confident with counsel closer to home, then my preference, if all things being equal, would be to choose someone closer to home. That makes sense. I have nothing against Washington (D.C.).

Mr. Wright asked, now that we have gone to Washington, is there someone who would be qualified in Atlanta (Georgia)?

Atty. Small answered, we were in Washington because we have had prior experience with a lawyer that we know from Washington. We were very satisfied with him and he qualified for the position. Could I go nationwide? Yeah, we could go nationwide but we had a viable candidate. We knew in the beginning that Bob O'Neill was qualified to do this work but we felt it necessary and to seek whether or not there was counsel in this area that was qualified and we did do that search.

There were no further comments at this time.

VOTE: Farrell, no; Rys was absent, all others, aye; motion duly carried.

ITEMS #15 - 19 Withdrawn

Mr. Parisi suggested that everyone wish everyone a very merry Christmas and happy holidays.

Mr. Parisi called for a motion to adjourn.

Motion was made by Mr. Farrell to Adjourn, seconded by Mr. Centner.

VOTE: All ayes; motion duly carried.

There being no further business the meeting adjourned at 9:59 P.M.

Meeting recorded and transcribed by:

Kathryn F. Zandri
Kathryn F. Zandri
Town Council Secretary

Approved by:

Robert F. Parisi
Robert F. Parisi, Chairman

1-12-99
Date

Rosemary A. Rascati
Rosemary A. Rascati, Town Clerk

1-12-99
Date



OFFICE OF THE MAYOR
TOWN OF WALLINGFORD
CONNECTICUT
PROCLAMATION

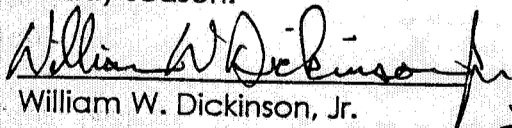
WILLIAM W. DICKINSON, JR.
MAYOR

- WHEREAS,** motor vehicle crashes kill over 40,000 people and injure three million every year, at a cost to society of some \$150 billion annually, and
- WHEREAS,** alcohol-related crashes account for approximately 40% of those deaths and injuries, and
- WHEREAS,** the December holiday season is traditionally one of the most deadly times of the year for alcohol-impaired driving, and
- WHEREAS,** for thousands of families across the nation, the December holidays are a sad time to remember loved ones they lost to an impaired driver during the previous holiday season, and
- WHEREAS,** community-based programs involving consumer education, effective laws, and strong law enforcement have been proven to be successful in reducing impaired driving, and
- WHEREAS,** organizations from every state are joining together for Strengthening Safe Communities this December by supporting anti-impaired driving programs and policies, and
- WHEREAS,** the community of Wallingford is a partner in that effort to make our roads and streets safer,

NOW, THEREFORE, I, William W. Dickinson, Jr., Mayor of the Town of Wallingford, do hereby proclaim December 1998, as

Drunk and Drugged Driving (3D) Prevention Month

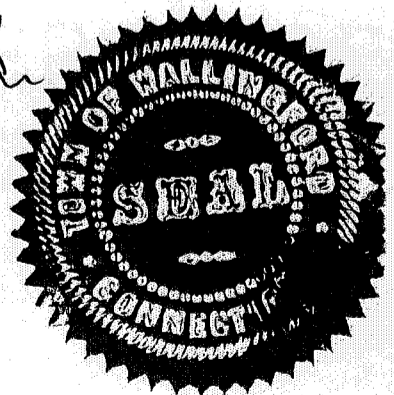
in Wallingford and do hereby call upon all citizens, government agencies, business leaders, health care Institutions, schools, and public and private institutions in Wallingford to promote awareness of the impaired driving problem, to support programs and policies to reduce the incidence of impaired driving, to promote safer and healthier behaviors regarding the use of alcohol and other drugs, and to provide opportunities for all to participate in Strengthening Safe Communities this December holiday season.



William W. Dickinson, Jr.

Mayor

DATED THIS 2nd DAY OF DECEMBER, 1998
WALLINGFORD, CONNECTICUT



Appendix II

EXCERPT FOR MINUTES OF THE PUBLIC HEARING
AND TOWN COUNCIL MEETING OF THE TOWN OF WALLINGFORD
HELD _____, 1998

I hereby convene the public hearing for the \$85,000 Fox Run Drive Water Line Project appropriation and bond ordinance and the Fox Run Drive Water Line Assessment Ordinance. The ordinances which are the subject of this public hearing are available to the public and may be obtained at this meeting from the Town Clerk.

Is there a motion and a second to read the title and section one of the proposed \$85,000 Fox Run Drive Water Line Project appropriation and bond ordinance in their entirety and to waive the reading of the remainder of the ordinance, incorporating its full text into the minutes of this meeting.

Moved by _____, seconded by _____.

Will the Clerk call the roll call vote.

The motion passes.

AN ORDINANCE APPROPRIATING \$85,000 TO EXTEND WATER LINES TO THE FOX RUN DRIVE AREA AND AUTHORIZING THE ISSUE OF \$85,000 BONDS OF THE TOWN TO MEET SAID APPROPRIATION AND PENDING THE ISSUANCE THEREOF THE MAKING OF TEMPORARY BORROWINGS FOR SUCH PURPOSE

Section 1. The sum of \$85,000 is appropriated for the planning, acquisition and construction of the installation of water mains in the Fox Run Drive area of the Town, known as Contract #16, including a portion of Fox Run Drive, approximately 900 feet from an existing water main (hereafter the "Project"). The project shall include pumping stations, storage tanks and related equipment as needed to implement the delivery of water to such project area, or so much thereof as may be accomplished within the appropriation. Said appropriation shall include, as necessary, architects' engineers' and consultants' fees, surveying, testing, inspection, land acquisition, easements, blasting, equipment, the planning and construction of related improvements and appurtenances including utility and infrastructure connections, and relocation, repair of abutting areas, administrative, advertising, printing, legal and financing costs.

AN ORDINANCE ESTABLISHING ASSESSMENTS FOR THE
FOX RUN DRIVE WATER LINE EXTENSION PROJECT

Whereas the Public Utilities Commission ("PUC") has received a request to extend its water lines along a portion of Fox Run Drive in the Town, approximately 900 feet from an existing water main (hereafter the "Project" or "new main");

Whereas section 7-137c of the Connecticut General Statutes provides that the owner of property abutting a water main extension shall reimburse the municipality its proportionate share of Project cost as the municipality by ordinance shall determine;

Whereas the PUC has recommended a methodology of levying assessments pursuant to section 7-137c to pay for the cost of the Project;

Now therefore, be it ordained by the Town Council of the Town of Wallingford:

Section 1. The PUC shall levy assessments pursuant to this ordinance and section 7-137c. The PUC shall follow the assessment procedures of section 7-250 of the general statutes with respect to filing the proposed assessments with the Town clerk, public hearing and notice regarding the proposed assessments, filing the final assessments with the Town Clerk and newspaper publication of the final assessments. The assessments shall be determined and levied upon completion of the Project. Except as provided in section 2, the assessments shall recover 100% of the cost of the Project as set forth in section 7-137c of the general statutes.

Section 2. Properties are to be assessed on a per unit basis for all properties which can be serviced by the Project, as follows:

- A. One unit of assessment for each single family house abutting the Project that cannot tie directly into an existing main as determined by the PUC.
- B. All vacant land shall be assessed one or more units plus deferrals pursuant to sections 7-137c.
- C. One unit of assessment for each single family house or lot able to tie directly into the new water main through easements, rights-of-way, etc., and also able to tie into an existing main, but does not tie directly into an existing main.
- D. For each tap of the new main used to extend the main to

- service other properties, one unit of assessment.
- E. Property owners wishing to tie their homes to the new main prior to the establishment of a final assessment amount (i.e. final completion of the Project) can sign an agreement with the PUC on behalf of the Town to pay the final assessment as determined by the PUC. The notarized agreement to pay will require all owners of record of the property to sign and pay a deposit of \$100.00. The deposit will be applied against the first payment of their water assessment. The agreement must be fully executed, and payment of the deposit received, prior to the submission of an application to service for their property.
- F. The PUC shall file a notice of pending assessment upon the effective date of this ordinance.

Section 3. The assessments shall be calculated and be subject to the following terms:

- A. The total amount of all assessments (including the assessments on Town land and assessments whether or not deferred) shall be equal to 100% of the cost of the Project. 100% of the cost of the Project means administrative cost and all costs paid to plan, construct and issue debt to finance the Project, including temporary service if installed minus the differential in cost between the standard 8" pipe size and any larger pipe size which the division chooses to install, as determined by the PUC.