

TOWN COUNCIL MEETING

JANUARY 22, 1991

7:00 P.M.

AGENDA

1. Roll Call & Pledge of Allegiance
2. Report Out by the D.E.P. Bureau of Air Management on the Air Emissions from the Waste to Energy Plant
3. Consider and Approve the Authorization to Continue to Waive Bids for Representation with Miller, Balis & O'Neil and GDS in the N.E.U./PSNH Merger - P.U.C.
4. PUBLIC QUESTION AND ANSWER PERIOD - 7:30 P.M.
5. Discussion and Possible Action to Form a Building Committee to Oversee the Design and Construction Phase for Developing 88 South Main Street as requested by Councilor Geno J. Zandri, Jr
6. An Ordinance Amending An Ordinance Entitled "An Ordinance Appropriating \$472,000 For The Planning And Design Phase Of The Town Electric Generation Expansion Project And Authorizing The Issue of \$472,000 Bonds Of The Town To Meet Said Appropriation And Pending The Issue Thereof The Making Of Temporary Borrowings For Such Purpose" - SET A PUBLIC HEARING
7. An Ordinance Amending An Ordinance Entitled "An Ordinance Amending An Ordinance Appropriating \$245,000 For The Planning And Acquisition Of An Addition To The Lyman Hall High School Vocational Agricultural Center and Authorizing The Issue of \$245,000 Bonds Of The Town To Meet Said Appropriation And Pending The Issue Thereof The Making Of Temporary Borrowings For Such Purpose" - SET A PUBLIC HEARING
8. Consider and Approve Tax Refunds (#126 - 143) in the Amount of \$3,874.21 - Tax Collector
9. Consider and Approve Merit Increases (12) - Personnel Dept.
10. Consider and Approve Appropriation of Funds (4) - Welfare Dept.
 - a. \$12,000 from Contingency Reserve for Emerg. Acct. #8050-800-3190 to General Necessities Acct. #001-3060-700-7010
 - b. \$2,800 from Contingency Reserve for Emerg. Acct. #8050-800-3190 to General Hospital Acct. #001-3060-700-7040
 - c. \$1,200 from Contingency Reserve for Emerg. Acct. #8050-800-3190 to Professional Fees Acct. #001-3060-700-7000

(OVER)

- d. \$108,000 to Expenditure Budget General Necessities Acct. #3060-700-7010, \$25,200 to General Hospitals Acct. #3060-700-7040 and \$10,800 to Professional Fees Acct. #3060-700-7000 for a total of \$144,000 from Revenue Budget Town Recovery of Welfare Expenses Acct. #1065-060-6260
11. Discussion on the Emergency Snow Removal Ordinance #352 as requested by Councilor Susan B. Duryea
 12. Discussion and Possible Action on Possible Selling/Leasing Options of the Former Yalesville Firehouse as requested by Councilor Susan B. Duryea
 13. Discussion and Possible Action of Payment of an Invoice from Vincent T. McManus, Jr. for Legal Services Rendered the Zoning Board of Appeals in the Matter of the Zoning Board of Appeals vs. Planning & Zoning - ZBA
 14. Consider and Approve a Transfer in the Amount of \$15,000 from Self-Insurance Acct. #8040-800-8280 and \$50,000 from Contingency Reserve for Emergency Acct. #8050-800-3190 for a total of \$65,000 to Insurance - Claim Transfer out to Yalesville Firehouse Fund Acct. #8040-800-8281 - Corporation Counsel
 15. Consider and Approve a Transfer of Funds in the Amount of \$750.00 from Longevity Acct. #001-2011-100-1750; \$250.00 from Longevity Acct. #001-2012-100-1750; \$1,500 from No-Sick Incentive Acct. #001-2014-100-1620 and \$700 from No-Sick Incentive Acct. #001-2015-100-1620 to Sewer/Water Acct. #001-2015-200-2030, \$1,200; Car Rental Acct. #001-2014-300-3100, \$1,600 and to State/Regional Affiliation Systems Acct. #001-2011-600-6600, \$400.00 for a total of \$3,200.00 - Dept. of Police Services
 16. Consider and Approve a Transfer of Funds in the Amount of \$25,000 from Police Hypertension Acct. #001-8040-800-8400 and \$30,000 from Fire Hypertension Acct. #001-8040-800-8410 to Reserve Worker Compensation Acct. #001-9000-900-7100 a total of \$55,000 - Risk Manager's Office
 17. Executive Session /Strategy and Negotiations With Respect to Pending Litigation Pursuant to Section 1-18a(e)(2) of the CT. General Statutes
 18. Executive Session Regarding Security Matters Pursuant to Section 1-18a (e)(3) of the CT. General Statutes
 19. Approve and Accept the Minutes of the December 11, 1990 & January 3, 1991 Town Council Meetings

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TOWN COUNCIL MEETING

JANUARY 22, 1991

7:00 P.M.

A meeting of the Wallingford Town Council was held on Tuesday, January 22, 1991 at 7:00 P.M. in the Robert Earley Auditorium (Town Council Chambers) of the Wallingford Town Hall and called to Order at 7:12 P.M. by Chairman Albert E. Killen. Answering Present to the Roll called by Town Clerk Kathryn J. Wall were Council Members Bradley, Duryea, Gouveia, Holmes, Killen, Papale, Parisi, Solinsky & Zandri. Mayor William W. Dickinson, Jr., Town Attorney anis Small and Comptroller Thomas A. Myers were also present.

The Pledge of Allegiance was given to the Flag.

Motion was made by Mr. Bradley to move the following items to the Consent Agenda to be voted upon by one unanimous vote. Seconded by Ms. Papale.

ITEM #9 Consider and Approve Merit Increases (12) - Personnel Dept.

ITEM #10a Consider and Approve an Appropriation of Funds in the Amount of \$12,000 from Contingency; Reserve for Emergency Acct. #001-8050-800-3190 to General Necessities Acct. #001-3060-700-7010 - Welfare Dept.

ITEM #10b Consider and Approve an Appropriation of Funds in the Amount of \$2,800.00 from Contingency; Reserve for Emergency Acct. #001-8050-800-3190 to General Hospital Acct. #001-3060-700-7040 - Welfare Dept.

ITEM #10d Consider and Approve an Appropriation of Funds in the Amount of \$108,000 to Expenditure Budget General Necessities Acct. #001-3060-700-7010, \$25,200 to General Hospitals Acct. #001-3060-00-7040 and \$10,800 to Professional Fees Acct. #001-3060-700-000 for a total of \$144,000 from Revenue Budget Town Recovery of Welfare Expenses Acct. #1065-060-6260 - Welfare Department

ITEM #16 Consider and Approve a Transfer of Funds in the Amount of \$25000 from Police Hypertension Acct. #001-8040-800-8400 and \$30,000 from Fire Hypertension Acct. #001-8040-800-8410 to Reserve Worker Compensation Acct. #001-9000-900-7100 for a Total of \$55,000 - Risk Manager's Office

VOTE: All ayes; motion duly carried.

ITEM #2 Report Out by the D.E.P. Bureau of Air Management on the Air Emissions from the Waste to Energy Plant

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Mr. Newt Rowe and Mr. Gudmun Lovvoll approached the Council to answer any questions they may have on this subject.

They gave a thumbnail sketch of the job to this point in time.

Of the pre and post-operational monitoring studies, each has consisted of 18 sampling sessions. In a typical sampling session, four field samples are collected along with Q.C. samples which consist of a field blank, basically a sample which is collected at the same sight as one of the field samples and it is used as a measure of the method precision. In the pre-operational sampling, most of the samples were collected in the summer period and in the post-operational session it has been biased more toward the collection of samples then in the summer session with other samples being collected in the fall, spring and winter. There are basically three principle participants in the study, the D.E.P., ENSR and Triangle Laboratories. He listed briefly the functions of each of the participants.

The funding for the pre-op and post-op monitoring at this facility comes from the Solid Waste Fund. It is basically a tipping fund from the Resource Recovery Facilities where as \$2/ton is collected and \$1/ton is designated towards the dioxin analysis, whether it be stack testing, soil testing, whatever.

The Commissioner of the D.E.P. is ordered to do this work by CT. General Statute 22a-231. Under that order the D.E.P. had to promulgate regulations which involve setting an air quality standard for dioxin which is 1.0 pcm annualized for dioxin emissions. Dioxin emissions are defined in Section 22a-174-1 of the CT. Regulations as being comprised of 50 specific dioxin isomers.

Mr. Rowe stated that from D.E.P.'s experience and the limited numbers that have been seen, the Town's numbers do not even come close to the ambient near quality standard which is a very conservative standard. The numbers are extremely low. He did not want to make an impact assessment statement at this point in time. A work group has been organized in the D.E.P. and met on a number of occasions to put together and propose a scenario as to how to make the assessment. He stated that it is a very difficult thing to do. He reminded everyone that the Wallingford facility is one of a few which are state-of-the-art facilities. The ambient emissions should be extremely low.

Mr. Zandri: One of the concerns that most of the residents had in this town about the facility was its impact on the air quality. It was my understanding that before this plant could be permitted, that air testing would have to be performed and the results made available. Was this initial testing done and are those results available?

Mr. Rowe: Pre-operational testing was done, yes.

Mr. Zandri: Are there results of that testing?

Mr. Rowe: Yes.

Mr. Zandri: Is that something that could be made available to us?

Mr. Rowe: Certainly. The package is approximately 400 pages long with a summary of the results included. It is pretty expensive.

Mr. Zandri: The main concern that I have is the different parts that were supposed to be tested and what the results of the test are, how they compare with other facilities in the State. It is also my understanding that these facilities are supposed to have yearly testing. Am I correct?

Mr. Rowe: I believe the way that the State Statute reads we are supposed to do a pre and post operational monitoring and at that point the commissioner makes the assessment as to what the monitoring requirement will be after that.

Mr. Zandri: There was supposed to be a testing plan adopted for that facility.

Mr. Lovvoll: There is a program where major sources should be tested once a year. The program has been lying dead for a few years and recently the Chief of the Air Management Bureau has resurrected the program. I know that they intend to inspect the major sources once again on a yearly basis and this is certainly a major source that would be included with them. I don't know where the status of that is at this moment.

Mr. Zandri: It was my understanding when we were originally reviewing this facility that there was going to be yearly testing, that a program was supposed to be set up by the operator on how this testing was supposed to work and it was supposed to be approved by the D.E.P. Commissioner. It was supposed to be done on a yearly basis. This plant has been in operation for two years now, starting its third year. What I want to know is, has this yearly testing been done, and if there are results, are they available?

Mr. Lovvoll: What testing, stack testing?

Mr. Zandri: Whatever testing is required by State Statute, whether it is stack or ash testing.

Mr. Lovvoll: The results of the stack testing are not in yet.

Mr. Zandri: This plant is starting its third year of operation. don't we have testing results from the first year?

Mr. Lovvoll: We are just finishing post-operational testing which should be for the first year of operation. The way things are broken out is the pre-operational testing has to be completed before a permit to operate is issued. When a permit to operate is issued the plant is shaken down and then for the first year of regular operation we go out and monitor for that year in the ambient. This is what we have just completed.

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Mr. Zandri: How long does it take to get the results in?

Mr. Lovvoll: I would expect, we finished taking our last samples for the Wallingford facility in early November. I would expect to have all of the results in in a draft report by April, May. That is just, there is an incredible amount of data here and I think that it takes one so long to put this data package. Given the D.E.P. Budget and the Solid Waste Fund and the amount of money that is added in with other requirements for other testing, there just is not enough money there.

Mr. Zandri: That was just one of the concerns of the people in this community, that D.E.P. was going to be understaffed and there was not going to be enough funds for the proper testing to be done on this facility. I would like you to go back to your supervisors or management and express my concern on this exact point. I don't really care if there is enough money up there or not. I care about whether or not the testing is being done on this facility in this community and I would like to get the results on that as soon as possible. I think that this was one of the major concerns of the residents in this Town. I am not here to scold either one of you but it was one and still is one of my concerns today.

Mr. Lovvoll: As soon as the reports are available, we will make them available to you.

Mr. Bradley: Your contractor is Ensore? I am sure that you must have some sort of a contract/contract agreement between D.E.P. and your vendor and I have to question, in that contract, what are the deliverables and what is the timeline for those deliverables to be brought forth? Are the contractual requirements being met? I hear that the stack tests are not available yet, was there some sort of timeframe on that contract?

Mr. Lovvoll: I don't believe that the stack tests were taken until this fall. The samples have not been submitted to the analysis lab that long ago. I expect them in within the next 1-2 months.

Mr. Bradley: Does the contract spell out when those deliverables are due back?

Mr. Lovvoll: Yes.

Mr. Bradley: What kind of a contract do we have with them?

Mr. Lovvoll: We do have time constraints, but you have to realize that the work goes to this other laboratory and there just, it's not like another analysis. You just can't take this work and go to another lab because you are dissatisfied. There are not a lot of places that you can take these samples. Certainly part way through a program you cannot do that. It is a very time consuming process. We don't like it but we must live with it.

Mr. Bradley: I hear you but the residents of Wallingford want to

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know what the environmental impact is on the environment in Wallingford. What I would like to see are the delays documented by your Bureau and corresponded back to this Council. We have local area legislators, if there are problems, we can get that resolved.

Mr. Bradley: I understand the sophistication of the tests but if there are contractual agreements and they are not being met, that is another issue all together. You mention the soil samples for dioxin, are they being taken just in the immediate area or how far out do they go?

Mr. Rowe: I believe that would be the Water Bureau, I really don't know the specifics. I know that they have done the soil testing but, as far as the number of samples, where they were collected, I can't be sure. I believe that some of the samples have been collected in the area where we have our ambient sites. I am not totally positive of that.

Mr. Bradley: But they do go out beyond the immediate vicinity of the plant?

Mr. Rowe: Yes. I am not even sure if they have had all of their samples analyzed. I don't know what the status is of their program.

Mr. Bradley: You mention that the funding for the sampling comes out of the tip fee, is that funding for those samplings specific to this facility or is this money pooled together from all projects in the State of Connecticut?

Mr. Rowe: It is pooled together for all of the resource recovery facilities in the State. In this post-operational study, Wallingford samples were collected contemporaneously with samples from Bridgeport, Bristol, inland Connecticut.

Mr. Bradley: This is standard testing across all facilities, the contractual agreements don't vary from plant to plant?

Mr. Rowe: Within this agreement there was some variance. The pre-op were done at different times. These pre-op agreements were written, the contracts were written before I started working in D.E.P. I can't get into specifics. I do know that there were 13 sessions associated with the Bridgeport pre-op and correspondingly we went with 13 sessions post-op. With Wallingford and Bridgeport there were 16 pre-op and post-op sessions. There were more work done at these facilities, basically to make a better comparison. Why there were only 13 done at Bridgeport, I honestly don't know. There has been a significant amount more testing done for the Wallingford facility than at future facilities for the pre and post-op tests.

Mr. Holmes: Exactly how many air tests have been taken already?

Mr. Rowe: I am not entirely sure how many were collected. The

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ones that were authorized for analysis, the number would probably fall between 70 and 90, the total for the four facilities was approximately 358 samples authorized for analysis. That is counting Q.C. samples and field samples.

Mr. Holmes: To this point only 7 results have been returned?

Mr. Rowe: About 11 of the 90 or so submitted.

Mr. Holmes: How long will it take to get the samples tested? Out of those 90 samples is there a danger of not being able to have current information on the emissions of these plants?

Mr. Rowe: The analysis can be done quickly, it is the generation of an analytical report and ultimately the review of the data and making a decision that, yes, this sample analysis is valid. It is very time consuming and laborious.

Mr. Holmes: If something was out of the ordinary with the sampling, would you have to wait to generate a report for that?

Mr. Rowe: There are so many sessions that are taken and if we lose a session due to heavy rainfall or power failure, it is not like the entire monitoring project is out the window.

Mr. Holmes: If the quality of the air was determined to be negatively impacted due to a large contamination of dioxin, would you have that information available in a short period of time so we can get back to the plant to correct....

Mr. Rowe: We would know that from the C.E.M. The C.E.M. would certainly show that the operating conditions of the facility were not up to specifications.

Mr. Holmes: The report of last year's operation will be due out April or May of this year?

Mr. Rowe: We would expect delivery of the draft report by then.

Mr. Holmes: When will it be filed with us?

Mr. Rowe: Approximately July or August.

Mr. Gouveia: The plant has been in operation for the past 26 months, has any test been done on the bottom ash or the fly ash?

Mr. Rowe: I am certain that solid waste would have been testing the fly ash.

Mr. Gouveia: How often?

Mr. Rowe: I don't know.

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Mr. Gouveia read the following into the record, "In November, 1986 a decision in the case of P.A.G.B. vs. C.R.R.A., Judge _____ cites the sworn testimony of the D.E.P. Commissioner, "...That his department will monitor on a permanent basis for toxicity in both the bottom ash and the fly ash. The bottom ash would be tested bi-monthly. Toxic bottom ash, if any, would be transported out of the State to a federally regulated site. No landfill site in Connecticut will be used to dump toxic bottom ash." We don't know if we have toxic ash, be it fly ash or bottom ash, because there is no test being done. And yet, the D.E.P. Commissioner in court, under testimony, sworn testimony, said that this was going to be done bi-monthly.

Mr. Holmes: Is that a separate department than you?

Mr. Lovvoll: It would be the solid waste management area. Normally we would consider fly ash as the most likely to be hazardous, and not bottom ash.

Mr. Gouveia: I am only reading from the testimony given by the D.E.P. Commissioner.

Mr. Lovvoll: I do know that, at least in the case of Central CT., they are landfilling the ash in the Hartford landfill at the north end.

Mr. Gouveia: I wanted the Council to see what they were told before and what is happening now, basically that is why I made that comment. Is the D.E.P. aware of the daily monitoring that is taking place at the plant? Is there any daily monitoring at the plant?

Mr. Lovvoll: There is continuous emission testing, yes.

Mr. Gouveia: Do you know what the results are?

Mr. Lovvoll: No. If they are in violation, they would have to notify D.E.P. immediately.

Mr. Gouveia: Again, we were told back then that daily monitoring would be done to continuously record operating conditions. That would be made available to the public. It has not been made available to us up here, so, I am sure that the public has not received any of the information either, 26 months later. By permit, the combustion efficiency is supposed to be 98.6% or 98.8%. I am not sure that has taken place. I wanted to find out about baghouse and the performance of the baghouses, dioxin readings if there are any, etc. Two years ago, one of the biggest concerns in Wallingford were dioxins and I wanted to find out if there were any kind of risk for the residents, but I guess that I will not ask those questions because what you are saying is that you don't have the answers yet for us.

Mr. Lovvoll: It is not to say that that information is not available, there is a contact who would be far better aware of this information. That would be Carl Bodge who heads the C.E.M.

group. The person to be speaking to regarding stack testing is George Miller. I know the C.E.M. controls are in place, but to give you specifics, I really can't do that. I know that there has been stack testing done, how much, how many year's worth, I don't honestly know.

Mr. Gouveia: Is the stack testing being done right at the stack or somewhere along the vicinity?

Mr. Lovvoll: Stack testing is done in the gas path.

Mr. Gouveia: Are there any other tests being done around the vicinity?

Mr. Lovvoll: That would be the ambient study. It was our impression that the interest of the Council was in the ambient monitoring. This is why we have come here this evening. The unit itself is guilty of a certain amount of parochialism. There are a lot of other players and we are just one facet of the system, if we had known that you were going to ask questions about C.E.M. stack testing we would have those people here who would much better answer your questions than we could.

Mr. Gouveia: The C.R.R.A. minutes state that the facility has had a few problems, they don't refer to which problems and we know that the plant has been shut down a few times and we don't know why. My concern is that I wanted to ask some questions as to, how is the plant being operated?, these readings that they are supposed to take on a daily basis, what are the results of those readings?, etc. These are the things that we were promised.

Mr. Rowe: We could bring your concerns back and if you would like we could arrange for a much broader hue of what concerns you may have. The questions that you have posed to us so far, it would have been better if we had had 5 or 6 people here tonight to answer.

Mr. Zandri: Is there any one person that is responsible for the overall operation of the testing associated with the Wallingford project?

Mr. Rowe: I would say no. The testing is done by 3 bureaus within D.E.P.

Mr. Zandri: Don't the results of this testing funnel to one individual who is responsible for the reporting.

Mr. Lovvoll: Ultimately the Commissioner. That is not what you think of as a central, expert who is immersed in that.

Mr. Zandri: I find it hard to believe that you have all those departments doing all that testing and no one person responsible for the compiling of the results and submitting a report. Does the Commissioner get a final report on the testing of the plant?

Mr. Lovvoll: She would get a final report of our testing when it was completed. A copy would be sent to the front office.

Mr. Zandri: I am the one who initiated having this item placed on the agenda, what I am going to do is contact Don Rowe and see if we can't coordinate this a little bit better next time and if I have to get all of the departments down here from the D.E.P., that is fine with me.

Mr. Lovvoll: I think that is what you may have to do because we are media specific.

Mr. Zandri: Maybe with some of the questions we have on the policies that we were promised and seemed not to be carried out, maybe the Commissioner will come down too.

Mr. Lovvoll: That would be the third Commissioner from the Commissioner whom you quoted.

Mr. Solinsky: How many pre-op tests were made?

Mr. Rowe: Off-hand I could not tell you. I know there were 16 sessions of sampling, maybe 96 tests.

Mr. Solinsky: How long did it take to get for that data to be processed from those tests?

Mr. Rowe: I believe that was initiated before I started at D.E.P., so to give you an exact time period, I couldn't do it, but my guess is at least 2 years.

Mr. Solinsky: They don't issue the permit until all of those results are in?

Mr. Rowe: I am not sure.

Mr. Solinsky: When you talk about the first year of operation, you don't mean the actual first year of operation from the time the permit was issued, the first year after that?

Mr. Rowe: I don't believe I said first year operation. I thought we were talking pre-op.

Mr. Solinsky: If I understand it correctly, this pre-op testing, if those samples come through all right, they issue the permit for the plant. Once the permit is issued, then the next year starts. The first year of operation is not the first year of the permit year. It has only been permitted for a portion of the two years that it has been in operation, am I correct? Is the permit retroactive?

Mr. Lovvoll: Permits are normally written in 3 stages, construction, interim operating stage, and the final operating permit stage.

Mr. Solinsky: When they receive their final operating permit, every test after that is considered post-operational?

Mr. Lovvoll: Once the plant is in a normal operating mode, the testing is then considered post-operational.

Mr. Solinsky: So the post-op is the permit retroactive to, I saw in the contracts that it was.

Mr. Don Roe: What they are talking about when they talk about post-op has nothing to do with the permit or the award of the permit of the facility. It is really with respect to how that particular dioxin study that is required to be done, how that is conducted. The pre-operational is before the plant is on-line at all so that you have a background, or a bottom line or a baseline database that then you compare what happens further on down the stream. That particular study, at least to the best of my recollection of that statute, doesn't tie into the permitting of the facility. We did send to the Council, when the facility received confirmation, when the facility received its permit to operate. Their final air permit.

Mr. Solinsky: Wasn't their final permit retroactive to the first day of operation? I thought that was mentioned in the contract.

Mr. Roe: I am not sure what you mean by retroactive, that is not a term that I have ever heard applied.

Mr. Gouveia: To follow up on Mr. Zandri's recommendation, I would also like to see the operator of the plant come before us and tell us about how the plant is being operated and the kind of daily readings that he is getting, how the baghouses are performing, etc.

Mr. Killen thanked Mr. Lovvoll and Mr. Rowe for their time.

PUBLIC QUESTION & ANSWER PERIOD

There were no participants in the question and answer period.

ITEM #3 Consider and Approve the Authorization to Continue to Waive Bids for Representation with Miller, Balis & O'Neil and GDS in the NEU/PSNH Merger - P.U.C.

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

Mr. Raymond Smith stated that what started out as the NEU/PSNH merger case, a decision was rendered by the administrative law judge at the end of December which left the Division in limbo. In the meantime, there are other things that are happening in the region and felt it was important for the Town to maintain representation since we have a strong vested interest. Some of the proceedings that are taking place at this moment are critical to a project that will be before the Council in the next week or so. Whether or not we get appropriate transmission access is vital to the project. It was Mr. Smith's recommendation to the Council that the Town maintain representation. He was seeking a consensus to continue to waive the bids. The next step then would be to come back with

the budgets and since a quarterly budget adjustment session has been scheduled, all the appropriate paperwork will be available at that time. He invited Atty. John Adragna to be present this evening. Atty. Adragna represents the Town as well as Chicopee, So. Hadley and Westfield. They are partners in a case known as the MACT Towns. Mr. Smith polled those communities to find that they intend to stay very much a part of the matter because they feel that their interests are far different than other utilities who are involved in this. There are a total of 55 utilities who have a vested interest in this case.

Atty. Adragna from the law firm of Miller, Balis & O'Neil informed the Council that his firm has represented Wallingford for at least the past 6 or 7 years in matters down in Washington, D.C. concerning principally, Wallingford's relationship with CL&P and Northeast Utilities. He gave a brief overview of where we are in the actual litigation with the Federal Energy Regulatory Commission (F.E.R.C.). The decision rendered by the administrative law judge was an initial decision and is not nor will be the final decision in the case. It (the decision) was not particularly satisfactory from anyone's standpoint. Every utility in New England is represented in this case. From his firm's perspective, the presiding judge made what was called findings of fact which were particularly favorable to the Town from a transmission standpoint. The judge recognized that systems like Wallingford and the other members of the group are uniquely susceptible to competitive harm from the merger. They are dependent upon Northeast Utilities and other systems for their transmission needs. The judge then declined to grant us any remedy. He did nothing about it because of dependency in some negotiations between the Town and Northeast Utilities. Atty. Adragna felt that it was improper for the judge to have not granted us relieve on the basis of talks because talks don't necessarily produce results. The net result of this is that the matter is now going before F.E.R.C. It is unclear as to when they will reach a decision on the matter. The final briefing will be done this Thursday (1/24/91). It was not his intention to submit any separate documents on behalf of Wallingford because everything that needed to be said was said. The Commission will give full deliberation and reach a decision no later than the end of this year or possibly somewhat sooner than that. Substantial progress has been made that leads Atty. Adragna to be hopeful that an arrangement can be reached with Northeast Utilities. There is a regional transmission arrangement which is an effort by virtually every utility in New England to come up with a new way of charging, pricing for the movement of electricity. The entire New England system is integrated. People in CT. are dependent upon people in MA. who are dependent upon people in New Hampshire, electrically. An effort is being made to restructure how that is done. By restructuring, Atty. Adragna meant, price, assured access, etc. The strategy is to represent what are fairly unique interests that Wallingford has that not many other utilities in New England have. He could not quantify in dollars and cents the benefit that the Town is obtaining but described them as being essentially, the ability in dealing with a supplier, be that supplier Northeast Utilities or someone else, the ability to turn around and look across New England and say

that we can always deal with another supplier instead, in other words, competition. If successful, the Town will then have that many more options as a purchaser as well as a seller. Long term it is our belief that the Town will benefit economically. Those are the affirmative things that the Town can get from a defensive standpoint. With respect to a regional transmission arrangement, the Town needs to remain involved in the process that is ongoing right now. It may well restructure how business is being conducted in New England.

Mr. Smith reiterated his feeling that it is important for the Town to keep its role as an active player in the process. There are some significant expenses estimated associated with that, an additional \$45,000 in legal and \$45,000 in consulting fees would be the Town's share representing about 40% of the group. He asked that the Council continue to waive the bid process and explained that the actual transfers would be presented before the Council at its January 31, 1991 special meeting.

Mr. Parisi: Are any of the other self-generating towns involved in this?

Mr. Smith: They are involved in the case, they remain involved in the case, but interestingly enough they have recently negotiated a settlement. They are not involved individually. They are involved as a part of a cooperative.

Atty. Adragna: Northeast Utilities has stated publicly that it intends to offer an arrangement to our group. That intention has yet to be presented.

Mr. Parisi: If offered, would that agreement be acceptable to us?

Mr. Smith: We would have to carefully evaluate it. We would have to assume more risks and responsibilities under that type of arrangement and have some people to administer that.

Mr. Parisi: If that agreement were not acceptable to us, what would we be trying to achieve by staying with the firm?

Mr. Smith: That is one option and the other option is the ability to trade perhaps with the Boston Edison or NEES (N.E. Electric System) rather than strictly dealing with N.E.U. Maybe in using this leverage we have a chance to revisit this. We are not a major player in this. It will effect the utility industry nationwide.

Mr. Parisi: Why should we spend all of this money?

Mr. Smith: Because we have different interests than those folks that are involved. They don't care about us in Boston Edison, they are worried about their transmission access. If they exclude us, so much the better, that means that there is more for them to use, trade, manipulate, etc.

Mr. Parisi: What about Northeast Utilities' responsibility to us for our agreement?

Mr. Smith: They have a commitment to continue to serve us through 1997. What happens in 1998?, I don't know. If capacity situation is right, they will probably offer us a contract that will be as attractive as what we have now, perhaps not. If they don't think that there is any competition out there, if you are the only game in Town, then they could certainly take a different posture than they would if there was competition. One of the reasons that we have a good contract right now is that we threatened to take some of our load to another supplier last time. We wrote them a letter putting them on notice for 30 days and I think that is what prompted an immediate response. Competition is what we are striving to make sure that we continue to have, flexibility in the power supply planning.

Mr. Parisi: We are going to build a new plant right?

Mr. Smith: A peaking plant, yes.

Mr. Parisi: What if that was expanded to generate more power, wouldn't that give us more of a voice?

Mr. Smith: It could, is it the economic thing to do?, right now, I would say no. I don't foresee Wallingford ever becoming self-sufficient at generation, especially at the limited site you have at Pierce. In order to be self-sufficient in our system, you would have to be putting in to meet today's demands. 120-125 megawatts of mixed capacity. This generator is not going to be efficient. Remember, we are buying a blend of existing units that have been around for 10, 15, 20 years and they run on nuclear fuel and hydroelectric and coal, it is a blended rate.

Mr. Gouveia: How much have we spent on this so far?

Mr. Smith: \$48,000 approximately has been our share with Miller, Balis & O'Neil. We have paid GDS \$38,632. not counting invoices that may be in transit.

Mr. Gouveia: What is the bottom line?

Mr. Smith: \$86,662.00.

Mr. Gouveia: In the initial decision, the subject of Wallingford was not addressed adequately, any particular reason?

Mr. Smith: I am sure that with 50 people in the room, you will get 50 different opinions. I think basically, what the judge said was that he recognized us as being a very unique and distinct group. However, the judge asked to defer the issue since the parties were talking to each other.

Mr. Gouveia: If you chose not to negotiate, will the judge be addressing this at the final decision?

Atty. Adragna: He no longer has any say in the case, it is out of his hands and before the full commission. The negotiation, in my legal opinion, is entirely irrelevant. The existence of negotiations is irrelevant to the question as to whether this group,

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Wallingford included, is entitled to relief from this merger. The position that we have taken before the Commission is just that. It would be an error of law for the Commission to take any notice whatsoever of the fact of negotiations. If we settle with N.E.U., great. Then we will do what we have to do to get the matter before the Commissioner. If we don't settle, it is entirely irrelevant.

Mr. Gouveia: Will the Commission decide in their final decision if you have not yet made any kind of decision between you and N.E.U.?

Atty. Adragna: The Commission in my view will have to decide the issues that we have presented to them. How they will decide?, no lawyer will give you a guarantee on that. I think that we have a reasonable likelihood of success.

Mr. Gouveia: Do you feel that before the final decision is made, further legal intervention is necessary on our part? As far as the litigation phase?

Atty. Adragna: We finished the litigation part of our representation when we filed our brief back on 1/9/91. There is another brief that has to be filed this Thursday. Actively, unless Northeast Utilities says something in what it files Thursday, in my view that is entirely inappropriate, unless they do something like that I don't foresee us filing anything before the Commission before the Commission reaches a final decision on the matter.

Mr. Gouveia: In Ray's letter he says that he estimates the cost of legal representation before F.E.R.C. concerning the initial decision to be approximately \$22,000.00.

Atty. Adragna: I guess what I am suggesting is that that number is, it is exceedingly unlikely that we are going to approach that. I think that we have spent all that we will spend on that litigation for now. That number assumed having to file multiple documents before the Commission concerning the initial decision.

Mr. Gouveia: But that is the intervention that I am talking about.

Atty. Adragna: That estimate was prepared in essence before that initial decision was issued. It certainly was prepared before we saw what N.E.U. said on January 9th. It was a good number at the time, it is now a number that it is extremely unlikely we will ever approach.

Mr. Gouveia: How much do estimate that your representing the Town on 1/9/91 cost?

Atty. Adragna: I have not seen any numbers in my office but we are not talking about more than. This is a shot in the dark, my guess is that it can't be over \$10,000 for that brief. I would be very much surprised if it were that much.

Mr. Gouveia: That presents a little problem in that we are being asked to waive the bid when the money has already been spent.

Mr. Smith: There is still some money left in the account.

Mr. Gouveia: So then you don't need the \$90,000?

Mr. Smith: We are going to address that Thursday at the quarterly budget adjustment.

Mr. Gouveia: I see two different issues here. One is the merger of N.E.U. and P.S.N.H. and the other one is the Regional Transmission Agreement. The reason that you want to get into the RTA is because the first one failed.

Atty. Adragna: I don't think that is entirely correct. There may be a RTA in New England irrespective.....

Mr. Gouveia: In addition to?

Atty. Adragna: That is exactly right. And how a transmission dependent utility like Wallingford is treated in that RTA is of critical importance to Wallingford.

Mr. Gouveia: Irregardless of the decision, Ray, your recommendation would be to go for that regional agreement?

Mr. Smith: Yes. to make sure that our needs are satisfied whatever they do.

Mr. Gouveia: You are asking to waive the bid for \$90,000. your recommendation. and I see three different things here. One is the legal representation before F.E.R.C., another is the legal representation for the regional transmission agreement and the third is the direct settlement in negotiations with Northeast Utilities. Will all those three things happen, or perhaps you may not have to negotiate with Northeast Utilities?

Mr. Smith: It could be any combination.

Mr. Gouveia: Then is this the worst case scenario?

Mr. Smith: It is an estimate at this point.

Mr. Gouveia: This is a three-prong effort and you are not anticipating any other regardless of what happens?

Mr. Smith: Not at this time.

Mr. Gouveia: How do you rate this issue in relationship to the rate settlement as far as importance is concerned.

Mr. Smith: I think that it is just as important for future planners. Are we going to get an immediate return? No.

Mr. Gouveia: I know that you had no way of knowing how much this was going to cost. but it has been somewhat of a piecemeal approach and it is already \$180,000 and could end up costing as much as the rate settlement which was over \$280,000.

Mr. Smith: Is the mere threat of having an alternate source of

supply worth something? I think so. We want to keep all of our options open to us.

Mr. Holmes: How was the 40.5% figure deemed to be our portion?

Mr. Smith: We take our annual sales of the four utilities and whatever our proportion is of the four utilities is the figure, in this case 40.5%. So, Hadley and Chicopee are small operations. It is proportioned to the size of the utility.

Mr. Solinsky: If Northeast Utilities buys PSNH, how are we losing anything?

Mr. Smith: The fear is that they will become a monopoly and dictate what the costs will be, who will be able to buy, sell, etc. That is the reason that 55 people are involved in this.

Mr. Solinsky: Will there be physical changes?

Mr. Smith: No, and there will be no way that power flows from Niagara Falls to our system, but what will you pay for that access for the transmission of those things. Perhaps a marketing situation, if we have excess power off of our unit, how can we get out to the rest of the world if we are restricted to one buyer and NEU won't allow us to take it out to Chicopee because they will pay a better price, we must deal with them. It becomes a monopoly situation.

Mr. Solinsky: How do we buy electricity from another supplier on the same line?

Mr. Smith: We make a deal with Chicopee, and we buy 5 megawatts of power from them, on the books we are allocated 5 megawatts of the unit that they have, we claim it as our capacity. When it runs, whatever cost it runs at, it comes to Wallingford on paper and we pay that price and we pay for the transmission rate for the utility in between. It is a bookkeeping process.

Mr. Solinsky: Is this a merger or a buy-out?

Mr. Smith: They have represented it as a merger.

Mr. Solinsky: Will that section remain public service?

Mr. Smith: We don't know. It will remain under the umbrella of Northeast Utilities.

Mr. Solinsky: If you make a deal with another supplier, you must also swing a deal with the company who owns the transmission line, is that it?

Mr. Smith: Again, the R.T.A. could handle that if it is structured right. That is why this is a landmark case because it is dealing with open transmission access which has been bubbling under the surface for many years in the utility industry.

Mr. Beaumont stated that it behooves us to make sure that we are involved in the R.T.A. proceedings in order that we can make sure that our needs are represented.

Mr. Solinsky asked how the electricity is brought to us from Canada?

Mr. Smith responded that is brought down along the Vermont/New Hampshire State line, in that area. There is a large substation in Massachusetts which is the receiving station and from there it is converted back to alternate current and then transmitted to us.

Mr. Solinsky: Who would own that facility after the merger?

Mr. Smith: There is a group of owners.

Mr. Solinsky: Is that included in the transmission lines, 92%?

Mr. Smith: No. That is built solely for the purpose of hauling the hydro-power out of Canada down into New England.

Ms. Papale asked if the three other utility companies, Chicopee, So. Hadley and Westfield, were staying on?

Mr. Smith responded that they are.

Ms. Papale was confused over the waiving of the bid for a law firm or a consulting firm or both.

Mr. Smith explained that the consulting firm supports the legal firm with technical information.

Ms. Papale asked if the decision had been appealed?

Atty. Adragna stated that it had on January 9, 1991.

Mr. Smith stated that we were bit players in this case. He offered a copy of the decision to anyone who is interested.

Mr. Killen had a problem with this because it started out with an appeal to F.E.R.C. and has turned into a so-called contained war which can result in an all out war. There is no limit. The Council will need to be more informed of what avenues it will take before they can vote to go ahead and cover all the avenues that the P.U.C. wishes it to.

VOTE: Zandri abstained; all others. aye; motion duly carried.

Mr. Smith thanked the Council for their support.

Motion was made by Mr. Bradley to Move Agenda Items #8 and 10C to the Next Order of Business, seconded by Mr. Parisi.

VOTE: All ayes; motion duly carried.

ITEM #8 Consider and Approve Tax Refunds (#126-143) in the Amount of \$3,874.21 - Tax Collector

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

Mr. Gouveia referred to refund #126 pointing out that the individual was delinquent on their taxes for 13 months, was charged \$273.24 in interest and a lien fee. That individual paid all that was due the Town plus an additional \$2,163.49. After 28 months the overpayment is being returned to the individual. He felt that either a system has to be put in place to "red-flag" these overpayments or interest should be paid to the individuals on their money. He felt it was unfair to be in receipt of \$2,163.49 for 28 months and not pay interest to its owner upon refund.

Mr. Norman Rosow, Tax Collector stated that as of July 1, 1991 people will be notified within 30 days of an overpayment. His department is currently in the process of back tracking the 1988 Grand List. With regards to #126, the first payment was made by a bank, the second payment by the individual themselves. Once the mistake was discovered by the party, they visited the Tax Office with proof of the overpayment. It was noted that the State Statute does not require a town to notify the taxpayer of an overpayment at all. The burden is upon the taxpayer as the Statute is written to inquire as to whether an overpayment has been made or not. Overpayments are created mostly by certificates of correction issued by the Town's Assessor Office for Motor Vehicles.

Mr. Gouveia reiterated his position on the payment of interest on the refund.

VOTE: All ayes; motion duly carried.

ITEM #10C Consider and Approve an Appropriation of Funds in the Amount of \$1,200.00 from Contingency; Reserve for Emergency Acct. #8050-800-3190 to Professional Fees Acct. #001-3060-700-7000 - Welfare Dept.

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

Mr. Zandri asked what the professional fees were for specifically?

Mr. Francis Francesconi responded that they were physician fees.

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

ITEM #5 Discussion and Possible Action to Form a Building Committee to Oversee the Design and Construction Phase for Developing 88 South Main Street as requested by Councilor Geno J. Zandri, Jr.

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

Mr. Zandri amended the motion to Form a Building Committee Consisting of Five Members, Three appointed by the Council Chairman and Two by the Mayor to Oversee the Design and Construction Phase of Developing

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88 South Main Street in Accordance with the Proposed Site Plan. Names for the Building Committee should be Presented to This Council at our Next Regularly Scheduled Meeting, seconded by Mrs. Duryea.

Mrs. Duryea asked what type of expertise is required to participate on this committee? What their duties are and who they will report to, who will be overseeing the project?

Mr. Killen pointed out that they would have to answer to the Council on one aspect if appointed by them, on the other, i.e., overseeing the project?, he was not sure. He pointed out the problem that developed with the Yalesville Fire House Building Committee.

Atty. Small stated that she also shared the same concerns. She felt it pertinent that someone keep track of money, change orders, what not. She stated that Adam and herself would put together a recommendation regarding that specific issue.

Mr. Zandri asked if a building committee was appointed for the Town Hall renovations?

Atty. Small responded, yes.

Mr. Zandri stated that a building committee was formed for the Police Station as well. He assumed that the building committee would oversee the hiring of an architect and work with all the departments, i.e., Building Dept., Engineering Dept., etc., for whatever input is needed.

Mr. Parisi asked who we were building the building for?

Mr. Zandri responded that it was to solve the parking problem at the Town Hall. There has been interest shown for the sight. It was not his concern who was interested in the building, but rather the solving of the parking problem.

Mr. Parisi asked what the actual cost would be to the Town to solve the parking problem?

Mr. Zandri: Total project cost is an estimated \$750,000.00 landscaping included.

Mr. Bradley asked who oversees the project from a building standpoint? The Building and Engineering Departments were mentioned and he stated, after reading the arbitration award as far as he was concerned, the Town Engineer and the Building Department were not fit to build an outhouse.

Mr. Killen responded that past history shows that the committee would go about the gathering of figures, appear before the Council with this information, put the work out to bid, award it to a reliable company and hire a clerk of the works, etc. It has been done that way with all of the school buildings.

Ms. Papale has been involved with two building committees, the Police Department and Vo-Ag and both times the Comptroller's Office was the only office within the Town Hall that was involved in the process. The committee itself was responsible for hiring an architect, putting the work out to bid, awarding the bid, hiring a secretary, etc. She stated that this format seemed to work out just fine. She felt that it worked so well because the committee appeared before the Council, keeping them as informed and as involved as possible. As long as that continues there should be no problem with any building committee.

Mayor Dickinson: I think the problem with this is that we are trying to put something up and we don't have a designated purpose for it. At least a purpose that we are all willing to sit down and say, "we think that this is in the interest of the Town". I think that we are all concerned about parking. I have great reluctance to say it is a good idea to build a building when we don't really have a designated use for the building. There are two other options regarding parking that still have to be looked into and I expect one, if not both of them in the next few weeks maybe months, but to embark upon a project such as this where there is so much uncertainty, I really recommend against it and there is no money appropriated and there is no plan, at least by my office to appropriate money, so I don't know where a building committee is going to get money to hire an architect. It is a joint venture between our both functions and I can't sit here and say that I am in support of a building committee. From the beginning I have said that I don't agree with it, I don't think that the economic times are good for it, we are putting up a building when we can't tell anyone who is going to be in it and what it is for. I think these things need to be settled before we embark upon a program.

Mr. Zandri: As far as economics. I think it is an ideal time to be constructing a building because right now the prices out there are tremendous. You can get the best deals going right now for labor. As far as dollars are concerned, there are already dollars bonded for the purchase of the land and I would assume that that bonding could come before us again and it could be extended to construct the building.

Mr. Parisi asked Mr. Zandri if he had solicited prices on the project?

Mr. Zandri responded that he contacted the individual who designed the building, Danny Lyons, who gave a square foot cost of \$80.00 to construct the building. It measures 4,000 sq. ft., totalling \$320,000.00 for the building, \$360,000.00 for the land and the balance was for the site work and parking.

Mr. Parisi asked if this will go out to bid?

Mr. Zandri saw no reason why it wouldn't.

Mrs. Duryea stated to the Mayor that any of the other options that look promising to the Town will result in a higher cost for construction and purchase than this project.

Mayor Dickinson felt that one option could come in significantly less in price. Regardless of that fact, there was interest in purchasing other pieces anyway. He went on to say that if one or both of the pieces of land they were thinking of became available he anticipated that there will be a great deal of support for purchase. He felt that we should not be encouraging departments to expand to utilize the new building but to contract as much as possible. He felt the parking problem could be solved without putting up a building.

Mr. Parisi asked who would be utilizing the building?

Mr. Zandri stated it could be used by a Town department or a private company.

Mr. Parisi agreed with the Mayor's point of view.

Ms. Papale stated that she voted in favor of this project for the fact that the property would also be built upon and not just an empty lot to park in.

Mr. Zandri asked the Mayor if the other land in question that could potentially solve the parking problem would have to have the Zoning Regulations changed?

Mayor Dickinson stated that for one particular piece of property, yes. The most likely one would not require a change in regulations. It would only take a matter of weeks to find out.

Mr. Zandri asked if it was within the footage requirement of the Town Hall?

Mayor Dickinson: That is correct.

Mr. Zandri: Is there something new that has developed within the last....

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Mayor Dickinson: One of the parties that we have been dealing with has indicated that they are moving forward with meetings and there is interest. Until I hear that there is not interest and nothing is moving forward I am not sure that there is a need to start a building committee.

Mr. Holmes stated that there currently exists a seven year excess of office space in the market. He was concerned that the Town will own a building with empty offices.

Mr. Solinsky shared the concerns of Mr. Holmes and the Mayor.

Mr. Zandri felt that dollar for dollar this project worked out to be the most economical way to go.

Mr. Parisi did not agree.

Mr. Gouveia: Mayor, the property that you referred to a few minutes ago, wasn't that property already discussed at this Council and deemed to be cost-prohibitive?

Mayor Dickinson: I am mentioning two that are still pending.

Mr. Gouveia: I know one is the legion that we all know about that one for four or five years now and nothing has changed, but isn't the other piece of property, the one that came before the Council that would require demolition at a cost of \$1.2 million?

Mayor Dickinson: No, no. There is another one that would require a change in regulations.

Mr. Gouveia: That's the one.

Mayor Dickinson: You must remember that you are looking to appropriate money for this and these other pieces may very well come before you. Are you willing to say, "No, I don't want to buy any of these others because now we are putting up a building". Are we sacrificing ownership of land in order to put up a building that we really don't need?

Mr. Gouveia: But Mayor, that piece of property has been made available a long, long time ago. We walked that property in June or July if my memory serves me correctly.

Mayor Dickinson: All we are waiting for is an appraisal.

Mr. Gouveia: How much longer can we wait to resolve the parking situation? Look at the American Legion, \$325,000.00 gives you twenty spaces, that's all.

Mayor Dickinson: That is for the entire piece. There are two options on that. If just the back portion were purchased it is significantly less money. That is actually the best deal.

Mayor Dickinson: We will know within four weeks. Is that such a critical time period? We will never have that building up in four weeks.

Mr. Gouveia: You say that the best option is to purchase the rear. I am assuming that the other option, which perhaps I am really assuming, would involve demolishing the building.

Mayor Dickinson: None of them involve demolishing buildings. This is the best option in terms of cost. It is a very low figure, about \$100,000.00 per parking space at twenty spaces.

Mr. Gouveia: \$325,000.00 to obtain twenty spaces? Geno says that \$700,000.00.....

Mayor Dickinson: It is less than \$325,000.00 for just the back portion.

Mr. Gouveia: Is this best option in the proposal from the American Legion?

Mayor Dickinson: No. It is existing and they are going through their necessary procedures to arrive at a decision. All we need to do is give them the time that they are asking for.

Much discussion and debate ensued around which was more important an issue, the spending of the \$750,000 or the parking problem.

Edward Musso, 56 Dibble Edge Road voiced his opposition to building a building to solve the parking problem. He felt that the employees should park off the premises and bus them in.

Motion was made by Mr. Parisi to Move the Question, seconded by Mr. Holmes.

OTE: Gouveia, Parisi, Solinsky & Killen, no; all others, aye. Motion duly carried.

VOTE ON AMENDED MOTION: Holmes, Parisi & Solinsky, no; all others, aye; motion duly carried.

ITEM #6 An Ordinance Amending an Ordinance Entitled, "An Ordinance Appropriating \$472,000 for the Planning and Design Phase of the Town Electric Generation Expansion Project and Authorizing the Issue of \$472,000 Bonds of the Town to Meet Said Appropriation and Pending the Issue Thereof the Making of Temporary Borrowings for Such Purpose" - SET A PUBLIC HEARING

Motion was made by Mr. Bradley to Set a Public Hearing for January 31, 1991 at 7:00 P.M., seconded by Mr. Zandri.

VOTE: Holmes & Parisi were absent; all others, aye; motion duly carried.

ITEM #7 An Ordinance Amending an Ordinance Entitled, " An Ordinance Amending An Ordinance Appropriating \$245,000 For The Planning and Acquisition of An Addition to the Lyman Hall High School Vocation Agricultural Center and Authorizing the Issue of \$245,000 Bonds of the Town to Meet Said Appropriation And Pending the Issue Thereof the Making of Temporary Borrowings for Such Purpose" - SET A PUBLIC HEARING

Motion was made by Mr. Bradley to SET A PUBLIC HEARING for February 13, 1991 at 7:45 P.M., seconded by Mrs. Duryea.

It was noted for the record that the Town Council's second regularly scheduled meeting will fall on Tuesday, February 12th which is Lincoln's Birthday.

VOTE: Holmes and Parisi were absent; all others, aye; motion duly carried.

ITEM #11 Discussion on the Emergency Snow Removal Ordinance #352 as requested by Councilor Susan S. Duryea

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

Mrs. Duryea explained that she has received many complaints since the last snowstorm surrounding the existing problem of snow removal during ice and snow storms. Going back to the minutes of 1987 and 1988, it seems as though the Town is not consistent in ensuring the safety of drivers and also in helping the snow plow drivers to get their job done. She spoke with Chief D'Ortenzio who will meet with Mr. Deak, Director of Public Works, on this issue. She felt the ordinance should be enforced the way it currently stands.

Mr. Holmes solicited the Police Chief's concerns on the issue.

Chief D'Ortenzio stated that he had concerns with the number of ordinances that deal with towing and snow removal. Due to the language of the ordinance he could not offer a short term solution to the problem. The ordinance mandates that the Town remove vehicles when the snow flies. His concerns surround when that actually stops. It takes several days to clean some of the side streets due to the lack of cooperation on the public's part. He questions whether it is reasonable and prudent to tow a car five days after the storm when the ordinance calls for removal during the storm. When does it terminate? How do we notify people? Should it be enacted only in areas where the Public Works Dept. has difficulty with removing the snow? He does not advocate moving all the cars on all the streets in Wallingford each time the snow falls.

Mr. Holmes inquired as to how the residents are notified?

Chief D'Ortenzio stated that a police cruiser visits the area with a bull horn requesting removal of the vehicles.

Mrs. Duryea felt that the Town has an obligation to the people of the Town to enforce this ordinance.

There was debate over what was determined a suitable and unsuitable storm warranting towing.

Mr. Zandri felt that the reason there is so much resistance is due to the lack of enforcement of this ordinance over the years. It is just a matter of enforcing it again until something better comes along.

Mr. Bradley asked when the towing/request for removal starts?

Chief D'Ortenzio stated that it is simply a matter of looking out the window and when the snow flies, start the process.

Mr. Parisi stated that this ordinance has always been an unpopular one. He raised the point that there are stretches of sidewalks that do not get shoveled and streets that do not get plowed. The ordinance is the law and the police enforce the law and it goes on down the line. The people need to see that we mean business and they will follow the policy.

The Chief expressed concern for those individuals living in multi-dwelling homes that do not afford them the convenience of a driveway and, for blocks, no other suitable location to move their vehicles to.

Mrs. Duryea wanted it to be made clear that she is not talking about tagging cars on the street when the snow flies. She is talking about snowstorms or ice storms.

Mr. Killen stated that this issue is not here to be punitive but to get the job done.

Chief D'Ortenzio was not criticizing the need for the ordinance but certain questions about the entire ordinance that also contradicts other things the Town does, even in terms of towing the vehicles and the payment of fines. His concerns were with the legality of towing a car when it was no longer snowing. There are also a number of streets that have not yet been accepted by the Town and he was not sure of the Town's authority to tow vehicles from these streets.

No action was taken.

Motion was made by Mr. Bradley to Move Agenda Item #15 Up To The Next Order of Business, seconded by Ms. Papale.

VOTE: All ayes; motion duly carried.

ITEM #15 Consider and Approve a Transfer of Funds in the Amount of \$750.00 from Longevity Acct. #001-2011-100-1750; \$250.00 from Longevity Acct. #001-2012-100-1750; \$1.500 from No-Sick Incentive Acct. #001-2014-100-1620 and \$700 from No-Sick Incentive Acct. #001-2015-100-1620 to Sewer/Water Acct. #001-2015-200-2030, \$1,200; Car Rental Acct. #001-2014-300-3100, \$1,600 and to State/Regional Affiliation Systems Acct. #001-2011-600-6600, \$400.00 for a total of \$3,200.00 - Dept. of Police Services

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

Mr. Zandri asked this be removed from the Consent Agenda to reserve his right to vote in the negative on this matter.

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

ITEM #12 Discussion and Possible Action on Possible Selling/Leasing Options of the Former Yalesville Firehouse as Requested by Councilor Susan S. Duryea

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

Mrs. Duryea was concerned with how much depreciation will occur with this building if it is allowed to sit and deteriorate. She was approached by an organization that would like to purchase the property. She does not have a preference over selling or leasing the building but would like to start some sort of a plan and to see what the Council's views are on the subject. In the Town Council Minutes of October 1987, the entire Council felt it was the right thing to do to sell it and the only reason that they did not put it out to bid or act on it was because the new Yalesville Firehouse was not completed. When it was completed they decided that would be the time to make plans for the former Yalesville Firehouse.

Mayor Dickinson stated that if the building is being used by the Recreation Dept. it is certainly for Town use. He went on to say that he has requested a report from Mr. Nunn's Committee that was set up to review the issue of the Public Access Television Station. One of the sites that they had reviewed was this one. He was not sure if the committee ever arrived at a conclusion on the site. That was the only municipal use expressed to the Mayor to his knowledge regarding this site other than the Recreation Dept.

Mrs. Duryea asked that Mr. Nunn appear before the Council to clear up the WPL-TV Committee's intentions.

Mr. Nunn gave a brief history on his committee and their charge. There are still a number of questions that have not been answered

to do with the Dept. of Public Utilities with the State regarding public access television and funds from the cable companies. He asked that Mr. Hanley and Ms. Scherer bring the Council up to date as to where they stand with the funding and siting and other areas that his committee has discussed.

Mr. Scott Hanley stated that a practical solution is being sought for the television facility. The search has been on-going for the past five years. The present facility is entirely funded by the Town and additional funds would be necessary to support the separate facility. That has been the basic position taken by the relocation committee. The activity by that committee has been suspended since the middle of last year due to a franchise renewal case delay. The firehouse was on the list of solutions but the committee did not have any funds to obtain any cost estimates on the renovation. Other sites have been viewed, with little success.

Mr. Zandri asked if a vote was taken to sell the property?

Mrs. Duryea read the motion made at that meeting into the record as follows: Item #7 was to Consider Authorization for Sale of Current Yalesville Volunteer Fire Dept. Property Pursuant to Public Bidding Process....(she read excerpts from the minutes into the record for historical purposes)...VOTE: All ayes: motion duly carried. It went forward but nothing was acted upon.

Ms. Papale: I think a for sale sign should go up.

Mr. Zandri: I don't know who follows up on these things but it should have been sold in 1987.

Mrs. Duryea thought that the building should go out to bid because she has been approached by an organization that is interested.

Mr. Killen asked the Mayor if the Post Office had been approached in possibly using the building?

Mayor Dickinson: My office sent a letter a good while ago. We never received a reply. We did send a letter indicating that it might be in their interest to use the site but we have not heard anything.

Mr. Parisi suggested that option over a year ago. He did not feel it was a good time to sell Town property.

Mr. Zandri questioned the procedure on the previous vote.

Mr. Killen asked the Mayor why the action was not carried forward?

Mayor Dickinson could not recall. It could have been the interest displayed by the Public Access Television.

Mr. Holmes remembered that there was subsequent discussion on the retaining of the building for use by other Town departments.

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Mr. Parisi felt that perhaps the delayed move by the fire company played a significant part on not selling the building.

Mr. Zandri was not sure what the procedure would be if a vote was already taken for specific action.

Mr. Solinsky felt that the building should be leased and that the Mayor's Office should pursue the Post Office in solicitation of interest.

Mayor Dickinson: I can contact the Post Office again by letter and verbally of which they should be able to supply me with a time factor, if they can't then I can report back within the next two weeks.

Mr. Zandri felt it was a good idea to lease, but if a lessee cannot be found within a reasonable amount of time, then it should be sold.

Mr. Killen agreed.

Mr. Parisi felt that the Post Master General in New Haven should be contacted.

Mrs. Duryea suggested a report back to the Council at the next meeting.

The Chair declared a 5 minute recess.

ITEM #13 Discussion and Possible Action of Payment of an Invoice from Vincent T. McManus, Jr. for Legal Services Rendered the Zoning Board of Appeals in the Matter of the Zoning Board of Appeals vs. Planning & Zoning - ZBA

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

Raymond Havican and Gail Powell both Commissioners on the Zoning Board of Appeals approached the witness bench before the Council.

Mr. Havican stated that Mr. William Moraza, Bonita Rubenstein, both Commissioners on the Zoning Board of Appeals and Mildred Dorsey, Alternate to the Zoning Board of Appeals were present in the audience this evening. Absent due to a previous commitment was Richard E. Scott, Alternate, and Michael Papale, Former Commissioner who was in Massachusetts for evaluation of physical ailment (back problem).

Mr. Havican: The reason that we are here is to ask you to reconsider your vote to deny payment to Atty. McManus. I also wish to state that we have no animosity towards Planning & Zoning Commissioners nor have any derogatory statements been made about anyone in the press over actions taken to defend our rights of the citizens of Wallingford. For information about the individual citizens who may be here. I wish to also state that we are not a paid Board. We are citizens of the Town, average citizens of different occupations who have taken oath of office to do our best for the Town. The actions that we have taken were to defend the rights of the citizens of Wallingford as granted to us by State Charter. Planning & Zoning took away a remedy that the ZBA administers for the people of the Town of Wallingford. When Planning & Zoning acted, we had only 15 days to respond. On the Thursday before the Tuesday deadline for action, Gail Powell and I met with Adam Mantzaris to discuss the issue. We asked, "what was his input into this regulation?" His response was, "none". He was not consulted or informed. We asked, "what should we do?". He would suggest that when an appeal is filed: 1) stall for 65 days, or 2) grant it and let Planning & Zoning sue your Board. We commented that such an approach was doomed. The appeal would never reach us. Linda Bush, who is down in the office, would deny it based on the fact that we took no action against it. The citizen would face going to court knowing that we took no action to protect his right to appeal. Adam's comment to that was, "I see your point". I next reviewed my discussions with Atty. Tom Byrne, a highly respected Zoning Lawyer and authority of published books on this subject. He stated that "we must not allow this to happen as it violates your Board's rights as granted by State Charter". I had also mailed him a complete description of what was published in the newspaper. Adam then spent time reviewing his law books and the final decision was that he would review the regulation with Atty. Byrne, review his case studies and talk to other personnel and advise us of the results. We advised him that a decision was needed before Tuesday, which was our deadline to appeal. There was no response from Adam. We have correspondence detailing this. Legal action was taken to protect the rights of

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the citizens. To not do this would violate our oath of office, to serve the Town to the best of our ability. Our right to appeal was sustained by the court because our case was approved for action. The Planning Commission then repealed the first regulation in admission that they were wrong and proposed a new second regulation. At this meeting Atty. McManus and Adam Mantzaris were present and Adam spent 45 minutes arguing and pleading to change the regulation but was rebuffed. I understand that comments were made by Ms. Bush that they wanted to teach us a lesson. So you might say in summary that Zoning acted without the consent of the Town Attorney. We had a statutory right to bring the second appeal. We won the case and the appeal. We did our best for the citizens of Wallingford and did not back away from our sacred oath. We were told by Adam that Atty. McManus's legal fees were negotiated and that the matter was settled that no one had to mortgage their home. We asked you to please put yourself in our shoes when you consider our actions and why we did what we did. Thank you.

Mr. Zandri: Did you get the authority from the Town Attorney to pursue this? That seems to be the big question.

Mr. Havican: He never answered our questions. He never said anything at all. You have a letter where I tried to point this out. It went right down to Tuesday morning, so there was no answer.

Mr. Zandri: You went to the Town Attorney and asked whether or not you should pursue this case and get his o.k. on pursuing it?

Mr. Havican: Yes. The Town Attorney is staffed. He is there to advise Boards when they have a problem. We went to him and said, "here is the situation" but we never got an answer.

Mr. Zandri: Janis maybe you can answer this question. If a Board from the Town goes through the Town Attorney's Office and asks about a particular case, who, at that point, would assign an attorney to the case?

Atty. Small: Our office would hire outside counsel. It is my understanding just to clarify that, what Adam had said was, "after consulting with Thomas Byrne, he would approach the Planning & Zoning Commission; 1) with an opinion as to the legality of the regulation and that he would seek to refine the regulation". But of course it should be noted that there was a step, the appeal period was running. It was a 15 day appeal period. That was his plan of attack. He was going to consult with Byrne who are the experts on Zoning law and then he was going to deal with Planning & Zoning and the regulation.

Mr. Zandri: Are we talking about the appeal or when this whole case initially started?

Atty. Small: Before the appeal was actually filed. That was his plan of attack on this.

Mr. Zandri: Let's start from the beginning on this. I want to find out when, how the attorneys were hired here. You had a situation where an action was taking place.

Atty. Small: We didn't hire anyone. Adam said not to file the appeal. He was going to deal with Planning & Zoning Commission.

Mr. Zandri: You don't know if I am talking about the appeal or whether I am talking about how this whole thing started.

Atty. Small: The appeal meaning the trial level. I am not talking about the appellate court level. I am sorry. I am talking about the trial level. I am sorry. I am talking about the very initial legal action, commencing of legal action. That was his position at that time.

Mr. Zandri: So could you just repeat then...

Atty. Small: What his position was is that he wanted to research the law, talk to Tom Byrne, issue a legal opinion and discuss with Planning & Zoning changing the regulation. That was going to be his plan of attack regarding this matter. At the same time with regards to the ZBA, the 15 day period in which for them to file the lawsuit was running. They felt the time pressure and he did not want to deal with it in a legal action, he wanted to deal with it internally with Planning & Zoning Commission. That is how he wanted to handle it.

Mr. Zandri: So then there really was no authorization for anyone to hire outside counsel?

Mr. Havican: That is correct. We never heard from him.

Mr. Killen: We should have had Adam here tonight. I did not realize it would boil down to this. I do have a copy of a letter from him with his signature saying that, as a matter of fact, that a meeting with the Chairman of the Zoning Board of Appeals called specifically to discuss the Commission's action, the undersigned expressly disapproved an appeal of the Zoning regulation of the Zoning Board of Appeals. It says very emphatically here with his signature that he told you not to file the opinion.

Gail Powell: Bert if I can speak to that. We met with Adam the first day before the appeal period expired. Adam's initial opinion when the meeting began was that as the Zoning Board of Appeals, we did not even have the right to appeal. That was one of his opinions at the time. We explained to him the advice that we had been given by Atty. Tom Byrne, who is a reputed legal expert with regard to Planning & Zoning issues. He is the expert which the Planning & Zoning has summoned to Wallingford a number of times to have group discussions and thrash out issues and what not. He is an expert in his field.

Mr. Killen: I have heard them. I have copies of those minutes here.

Ms. Powell: Upon hearing this from us about Byrne's recommendation, Adam wanted time to consult with Mr. Byrne, he felt that his opinion may be wrong, that we did have the right to appeal maybe we did not. When we left his office that Thursday evening, I left him with five points that we needed a direct answer to on or before Monday because Tuesday was the expiration of our appeal period. So he was aware from the time that we were able to get in to see him that from our

standpoint the clock was ticking. When we make a decision on the ZBA, an applicant or the Planning & Zoning or an abutting property owner decides, depending on which way we go, has 15 days to appeal our decisions. We just sit and wait. There is nothing that takes effect including that regulation that Planning & Zoning had enacted until that 15 appeal period passes. If that appeal period passes with no action, the regulation is on the books and that is the end of it. It was our considered opinion as a Board, with advice from Tom Byrne, that we, in fact, since we were the aggrieved party by the enactment of the regulation, that we had the right to appeal on behalf of the Town of Wallingford. There are 13,400 property owners in Wallingford who were going to be defeated by, possibly defeated, or any potential request for a variance defeated by the enactment of this regulation. It was our bound and duty having taken an oath to serve the Town in the best of our ability in the capacity as ZBA Commissioners, to act in their best interest. That is what we did. Everyone is looking through the new green Charter book, that is not the book that was in effect at the time that we took this action.

Mr. Holmes: The language is the same.

Mr. Zandri: This was a regulation that was just passed by the Zoning Board, correct? That you are fighting?

Ms. Powell: Correct.

Mr. Zandri: Even if that appeal period passed and that regulation was now law, could that regulation be, at some other point, changed again?

Ms. Powell: Anything is possible. One of Adam's scenarios was, as Mr. Havican suggested, let it fly in the face of whatever, let's take an application and approve it and let them take us to court. But I don't see any sense in that. She has taken us to court enough. There was a legal process that was due process involved and we felt an inherent responsibility of all of our Board members and Alternates to exercise it.

Mr. Zandri: I think that there were two avenues that could have been taken and one was, if you felt that you were not getting satisfaction out of our legal department you could have always come to this Council for help as far as a decision one way or another. The second avenue that was available to you and to anyone in this Town, if there is a regulation on the books that we don't agree with or you don't agree with and with a legitimate argument, it could be repealed, it could be brought up again and overturned.

Ms. Powell: I have also heard that Adam said that the regulation, and I never heard this, he said, it was spoken but I never heard the words that he encouraged us not to fight it because the regulation was good for the Town. I do not believe that the Town Attorney should be encouraging any Board in Town to act in direct conflict with State Statute. The regulation, in itself, apart from what it said about use variances, or whatever, the language in the regulation and the amended regulation told the Zoning Board of Appeals how we were to conduct business and that is disallowed by State Statute. I think there has been a lot said through the paper, there

have been a lot of inflammatory remarks thrown around and I think what we want to convey to you, I think it is time you heard the ZBA's side of the coin. Every coin has two sides and nobody has really come forward and explained why we felt pressured into the action that we did both as citizens and sworn Commissioners of the ZBA. Just to get it past the technical point of, did you do this? and did you pass go? and did you collect \$200.00? We had a sworn right to protect the rights of the citizens of this Town. The reason that we have a ZBA in Town is because we have a Planning & Zoning Commission. That is also mandated by State Statute. You cannot have a Planning & Zoning Commission without a Board of Appeals. There is no democracy without it. If you are going to regulate Planning & Zoning, you have to give homeowners and property owners and residents a right to appeal. And that is what we were seeking to protect. It had nothing to do with a war between us and P & Z. In as many years as I have sat on the ZBA and as many years as I have sat as an Alternate before, we have never initiated one legal action. We have been the respondent of many, both from the municipal and from the residential side, let's face it, there are inherent things that go on with the P & Z Commission and ZBA. They write the regulations and we serve as a pressure valve. It is like being a member of the school board. You are going to have people who don't like the way you think or act in either case. We were doing what we felt by State Statute to do and that is why we took the action that we took. The fact that it was upheld in court, both our right to appeal which was also in question, and the fact that the legislation, the regulation that was passed was also denied and upheld as being incorrect by the court. Those two findings make me believe that we did our duty in the timeframe that we had to do it in. I don't know what process that she goes through when she brings action against us, I have not had her experience at it.

Mr. Zandri: The only comment in, when the vote came up at the last meeting and the way I voted, I voted because I felt there was a problem with following the Charter and I still think that problem still exists.

s. Powell: If we had had proper advice on the footsteps to follow we would have followed them.

Mr. Holmes: Thank you Mr. Chairman. I was just wondering, when you took that vote to hire an attorney, where did you think the money was going to come from, seeing that you have no budget for that? I just don't understand that thinking. I know that you were pressured, you felt pressured with the time constraints, but when you made a decision to hire outside counsel, where did you think that was.....

Mr. Havican: It came down to the wire and if we didn't take...we are not attorneys, if we didn't take legal action, we would have lost.....so what was done in checking around as far as attorneys who would understand the situation, the only one was the former Town Attorney, Vinny McManus. It was his opinion that a legal approach as stated by Tom Byrne was correct. We must do something for the Town of Wallingford and the citizens to not let this happen. When push came to shove when there was no answer from Adam and no call....and it came right down to the hour that we had to

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get the paperwork in, I made the decision to tell Vinny that we would like to have him represent us. As far as the monies for it, I figured that, o.k., we would have to do that later on, I just had to make a move. I made a move that the Board had discussed and felt that it was our responsibility to the Town.....of law... the decision was made. I don't back off on making a decision if I think that it is right. To do less than that I thought would be like a hollow man. You take an oath to defend the citizens and work hard for the Town and do the best that you can, when push comes to shove and you wilt then you are nothing, then I say that you should never serve on a Board if you don't have the guts to do what you really think is true. You let the chips fall. It was one of the Kennedys that stated, "you do the best that you can, then you say the hell with it".

Mr. Holmes: I am not going to give you my opinion as to who is correct in this case as far as the right to appeal, I agree 100% with the thought process as far as you wanting to appeal it. But again, I just go back to the issue, I think that I was reading some of your minutes where I believe that your Commission was aware of the exposure and I think that you made comments that, "well if they don't approve it or if they don't fund it, I will pay for it myself".

Mr. Havican: I never said that I would pay for it myself, I said, "maybe if necessary, we stand in front of K Mart and ring a bell to try to raise some money". I am not the type of a Chairman who controls the Commissioners and says, "do this, do that, this is what I want to have done", they are all intelligent people, they have a lot of experience, they make up their own minds. The Chairman is there to lead and direct, I don't force anyone. No one was forced to make a decision to support what the Board wanted to do. It was unanimous. We felt that we had to defend our position by State Statutes for the Town of Wallingford....

Ms. Powell: And we would have to fight and grovel and do whatever we needed to do, possibly after the fact, get approval for the bill, feeling that two scenarios could have happened. Number one, Planning & Zoning along with the Town Planner could have come to their senses and arbitrated the issue and settled the matter in which case it would not have had to go full circle or, we could have gone with it to the end and come out being proven that we were correct.

Mr. Holmes: Be that as it may, it is just like when I buy supplies I have to get authorization to get those, I just can't run to the store and then say to send my company the bill. There are certain procedures that you have to follow. I feel that you did not follow them.

Ms. Powell: For every procedure there is also an exception and for every policy there is also the time that you have to circumvent it or go around it. There are a lot of things that come up before this Council that are not time-limited. I think that is what we are trying to impress upon you tonight. We were not trying to be flagrant in disregarding Council's input into our dilemma, but we were faced with a timeframe problem and when it reaches 12:00 on that 15th day, it doesn't matter how good your intentions are, the door is shut.

Mr. Holmes: I am in favor of paying this bill simply because I don't think that we are going to win in court and I am not desirous of going to court. We are going to spend a good deal of money taking this to court and I have no doubt that we stand a better chance of losing than winning and I am just not interested in seeing it happen. I am still in favor of paying this bill, I think that procedures should be clear to everyone in the future so we don't have this type of issue come up again.

Ms. Powell: I think that when you have Chairmen, and when you have Charter changes and when you have new people sworn in on Commissions I think that an orientation is entirely possible, but to my knowledge on any commission that I have served on, that has ever been done. I have heard 6 figure numbers thrown around this place like chicken feed tonight and we are talking about paying a man for representing a Town board doing what they felt was right for the residents, homeowners and taxpayers, I might add, of this Town. I believe that the figure that has been negotiated is in the neighborhood of \$14,000. I would hate to see us waste more time and money and pay the bill as it stands now and then see what happens next because I think that there has been enough time and enough press taken up to this point.

Mr. Parisi: As you approach this hour of reckoning as you say time was sliding away, and you must have realized that you were going to expend funds in the name of the Town of Wallingford am I correct? You realize that? At any time did you consult anyone? You had no idea that you should consult the Mayor or the Council Chairman, the financial body of the Town that you were going to expend money?

Ms. Powell: We did not need to consult anyone because the night the decision was made to file the appeal and here I mean file I appeal of the enactment of their regulation I received a call from the Mayor. I told him basically at the time exactly what I am telling you tonight.

Mr. Parisi: That you were going to hire an attorney?

Ms. Powell: We had already done that.

Mr. Killen: What is your point?

Ms. Powell: He asked if we had talked to anyone, we did talk to the Mayor.

Mr. Parisi: Did you actually tell anyone that you were going to expend "X" number of dollars?

Ms. Powell: No we didn't.

Mr. Parisi: You didn't get a price?

Ms. Powell: We did not know how much we were going to spend. If Planning & Zoning had settled the issue we might not had spent \$500.00.

Mr. Parisi: The point is that the Charter is very specific on the conduct of business and you didn't, or someone didn't, whoever, did not even look at the Town Charter. You can say everything you want about representing taxpayers and all of that and I understand where you are coming from. But there is no statement that you can make that justifies the expenditure of Town money without approval of the proper Boards.

Ms. Powell: I understand that we are not the first Board who has acted, I don't believe that we will be the last though I would like to think that every commission and every employee in Town has learned a lesson by this. It has been in the paper for over a year. I would just like to see the matter settled. But I felt an incumbent as a Board member myself, to come before you, especially after reading about the vote not to pay the attorney after the battle had already been won in court, not to pay the attorney for time expended, it just seemed that members of the Council, members in the Town Attorney's Office and members throughout other Boards and what not in Town, including the press, had only heard one side of the story. No one has ever to my knowledge summoned us to ask us why did we do it? We were never brought before the Council like the Chief of Police was tonight asking, why didn't you plow the streets?

Mr. Parisi: That is not the point, we don't have to ask you why you did it, the point is that it only works one way and that is the authorization to expend funds which you cannot assume yourself, as Chairman or whomever. If that is the scenario then we can go out and spend money also because we are the financial body and come back later. There has to be some order.

Ms. Powell: Well excuse up for being zealous but we figured the point was strong enough and dear enough to the taxpayers of this Town that we went out on a limb, I mean no one knows that better than us. We went out on a limb, but we felt that we did that with the safety vest that what we were doing was right. We were confident through all kinds of legal advice that not to take action would be worse than the alternative.

Mr. Parisi: I still can't believe that nowhere did a bell go off in your mind that you should consult someone about the expenditure of the money, namely, if no one else, the Chairman of the Council.

Ms. Powell: I believe that our Chairman knew that he would have to come to Council after the fact and he was willing to face those consequences.

Mr. Parisi: I guess that is where we are at then.

Ms. Papale: I would like to make the statement of how difficult it was for me a few weeks ago to vote the way that I did. And I also want to mention that I feel that I have always had very good rapport with P & Z and ZBA. I have always been there to listen to Democrats and Republicans and people on both commissions have called me very often. I understand how frustrated the ZBA had to be when all of this happened. As a Councilor I don't want to say that my job is

more important and that I have more authority over things than you do but we do have the authority as far as the fiscal body. I didn't hear and I don't really like to come home to find my answering machine flickering, but I did not hear one word from the ZBA, not that I could have done anything or swayed anyone, but maybe I could have given you some advice or maybe I could have talked to Adam or someone, all I know is that the letter that Bert checked and our Town Attorney advise

your Board not to go ahead. As I looked in the budget and the Charter I realize that there were no funds in the budget to pay for this bill. I also want to state that I am not even going to look at this bill as being paid to Atty. McManus who did a fine job for you. He won the case for you. I find Vinny to be a fine lawyer and a fine person. I am not looking at it me voting it down not to pay Vinny the money that is owed to him, I voted last time for the idea that I can't let a Commission make a decision like that. There was no funds in the budget so how was this going to be paid? I think that if you had come to our Council Chairman, somehow we could have resolved it and if you were so frustrated with the time, I really think that a few phone calls to a few of us might have pushed Adam a little bit. They are very busy in that office but when we go in there they seem to have time to talk to us. It is just too bad that this has happened and I want to mention again, Vinny did a hell of a job for you and I just feel bad, but I am not voting, or I didn't vote against funds for Atty. McManus, it was just the principle of the way that this was done and I really wish that it would have worked out different.

Ms. Powell: I agree. I understand what you are saying. Hindsight is always perfect vision. In the timeframe that we were looking at with the clock ticking and I have heard many times here this evening, can't we get some decisions going, and the carrying out of our duties, we don't have the luxury of something going on for so long that we forget what the motion was or how it was happening or when because our decisions are made two weeks later. If we pass two weeks without receiving a summons we know this decision has gone into effect. Likewise, as I said, we have never had to budget in Zoning Board of Appeals, not in the many years that I was Chairman nor anything else. We have never had to budget for legal expenses because it has never been an issue. This issue at this particular point in time is that, upon advice from the Town Planner's Office, Planning & Zoning went forward and enacted a regulation that was inherently illegal that flies ridicule in the face of State Statute that applied regulatory procedures to our Board which is also against State Statutes. If we had a month to think this over and put a game plan together, that might have been adequate time. You would have had two Council meetings during that period, it would not have been the season when people are on vacation, and so on and so forth. There are a lot of things that would have been better about it, but we did not have the luxury of that time and we felt it was better to be tentative and act then to feel that we were right and not have the commitment to take the step to do it. I commend Vinny for his actions on our behalf. But from the opinion from many other sources that we talked to, it was so obvious that the judge would have found that way no matter who represented us. It was very flagrant. As Linda said at the meeting where they not only repealed the first regulation knowing that they had done something that was totally against the rules. Then they amended, they

came up with the second regulation which Adam spent 45 minutes trying to talk them out of, advising them that it was not proper and she just said, "we don't need to listen to you". How can you ignore that also and the regulation that they came up? As some people have said, the only place there would have been any room for the ZBA in that case would have been, I believe the quotes was "when ducks fly upside down through Wallingford". It is one of those cases where it never would have happened and it was regulatory on the ZBA's behalf by Planning & Zoning. We were being told what we could here, when we could here it, how we were to approve it, to get their approval before we made our decision, and that is strictly against any State Statute in relationship to P&Z Boards and ZBAs. I am not asking that the bill be paid on behalf of us, I am asking that it be paid on behalf of the people we represented who are the same people that you represent, those being the people of Wallingford.

Mr. Parisi: I believe in your right to serve as an Appeal Board, I have no problem with your Board as it stands and the function of your Board. I agree you should have every right to fulfill your mission and to serve the people of the Town. My disagreement is with the procedure that you used to pursue what you thought was the right thing to do. In my eyes, you did not do it properly, by the rules of the Town and the Town Charter. I just want to make that clear that this has nothing to do with you, individually or as a Board. I am in agreement with your position.

Ms. Powell: It was not an easy decision to make.

Mr. Parisi: I am not going to argue any of that. My point is that there is a proper procedure to expend funds and that is what the problem is.

Ms. Powell: And they (the Council) are saying when you have the time to go through those procedures.....

Mr. Papale: The bottom line is that you spent money that was not there.

Ms. Powell: Maybe this year our Chairman will put in a line item for legal expenses.

Mr. Killen: When it came before us we disposed of it, we voted not to pay the bill. I got a call from Janis Small asking if we would entertain a motion to listen to your Board. I said "fine, communication is what I am interested in". That rang a bell with me and I dug out the minutes from April 18, 1989 and we sat with you people and the P&Z Board asking the Chairpeople to keep Linda Bush out of it, the Chairpersons to sit down and get together. I was promised constantly that you people would get together, which you never did. Never did.

Ms. Powell: As we said early on we have no problem with P&Z, we understand their role and I believe that they initially understood ours.

Mr. Killen: Ray called my 2 and 3 times trying to set up a meeting stating that "when Gail gets back we will get together".

Mr. Killen: You are constantly warring over your turf. Not on the matters of law. The Charter states very specifically that you write the Town Attorney a letter, he or she is obliged to give you an answer regarding your duties. That has been there since time in memorial. Now I asked earlier in the evening here, the Town Attorney, Adam Mantzaris, Corporation Counsel, says in a statement, "at a meeting with the Chairman of the Zoning Board of Appeals called specifically to discuss the Commission action, the undersigned expressly disapproved an appeal of the Zoning regulation by the Zoning Board of Appeals". Did he or didn't he tell you not to go forward with that appeal?

Ms. Powell: He wanted to talk Planning & Zoning out of having the amendment. He wanted to let us allow the amendment to be enacted approve a use variance in strict defiance of the regulation and let Planning & Zoning sue us in court and thereby have our legal standing....

Mr. Killen: You are not answering yes or no, the bottom line is..

Ms. Powell: You asked me what he said.

Mr. Killen: The bottom line is, he says he expressly disapproves an appeal. That is very blunt. Those are his words, not mine. If we are going to get into semantics along this line, I said, I invited you people to be here, I just assume have Adam here. I am not going to have someone say that they heard one side and not the other.

Ms. Powell: Adam did not want, I told you right in the beginning Bert, Adam had two feelings. His first feeling was that he didn't believe that...

Mr. Killen: I am not interested in his feeling, I am interested in his advice to you. The thing that bothers me....

Ms. Powell: He left the meeting saying that he would get back to us, that is how he left it.

Mr. Killen: The thing that bothers me is that the both of you have stood by your oath of office, which is wonderful because we all have an oath of office. But that oath does not limit you to the State Statutes, it also says that you will uphold the laws of the Town of Wallingford and the Charter which you chose to ignore. So you flipped a coin and said either we will obey one side or obey the other. You don't have that option and I don't have that option.

Ms. Dorsey: I would like to say something. There is nothing in the old Charter that says we have to get permission.

Mr. Killen: Oh yes there is. Yes ma'am.

Ms. Dorsey: In 1989 the Charter was amended. In November of 1989. We did not receive copies until May or June.

Mr. Killen: The point from time immemorial, and I will get you an original Charter, has always said that no Officer, Board or Commission

shall obligate the Town to pay any bills for which they don't have money, I am paraphrasing it. But if the money is not there, you have no authority to go out and do so. And anyone doing so not only is liable for the money but is liable for loss of their job. That has been in the Charter since we have had it.

Ms. Dorsey: This is such an important issue then why isn't a letter sent to each Board at the beginning of each year advising the people that they cannot do that? I never seen a letter.

Mr. Killen: This book is available to everyone in the Town of Wallingford. Anyone taking the oath of office should get a copy of this and find every section that pertains to them and every time they have a question they should peruse it. If you had done so you would not be here today. It says right in the Charter that you cannot do what you did. It is that simple.

Ms. Dorsey: I still think it would be easier if you sent a letter to each Board.

Mr. Killen: How could it be easier than having a book which is imperative that all of you know. Whether one letter comes or not makes no difference. It is imperative that you know what is in there because it is guiding you. You keep going back to State Statute but you are falling back on it as your reasoning but you are picking your reasons and saying, the other ones may be good reasons but we don't want them. You can't do it that way.

Ms. Powell: Both P&Z and ZBA are inherently responsible to the State Statute.

Mr. Killen: Not only to the State Statute and if we are then the State will appoint you. Because you are responsible here is why we appoint you and you have a responsibility to us and the Town of Wallingford. That is very important.

Mr. Bradley: I would like to understand the timeframes here, Ray. When did the case first come in, and dates and times that transpired? In other words, something came before you that triggered this, when did that occur?

Mr. Havican: I am not sure. It was published in the newspaper. The new regulation by Planning & Zoning. From that date we had 15 days toI don't know what date it was.

Mr. Bradley: Does it wrap around the date of the August 29th memo from Adam Mantzaris. It is dated August 29th but it has an addendum that Bert just referred to of September 4. I was trying to determine when you first started this process.

Mr. Havican: I have Adam's letter dated November 16, 1989 to me, my response was dated January 12, 1990. I don't seem to have an earlier letter from Adam.

Mr. Bradley: This was to the Council. No, you are not copied on it. Pat, do you know when the date of that regulation came before ZBA? The one that this appeal is all based on, and the 15 day time period

here?

Mr. Killen: September 11, 1989...a decision.

Mr. Piscitelli: I can't recall. I recall that at the time Adam had talked to us about when this was all going about and said that we should look and try to be, get the Statute to be a little more explicit. I think that he was calling around to some of the people who were involved in land use. But, it was really up in the air because this whole thing has really drawn attention from a lot of communities throughout the State. This is from what Adam has told me and Janis that the decision that was rendered by the judge in favor of the ZBA really didn't accomplish anything. It brought it back to square 1. This is the reason why both Adam and John Knott had approached us to work out some language and then I think came before the Council about appropriating some money for both Commissions to try and really solve the thing. I really cannot place the date, Ed, to answer your question specifically.

Mr. Bradley: I am trying to center the September 4th addendum that your (Bert) brought up as far as Adam meeting with the Chairman. Where did their first meeting,...in other words, what meeting triggered this? It is based on the legal notice, the date of that and then what the 15 days transpired to. I wanted to see where this had fit in.

Mr. Killen: According to the memorandum of decision on September 11, 1989, the Wallingford Planning & Zoning Commission amended their Statutes. The Board of Appeals appealed that decision in Superior Court. Thereafter on March 12, 1990 the Wallingford Planning & Zoning Commission further amended their regulations. One of those two dates is what you are looking for.

Mr. Piscitelli: Do you have the date when Adam came before you and requested the funds for both himself and John Knott to represent both Commissions on the appeal process to this decision that was rendered by the judge for the ZBA?

Ms. Powell: The decision was rendered in August of 1990. The case was in court approximately 1 year and I believe the Planning & Zoning meeting where the regulation was voted upon was probably May or July because there were a lot of people on vacation at that particular time, it was hard to reach people.

Mr. Piscitelli: Janis do you have the file?

Atty. Small: I have our file.

Mr. Piscitelli: In regards to the dates?

Mr. Killen: Which one are you looking for Pat?

Mr. Piscitelli: In answer to Ed Bradley's question. Because I don't recall.

Atty. Small: What date are you looking for Ed?

Mr. Bradley: I am looking for the date of the appeal, when it started this 15 day time period.

Ms. Powell: We filed on the 15th day.

Mr. Bradley: I am trying to determine when the September 4, 1989 date of this memo by Adam fits into that timeframe. In other words, was the Chairman and the discussion with Adam prior to the meeting, during that timeframe, or was it more....

Ms. Powell: Our meeting with Adam was the Thursday before the Tuesday which was the 15th day.

Mr. Bradley: That does not tell me what relation it is to September 4th.

Ms. Powell: It was probably 2 months prior to that. 1-2 months.

Atty. Small: There was one suit that was then withdrawn and then I have the second suit. I have to go up and find the file. They had the first regulation which the ZBA filed a lawsuit over. That regulation was then amended and a second action was brought. I have the one that is pending in court so I would have to go find the other one.

Atty. Vincent McManus: When I was first approached by the members of the Zoning Board of Appeals....(he mistakenly turned the microphone off thinking he was turning it on)...while they were waiting for Adam Mantzaris to work something out. It was not until Adam Mantzaris determined that he was not going to be able to work....out, that we proceeded with the appeal. We waited about 2 months.....a couple months after that we then went to work on signing an aggrievement. Our aggrievement was filed. When the Planning Commissioner decided to repeal the regulation.....because the regulation.....had been repealed, then that appeal was....it was therefore withdrawn. (The remainder of Atty. McManus's comments were inaudible)

Mayor Dickinson: I am just going to basically reiterate what I think I indicated the last meeting. That is that I do recommend payment of the bill but I don't agree legally that the Town is obligated or would be in the future as I don't think it is a precedent that we should feel from now on that any Commission that obligates the Town of Wallingford without funds appropriated can do so with impunity. I do feel, as I stated last meeting, that a resolution should be passed reiterating the terms of the Charter and indicating the provisions that show and provide for enforcement of the Charter. Because, even if the Town is obligated to pay these, there are provisions in the Charter for enforcement of the Charter. There are two aspects to this. I don't know how we can possibly deal with budgets if any Commission is able to go out and spend funds that we are not aware of what we are obligated to in the course of a year. So there are strong arguments on all sides of this given that it is a case of a new nature. I would do as I did last time, recommend payment of the bill. But I do think a very emphatic and strong statement has to be made to all departments, paid volunteer, whatever, that the Charter must be obeyed. Otherwise, our budgets are total mockery. I don't think that we can do that as a matter of principle.

Mr. Bradley: Mayor this is a resolution that would be coming from the Administration side? From your office?

Mayor Dickinson: I indicated that we would draft a resolution but if anyone else wants to it is fine with me.

Mr. Bradley: Now getting back to the September 4th memo, I think what I heard as far as dates and what transpired here that when the Town Attorney did disapprove an appeal, that the disapproval was prior to the ZBA going forth with legal action. You are shaking your head no, it was after the fact?

Ms. Powell: I believe that was why he wrote the letter.

Mr. Bradley: And at no time prior to that did he convey disapproval of the appeal?

Ms. Powell: He really was not in favor of an appeal and I have said that right from the get go. First of all he was of the opinion that we, as a Board, did not have a right to appeal the regulation that was enacted by Planning & Zoning. He did not think that any Board or Commission had the right to appeal a rule or regulation from another Board. That was his first advice to us. We sat for how long at the meeting Ray? Two hours? An hour and one half? And discussed all aspects of the regulation. At that time we asked him, "at what time were you apprised of the regulation?", he responded, "not until after they had voted upon it". So he had not seen the regulation that they were voting upon until after it came up for public hearing, it was voted upon and then it came to his attention. He reviewed it quickly and I don't know if he was surprised when we came to him or not. But he said that at first he didn't think that we had the right to make an appeal. I said "that is kind of crazy because there is a 15 day appeal period after the enactment of any action by Planning & Zoning and by ZBA alike for the aggrieved party to challenge

that decision". And that is basically what an appeal is at that point. It is challenging the decision through the court. There is no other avenue. Once that 15 day window closes, the action take effect and then you have to go through the whole long, drawn out process of trying to get another change through and that is why he wanted to try reason with Planning & Zoning. At worst case he wanted us to say, "well go ahead and accept the use variance request", we couldn't say whether when a use variance was going to come in. For all we know we may have never seen another one. But then again we may. But, then a lot of advice is given to applicants down in the Planning Office and a lot of applicants are told, "you can't do that". Flat out, "you can't do that", it is against the regulation and they just kind of go away and they don't realize that they have other avenues open to them.

Mr. Bradley: So this appeal was in process, Atty. McManus was actively working at it....

Ms. Powell: When you got that letter?

Mr. Bradley: Prior to this.

Ms. Powell: I know that it was in one of the summer months, if we could find the published notice of the enactment of that regulation....

Mr. Bradley: What I am trying to determine is, there are two sides. There is one side not knowing and we all make mistakes. The other side of it is knowingly, when you are being told that the Town Attorney is disapproving of it. That is the gap that I am trying to narrow here. Now from what I am hearing from you is that this all occurred prior to this. The appeal was in process. Mr. McManus was working on the case and the Town was incurring charges from Mr. McManus and that this conversation, whenever it took place, I got a September 4th memo here, occurred after this process had started. Is that correct?

Ms. Powell: When we left Adam's office the Thursday that we met with him, there was a hope that there would have to be no appeal although we reserved the right to him throughout the length of that meeting the fact that we had already....I'm getting to that, at our regular meeting, we had taken a vote as committee members that this regulation was against State Statute and did we want to take action? Did we want to accept the regulation even though it was wrong against State Statute?, or did we feel that we have the right to appeal? We voted unanimously that we felt that we had the right to appeal. And then we sought Adam's advice. Adam said, "no Board, no ZBA has the right to appeal", which we talked about for a long time. We took specific parts of the regulation and showed him how they violated State Statute with a regard to the relationship between Planning & Zoning Commissions and Zoning Board of Appeal Commissions. And then he was kind of, "well maybe you do and maybe you don't", and then we discussed the Tom Byrne issue and he said he would contact Tom Byrne and he would get back to us. We left the office that night and I reiterated twice to him, "there are five points, Adam, that you need to get back to us on, 1, 2, 3, 4 & 5". And, as I understand it, when Ray called him in the eleventh hour, there was no response to any of them except that he still didn't feel that we had the right to appeal.

Mr. Bradley: I hear your side, Mr. Mantzaris is not here. Janis I don't know if you can shed any light on what I am trying to get at here.

Atty. Small: It is my understanding that Adam was, in fact, surprised that the appeal had actually been filed. I have a letter from him on November 16, 1989 to Ray Havican that he was surprised, he thought that he had an agreement that he would review the regulation with Tondreau & Byrne and then advise Planning & Zoning Commission of their opinion and that, based upon his opinion, that there would be some adjustment to the regulation.

Mr. Bradley: So the appeal was in process and he hadn't....

Atty. Small: They came to see him for the appeal, this is my understanding, before the appeal was commenced. That was the 2 1/2 hour meeting, that was at the eleventh hour. After their conversation they started the appeal. That appeal sat while Adam

tried to work out an agreement with Planning & Zoning. I guess they had a meeting and there was an amended regulation which I guess even Adam was not satisfied with, and from that regulation ZBA filed the second appeal. The first one became moot, because that regulation was no longer in effect. That is the steps that occurred.

Mr. Bradley: That does not answer my question. I may be beating a dead horse.

Ms. Powell: This is from a document which is part of the oral argument on the brief filed on our behalf. In the second issue background on or about July 6, 1989 the defendant, Planning & Zoning Commission, enacted an amendment to Section 9.1H of the Town Zoning Regulations. The amendment was enacted on or about July 6th. So the clock would start from the publication of their, not on July 6th, if that was a Monday and their legal notice is published on Friday, Friday would be day 1. When we were able to get together with Adam all three of us, at the time that we were able to get together with him, that day was the Thursday before the Tuesday which was the 15th day. This is the first appeal which initiated it. We appealed and he filed the appeal with Adam on the 15th day and that night I received a call from the Mayor and he explained the points of State Statute and no money in the Budget, and I still believe that this is a democracy even with Charters and Statutes and all of that, and I just said we had to do what was right.

Mr. Bradley: Let me stop you there, no money in the Budget.

Ms. Powell: That was a comment from Mr. Dickinson, the appeal had been filed at that point.

Mr. Bradley: Yeah, and what was the reference to no money in the Budget?

Ms. Powell: Bill was explaining to me at that time, "well, you know, how can you file an appeal, you have no money in your budget?" and I just said, "well, we will have to go to the Council after the fact rather than before, there wasn't time to come here before that 15th day".

Ms. Papale: We have emergency meetings all the time.

Mr. Gouveia: I recognize that this is not a judicial board, we are legislative and a financial board and that is it, but these people have presented a compelling case. And, some aspects of their testimony differs greatly from what we have been told before. I do recognize that they did have two avenues that they could have pursued and they didn't. In the letter they chose to commit taxpayer's funds without proper procedure as being told before. That is their sin if there is such a thing. I think based on what they presented, in order for me to be able to act on this again, I would like to see Ms. Bush and Adam Mantzaris be present before the Council so that we can have all sides at the same time. Again, I say that recognizing that this is not a judicial board but if you are going to look for a resolution to this problem, they are not too far away from here. We could get them here for the next meeting, in fact, I will put that in the form of a motion. I would like to make

a motion to ask Mr. Mantzaris and Linda Bush be present at the next meeting and to continue this discussion and possibly come up with a resolution to the problem. Ms. Papale seconded Mr. Gouveia's motion.

Mr. Gouveia: I should include the Chairman on the Planning & Zoning.

Mr. Killen: Your motion embraced P&Z & ZBA?

Mr. Gouveia: Exactly.

Mr. Holmes: When you make that motion is that to delay action on whether to pay this bill or not?

Mr. Gouveia: That depends, again, when we have all the people involved and have each one present their testimony, I mean obviously, Ed has tried for 1/2 hour to get some answers and he has not been able to. Maybe if we get everyone here, every attempt has been made to explain what Adam Mantzaris stated. Adam Mantzaris is not here to explain.

Mr. Holmes: Everyone is going to hear their side of the story and I think that we have gotten it in separate pieces.....

Mr. Gouveia: I understand that but again, there were some aspects of the testimony presented here today that are not at all the same things that were presented to us in the past.

Mr. Holmes: To me that does not change.....

Mr. Gouveia: The motion was made.

Mr. Parisi: If we are going to discuss this to that length, because it is going to be a repeat of the meeting that, quite frankly, that you tried to set up with P&Z & ZBA with another department thrown in for good measure, I think that it ought to be discussed by itself, not on a regular agenda. This is not going to be handled quickly. But again, I think that we are really missing the basic point here and again, the basic point is, does a Board or Commission have the authority to expend Town funds without being authorized to do so? That is the situation that we are really dealing with. The timeframes and all the other points that have been brought in, quite frankly, tonight don't weigh it in what we are supposed to look at. We are specifically looking at whether or not a Board or Commission or any group has the right to expend Town funds without being properly authorized to do so.

Mr. Gouveia: I understand that. I think that you understand that too, you did vote to pay the bill, didn't you?

Mr. Parisi: Yes I did. I voted to pay the bill, Mr. Gouveia, because the man did the work. And he did it quite well.

Mr. Bradley: But yet, it was a different story with the computer.

Mr. Killen: That is neither here or there. The problem that we are facing now is, is this going to change?

Ms. Powell: I don't want to digress, but the man did the work and the person who opposed him, I believe his bill has been authorized for pay

ment, and, in all fairness to Mr. McManus, with whatever legal actions can follow, I know this Board also voted to file an appeal. I really believe, in all fairness to Mr. McManus, he did represent us, he did do the work, he represented not only us but the people of the Town of Wallingford whose rights were being suspended by the enactment of this regulation and the court has said two things, one, as the ZBA we did have the right to appeal, which was one of Adam's questions and two, that the regulation as enacted by P&Z was, in fact, not proper and he upheld our appeal.

Killen: The weak point there is that if he had failed you still would have expended our money, he still would have been out the money. The point we are making is, we are trying to say now, if we win our case, then the Town has to pay for it whether it was legal, immoral or fattening, makes no difference. If we win the case. If he loses, he still put in the hours, don't pay him because we lost the case. That is no way to do business.

Ms. Powell: The man who lost has already been paid.

Mr. Killen: The point I am making is that you are putting too much basis on something that has no basis in fact. You are saying that because you won the case it gave you the right to do what you did. Again, there is nothing personal in this, I listen to this and I see that you went to Mr. Byrne, you went to outside opinion until you got the opinion that you wanted and that is what you paid....

Ms. Powell: We did not go to lawyers until we got the one that we wanted, we went to a number of lawyers, and a number of lawyers came to us and said if we don't appeal it, we are nuts.

Mr. Killen: Why didn't they take the appeal then?

Ms. Powell: All I am pointing out is that the regulation that was passed was apparently so improper to so many legal minds, not mine, that they felt compelled to tell us.

Mr. Killen: Those legal minds did not tell you to look in the Town Charter to find out if you can take that appeal, who is going to pay for it?

Ms. Powell: If I had thought that I could have come to you on Monday night, Bert, and got an approval for the money, maybe I would have done that in retrospect. At the time, we didn't think of it. We had told Adam in the interim, "if you could work this out with Linda that is fine. We don't really want to go through a legal process if we don't have to".

Mr. Killen: You had to realize somewhere along the line that something, somewhere, has to govern what I do. You don't believe in your own mind right now that you can go out and do anything that you want as long as you feel its right and you serve on this Commission, do you? Spend any kind of dollars that you want so long as you feel that it is right?

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Ms. Powell: No I don't. I do feel that as an American citizen, as a citizen representing the taxpayers and property owners of Wallingford that if I make a decision in their best interest, and then come to the Council and say, "I acted in advance, I did it for this reason, I circumvented procedure for this reason because I was tied to a clock", that I would have to feel that a body of people living in the same democracy that I do would have some forbearance.

Mr. Killen: Then I would have to tie that to everyone who came forward saying that they have over expended their budget and this is their reason for doing so. I would have to say you are honest people and you do not get paid to serve on your Commission, we have to do it. Let's be honest, Gail, that is not fair.

Ms. Powell: As I have said I have been on this Commission for a long time and this is the first time that an issue of us initiating a legal action has ever come up.

Mr. Killen: You are putting the sanctity of the State Statute over the sanctity of the Charter. So long as what you did coincided with the State Statute, you felt that it precluded any action on the part of this particular Council or the Charter.

Ms. Powell: That was not our decision at the time, that was advice that came to us after. The only thing that we were thinking of at the time, right, wrong, or indifferent, was doing our duty as volunteer members of the ZBA...

Mr. Killen: Gail, please!

Ms. Powell: I'm sorry, Bert, like it or not, that is the way it was.

Mr. Killen: I'm sorry but you are too intelligent a woman to sit there and tell me that you are going to initiate an action and not think that someone is going to pick up the tab. That never crossed anyone's mind? Now come on! I would have to ask for everyone's resignations if that is the way you operate. That never crossed anyone's mind? I find that hard to believe!

Mr. Havican: When we met with Adam he made a statement that, he said that we did not have the right to appeal and he was not going to authorize the funds from the Town Attorney's Office used to hire a lawyer. We don't have any in our budget for legal fees. If he says that he feels that he is not going to authorize the use of his funds, I'm sure that are in there for attorney's fees, by the same token he could authorize the use of his department's funds, he could offer it to us...and as we discussed this and it became apparent to Adam that there was a little more involved in this when he started looking at his law books and questioning Tom Byrne to hear another side and go over to talk to P&Z, that he wanted to look into this and take a double take on it. We relied on the Town Attorney we went to. He didn't tell us to go to the Town Council and get it. He referenced the fact that he has a budget and he would not spend the money in his budget. Then when he backed off and was going to reconsider, and he is going to advise us and he never does, we waited to see what he was going to come up with.

The impression that I got was that he had his own funds and he was going to have to make a decision to use those funds to support our suit.

Mr. Killen: Where did you get that impression Ray?

Mr. Havican: In talking to Adam.

Mr. Killen: That he was going to support you in your suit?

Mr. Havican: No, that he wasn't.

Mr. Havican: But then when the discussion went on and he said, "well I have better do some more checking to get some more facts" he then said, "I am going to research this see what I can come up with and then I will be in touch". I said, "we have a time limit, we need it by Monday". He never contacted us.

Mr. Killen: I never got a phone call.

Mr. Havican: We were working with Adam.

Mr. Killen: When you were through with Adam, you went and put a phone call into Vinny McManus, that phone call could have gone to me and I would have told you right off the top, "forget about it".

Mr. Havican: We did not call him until Tuesday morning.

Mr. Killen: It still was before you called me because I still have not heard from you people until tonight. That is what we are here for.

Ms. Papale: Ray, when Vinny McManus was hired, did the ZBA have the money to pay him?

Mr. Havican: No.

Ms. Papale: Then the bottom line to this is, how did you think that Atty. McManus was going to be paid?

Mr. Havican: The only thing that we could have done was to come back to you or get the money out of Adam.

Ms. Papale: You thought the Council would o.k. this after you spent the money?

Mr. Havican: We relied on Adam who was making a decision.

Ms. Papale: If I couldn't reach an attorney that I had working for me I would be at his office, I am not harassing anyone, but I would be at his office in front of his car when he gets out of it at his office. There are ways.

Mr. Havican: You have to trust the guy when you approach the Town Attorney and he says that he is going to come back to you.

Mr. Killen: You went out and hired a lawyer on your own. You were not relying on Adam at that point. You could have sought advice from someone here who could have given you the proper advice.

Mr. Havican: Had he come back, or called me on the weekend and said, "drop dead, I am not going to do anything for you", then I am sure it would have clicked in our minds to call the Council and say, "we are stonewalled, here is the situation". But he never called.

Mr. Killen: But you were stonewalled anyway. You still needed an attorney.

Ms. Powell: If we had not filed the appeal, we had no option either way. Even once we filed the appeal through Vinny, that he and Adam continued to work to try and avoid an ongoing, long, involved legal process. You heard Vinny say that tonight. They spent a couple of months trying to resolve the issue without expending a lot of funds.

Mr. Killen: Stop and think, who was going to be paying Vinny even when they were trying to work it out? There was still no money set aside for that purpose whether it was \$50 or Vinny's big bill. I am talking about the letter of the law which states that you cannot spend money if it were not set aside for that purpose.

Ms. Powell: Then that was the time that this Board should have come before the Council to have funds approved. But it still would have been after the fact.

Mr. Killen: You are here because Ray sent me a letter. That could have been a phone call or a letter to me before the time ran out at any given time you would have had a meeting, I promise you that.

Ms. Powell: I don't know what letter you are referring to, I know that if we had contacted you, you could have given us advice but you could not have filed the appeal.

Mr. Killen: That is where you are trying to justify your actions.

Ms. Powell: Could you have had that meeting in the next two hours? That was our point. We are beating a dead horse here and I realize your love of the Charter, and I love it too, and it does protect me, but we have ordinances that don't work and we have this, and yes, we went ahead and expended Town funds believing, in fact, that we were doing the right thing when some advice that we were getting seemed wrong. We were upheld in court and now we are just asking at this point in time, when it probably should have been a year ago, that our attorney be paid. I think that is what it boils down to.

Mr. Parisi: I would like to move the question if you would please.

Mr. Holmes: I second.

VOTE: Holmes, Parisi, Solinsky and Killen, no; all others, aye; motion duly carried.

Mr. Parisi made a motion that this be done at a Special Meeting, seconded by Mr. Gouveia.

Mr. Gouveia amended the motion to Schedule a Special Meeting to Continue This Discussion and the have Att. Mantzaris and the Chairmen of the P&Z and ZBA Commissions Present, seconded by Ms. Papale.

VOTE: Holmes, Parisi, Solinsky & Killen, no; all others, aye. Motion duly carried.

Holmes left for work at 12:30 a.m.

Waive Rule V Motion was made by Mr. Bradley to Waive Rule V of the Town Council Meeting Procedures to Discuss the Waiver of the Bidding Process to Discuss the Waiver of the Bidding Process to Dispose of Hazardous Waste, seconded by Mr. Parisi.

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

Motion was made by Mr. Bradley to Waive the Bid for Removal of Hazardous Material; seconded by Mr. Parisi.

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

Mayor Dickinson explained that this issue involves disposal of Ethyl Ether, some containers of which were discovered in the Police Dept., thought to be useful in the fingerprinting process. It is very old, possibly dating back to the 1940's. The Fire Marshall identified the materials and felt that they should be moved. American Cyanamid was contacted and a representative, Larry Drapela along with the Plant Manager, Mr. Sloan. They were deemed very hazardous and must be neutralized. ETSC Remedial Services, Inc. will neutralize the 4 oz. cans and dispose of them. It is necessary to neutralize each one individually, it is estimated that there may be as many as 250 which could mean an expenditure of an additional \$11,000.00. He stated that he would ask for an additional \$15,000.00 to cover us, hopefully which places it at \$40,000.00. He asked the Council to allow an amendment of the transfer to reflect \$40,000.00. If the Council were uneasy about that another special meeting will need to be held tomorrow because at this point with the information at hand, the \$25,000.00 would not be enough. The reason for the expense is outlined in the material before the Councilors. Each of these canisters has the potential to explode and must be neutralized individually, a hole drilled in it. If they are still liquid they are not that hazardous. If they have become crystallized inside, that is where the hazard lies.

Mr. Zandri asked what the substance was used for.

Mayor Dickinson replied that he believed it to be medical supplies that Civil Preparedness maintained. At one time the Police Dept. used Ether in the fingerprinting process. The supply was most likely kept for that use.

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Mr. Zandri asked if the manufacturer of the substance has been contacted at all?

Mr. Drapela answered yes. Squibb was the manufacturer of the product.

Mr. Zandri asked what the procedure is for disposal of such a volatile substance?

Mr. Drapela stated that the contractor will open up each container by drilling into it, testing it with a special type of reagent to determine whether or not it has peroxides formed in it. It is most dangerous when these peroxides are in the threads and lids of the jars due to the friction that occurs during the opening and closing of the jars.

Mr. Zandri asked how explosive the material was?

Mr. Drapela compared it to picric acid which was a common agent used in basic experiments in high school and college chemistry labs. The Ethyl Ether has very similar properties and potential should it detonate.

Mr. Zandri asked how much damage would result in an explosion?

Mr. Drapela responded that he was not an expert by any means in the hazards of the material but having had to research this issue for tonight and with talking with the contractor, a four ounce can has torn laboratories apart on occasion.

Mr. Zandri asked if environmental problems would occur if the cans were detonated in a proper facility/location?

Mr. Drapela answered yes, there would be quite a few problems from both the standpoint of air emissions and solid waste in the ground. It presents a safety hazard to the personnel involved as well. That procedure of disposal would not be the accepted state-of-the-art technology for handling the material. The approach they are recommending is the accepted one for hazardous materials such as this.

Mr. Zandri stated it is not only the acceptable way but the most costly as well.

Mayor Dickinson wanted everyone to know that the company who will perform the task, E.T.S.C. Remedial Services, Inc. is currently at American Cyanamid, the Town had to have them involved to obtain all the pertinent data surrounding this issue.

Mr. Zandri asked if this is the only company who will handle this?

Mr. Drapela responded that there are other companies. This company has offices in Connecticut, but do not have people in the state on staff that do this type of work. They have had to transport employees in from out of state for this. The procedures dictate the

cost of chemicals used, the labor, protective gear, etc. He did not feel that you could find a better price for the work.

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

Motion was made by Mr. Bradley to Amend the Transfer Associated with the Disposal of Hazardous Waste from \$25,241.00 to \$40,241.00 with the Difference of \$15,000.00 Being Transferred Out of the Contingency; Reserve for Emergency Acct., seconded by Mr. Parisi.

Mr. Zandri inquired as to whether or not a wage account was being affected by this transfer?

Mr. Killen responded, yes.

Mr. Bradley asked where the materials were at this moment.

Mr. Drapela answered that they were in an office inside the administration building at the plant. It will be moved outside to a safer area by the contractor wearing protective equipment.

Mr. Bradley asked how the canisters can be drilled without causing an explosion?

Mr. Drapela said that they check for leakage and crystals on the exterior of the canisters. They will drill into the liquid not where the crystals would be found. Samples will be taken from the liquid.

Mr. Bradley asked how quickly they can be disposed of, what is the timeframe?

Mr. Drapela stated that it should take approximately 1 day.

Mr. Bradley asked if all of the proper authorities have been notified?

Mr. Drapela stated, yes. A 100 meter radius will be cordoned off to protect passers-by.

Mr. Gouveia asked that the costs be explained in detail.

Mr. Drapela said Transportation and Disposal listed at the very bottom is of the waste material after it has been neutralized. The Chemistry is for the stabilizing/neutralizing agents. The Remote Access and Stabilization and Response Team are the Labor involved. The PBE is for the PBE that would be consumed for wear and tear on PBE that will continue to be used but obviously will degrade after each project to some extent. Mobilization will include their airfare. Transportation would probably be the cost of the rental car.

Mr. Gouveia: What about the Emergency Response, I see another \$1,500.00 there?

Mr. Drapela: That is basically a premium for having them get here as quickly as we had to dispatch them.

Mr. Gouveia: How is it going to be transported out of the building?

Mr. Drapela: Very carefully, with the building evacuated, by hand. Once neutralized it will not be shock sensitive.

Mr. Gouveia: Do you feel that time is of the essence in this situation?

Mr. Drapela: Yes.

It has been noted that the Comptroller has certified the availability of funds for this amended transfer.

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

Mayor Dickinson recognized American Cyanamid's participation on this issue and others in the audience for their help. Without them we would have been hard-pressed to move this quickly with the knowledge that they have provided the Town. He extended his thanks to all parties involved.

ITEM #14 Consider and Approve a Transfer of Funds in the Amount of \$15,000 from Self-Insurance Acct. #8040-800-8280 and \$50,000 from Contingency: Reserve for Emergency Acct. #8050-800-3190 for a total of \$65,000 to Insurance - Claim Transfer Out To Yalesville Firehouse Fund Acct. #8040-800-8281 - Corporation Counsel

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

Mr. Bradley asked questions surrounding the change orders that Mr. O'Connell was being besieged with according to the arbitrator's report.

Atty. Janis Small stated that she could not address those questions since Atty. Mantzaris was the attorney involved with the case.

Mr. Bradley felt that there was too many errors, violations, etc., and this issue needed to come back before the Council for discussion.

Atty. Small said that Atty. Mantzaris and herself had discussed submitting recommendations to the Council regarding the many issues of concern raised by the arbitrator's report. It was their expectation to do that in the near future.

Mr. Bradley instructed the Town Council Secretary, Kathryn Milano, to make a note that this item come before the Council in the near future irrespective of the action being taken this evening.

Ms. Papale stated that when an item such as this comes before the Council and the opposing Counselor is waiting in the audience,

Atty. Mantzaris should be present to answer the questions surrounding this issue.

Mr. Zandri wondered where the Town obtained its information from leading us to believe that the Town was in the right to make the initial decision to take legal action?

Atty. Small stated the Town was sued, the Town did not do the suing.

Mr. Zandri was concerned about the facts presented to the Town on which the determination was made to proceed with legal action. He wanted to know who had the authority to sign off on this work, committing additional Town funds to something that was not there to start off with. He felt this action was exactly the type that precedes the problems we are currently faced with. He agreed with Mr. Bradley that this needs to come before the Council again soon.

Mr. Gouveia concurred with Mr. Bradley.

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

ITEM #18 Motion was made by Mr. Bradley to Move Into Executive Session Regarding Security Matters Pursuant to Section 1-18a (e)(3) of the Ct. General Statutes

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

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

Motion was made by Mr. Bradley to Move Out of Executive Session, seconded by Mr. Parisi

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

Motion was made by Mr. Bradley to Waive the Bid for a Security System for the Tax Department, seconded by Mr. Parisi

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

Motion was made by Mr. Bradley to Approve a Transfer of Funds in the Amount of \$1,000 from Acct. #1420-2000, Telephone; \$1,000 from Maintenance of Equipment Acct. #1420-5200; \$2,900.00 from Professional Services Acct. #1400-9000 to Acct. #1420-9904, Security System for a total of \$4,900.00, seconded by Mr. Parisi.

VOTE: Holmes was absent; Zandri, no; all others, aye; motion duly carried.

ITEM #17 Motion was made by Mr. Bradley to Move Into Executive Session/Strategy and Negotiations With Respect to Pending Litigation Pursuant to Section 1-18a(e)(2) of the CT. General Statutes, seconded by Mr. Parisi

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

Motion was made by Mr. Bradley to Move Out of Executive Session, seconded by Mr. Parisi

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

Motion was made by Mr. Bradley to Reject a Claim by an Injured ConRail Worker, seconded by Mr. Parisi

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

ITEM #19 Approve and Accept the Minutes of the December 11, 1990 Town Council Meeting

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

Motion was made by Mr. Bradley to Correct Page #46, Line #25, Remarks attributed to Mr. Gouveia to read, "can" as opposed to "cannot", seconded by Mrs. Duryea

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

Motion was made by Mr. Bradley to Adjourn the Meeting, seconded by Ms. Papale.

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

There being no further business, the meeting adjourned at 1:29 A.M.

Meeting Recorded and Transcribed by:

Kathryn F. Milano, Town Council Secretary

Approved by:

Albert E. Killen, Chairman

Date

Kathryn J. Wall, Town Clerk

Date