

## **Board of Selectmen's Meeting**

**April 1, 2010**

Present: First Selectman Gayle Weinstein; Selectman David Muller; Selectman Dan Gilbert; Town Administrator Tom Landry; Administrative Assistant Judy DeVito; Residents.

**This meeting was recorded and videotaped. The tapes are available in the Selectmen's office.**

Ms. Weinstein called the meeting to order at 7:35pm

**Pledge of Allegiance**-Dan Gilbert lead the meeting in the Pledge of Allegiance.

**Discussion/decision regarding the grievance by Weston Highway Employees Union Local 1303-41 of Connecticut Council 4 AFSCME, AFL-CIO and Weston Dispatchers Local 1301-212 of Connecticut Council 4 AFSCME, AFL-CIO regarding the Day of Mourning declared by Governor Rell for February 10, 2010.**

Mr. Gilbert said one of Ms. Cashman's key points was where the contract language is clear, you follow the language. That was an inaccurate observation because when you look at contract language, past practice is more important. Past practice gives you a good sense to what the intent is. Mr. Gilbert said the Union argument and the Union's representative's argument that we should pay that day is not valid. He would bet that if Mr. Landry went back in history he would find day after day when a day of mourning was identified by the Governor, that was not paid, and more importantly, was not grieved by the Union. For him contract language is not prime, past practice is. The practice here is to not to pay that day.

Mr. Landry said that the union did get back to him and they said that they have been paid for previous Days of Mourning. Mr. Gilbert said if we did, who authorized the payments? If they were paid, we have to be able to defend them. His position is that it should be denied because past practice is prime.

Mr. Muller said that he also agrees that it is important to deny this motion. We asked and received from the Governor's office a letter which clearly stated that the Governor's action was ceremonial in nature and was not to be construed as a holiday. It was a purely ceremonial act and therefore Mr. Muller did not see a trigger for additional compensation. The State did not close offices and therefore he believes that there is no action that was altered anywhere in the State.

Mr. Muller said that Ms. Cashman's response to his hypothetical question "What would happen if the Governor were to declare a Day of Mourning for the passing of any serviceman?" She said it would depend on the hypothetical and then she said she would be back here making the same grievance for everyone of those days that the Governor

declared a Day of Mourning. He did not think that the contract is intended to bankrupt local governments by the act of a statement made by the Governor.

Mr. Muller said that Ms. Cashman assures us that the Governor chooses her words very carefully, especially since she is clearly aware that numerous labor agreements contain terms such as "Day of Mourning". This highlights the need for us as a board to inquire and to reflect and consider carefully before making a decision on issues that some may consider black and white.

There is the issue of precedent. He asked Ms. Cashman to clarify her statement that precedent may not be used to make a decision. Town Attorney was consulted on whether precedent can be used in making a decision. Mr. Muller read a note from Ms. Sullivan, Town Attorney which read "I am unaware of any applicable statutes or regulations that specifically address arbitration decision and precedent value". Ms. Cashman assured us that MERA dictates, it may not. Ms. Sullivan went on to say that there does appear to be caselaw from the Connecticut Supreme Court, and that is the case of Stratford versus International Association of Firefighters which clearly states that arbitration decisions are not precedential.

However, that said, when attorneys speak of "precedent" they are talking about a case or a principal that **must** be followed. Technically, an arbitration decision arbitration is not precedent. If an arbitration ruling were precedent it would have to be followed even if another panel thought the outcome was wrong or disagreed with the analysis. The better question is not whether it is precedent but whether as a panel you can rely on the out of the Town decision. An arbitration decision from an arbitration panel ruling in a similar situation based on similar facts can provide guidance and its reasoning can be influential. So while I would not declare the So. Windsor case as precedent, if the panel finds it convincing, I would not hesitate to use its analysis and/or adopt similar reasoning to support the panels decision and to come, if the facts are supporting, to a similar conclusion.

Mr. Muller said his third point is at the beginning of the hearing last week, Ms. Cashman commented that this was a waste of her time to be here. Mr. Muller said in discussing the terms and conditions of employment of any Town employee, he does not for a minute consider a diligent and honest conversation to be a waste of time. He was elected to serve the Town and a conversation of the Town's most valuable asset is never a waste of time.

Finally he would like to restate what he said at that meeting. Weston is a small Town with a demonstrable history of civility even in disagreement. This is an open Board that welcomes discussion. Any party should know that he or she will receive our undivided attention and that any party that believes that confrontation and lack of civility are an appropriate course to follow seriously misjudges how this Selectman wishes to deal with matters that come before him. He said based on his comments he votes to deny the grievance.

Ms. Weinstein said her decision was based on the Governor's letter to her. The Day of Mourning is listed in the holiday section and the Governor made it very clear in her letter that it was not a holiday Day of Mourning but rather it was a ceremonial day.

Mr. Muller made a motion to deny the grievance by the Weston Highway Employee Union Local 1303-41 of Connecticut Council 4 AFSCME, AFL-CIO and Weston Dispatchers Local 1301-212 of Connecticut Council 4 AFSCME, AFL-CIO regarding the Day of Mourning declared by Governor Rell for February 10, 2010. Mr. Gilbert seconded and the motion passed unanimously.

**Discussion/decision regarding adjourning the ATBM to allow for a secret ballot vote.** Ms. Weinstein said that there was a petition circulated by Weston for Fiscal Responsibility who asked that the Board of Selectmen's budget, they meant the Town Operating Budget and the Board of Education budget be considered for paper ballot or optical scan or both after the ATBM. They did get more than the required number of signatures so she feels it is important that we honor their petition. There are a lot of issues and concerns that she feels we need to talk about.

Ms. Weinstein said the first issue is that the articles mentioned in the petition are not necessarily the correct provisions but she still felt that they should honor the spirit of the petition. According to Town Charter, if someone asks for a paper ballot, the vote needs to happen 7-14 days after the Annual Town Budget meeting. She was concerned about communication with our residents and making sure that everyone understood what we were going to do, as well as making sure we had enough time to print the ballot. If we had waited until the ATBM to accept the petition and move forward, that would put us right in the middle of school vacation which would eliminate a large portion of the population.

She suggested that tonight they make a decision to adjourn the ATBM to April 15, which gives us two weeks from tonight. The paper will go out that day, which she is hoping will encourage people to come out and vote, and it gives them plenty of time to get the ballots done and still be within the seven to fourteen day timeframe that is required.

Mr. Gilbert asked Ms. Weinstein to talk about the absentee ballots. Ms. Weinstein said she did not think that we would be able to do them because at the ATBM motions can still be amended. At the ATBM, according to the Charter, we still have to go through the call and vote on anything that was not asked for in a private ballot. We will vote on every line item on the Town Operating Budget but not the total.

Ms. Weinstein said if the Town Operating Budget goes to a secret ballot and fails, then the number needs to go back to the Board of Finance to try to come up with a different number if they so choose. Then we have to go back to a Town meeting and revote on the line items, but it is a little murky as to whether that can be a Town vote or whether that again needs to go to a second referendum. If the School Budget fails, Board of Finance needs to come up with another number and it goes again to another referendum.

Mr. Muller asked if shifting from an open Town Meeting to a situation where we actually are voting by ballot, whether that shift, known in advance, we have the potential to disenfranchise residents. He is concerned what the response would be if someone says the Town of Weston has disenfranchised me by not allowing absentee ballots. Mr. Gilbert said he agreed with Mr. Muller.

Ms. Weinstein said that someone would have to respond to an absentee ballot without knowing what the numbers are that they are voting on. Mr. Muller said that partially we are doing that by shifting to a date eight days after the Town meeting. Mr. Muller said he would speculate that there are a large number of people who will be as ignorant of the number by the time they go to vote as someone out of Town who is voting by absentee ballot. Ms. Weinstein said at the polls they will make sure that the numbers are well posted.

Ms. Weinstein said that she would talk to the Town Clerk about the absentee ballots. Ms. Daniels asked if we could check with Town Attorney on section "G.(i) because it says a meeting shall be convened and shall discuss all items in the Notice and Call and shall act only on those numbers not so petitioned, and in the event that the recommended total Annual Town Budget has been so petitioned, the Annual Town Budget Meeting shall discuss but shall not act on any item in the Notice and Call". Ms. Daniels asked if that meant you can have a vote on the different parts of the Town Budget. Ms. Weinstein said we have to vote on the different part of the Town Budget because the call was already posted as such.

Ms. Weinstein said the big question is the School Budget. We can discuss it, but she did not know if someone could make a motion to amend, and whether you can vote on the amended number without voting on the total number. Ms. Weinstein said she had to figure out if we could vote on an amended number to bring to a paper ballot.

Ms. Weinstein said that she would like to take care of this tonight so that we do have the two weeks and two newspaper cycles to at least get it out there and have people understand the situation. Mr. Muller said the goal was admirable but the mechanism that we are trying to rush through is not.

The registrars came up with a budget for the referendum and it will cost about \$3,000. Depending on what cost are finalized we will have to ask for a supplemental to cover the cost. Ms. Weinstein spoke to Jerry Belair and is hoping that the Board of Education will not charge us the usual custodial fees. We are going to hold it in the Middle School and it will be all day based on what the Charter says.

Mr. Gilbert made a motion to adjourn the Annual Town Budget Meeting to allow for a secret ballot vote on the Town and School operating budget to April 15, 2010 at the Weston Middle School Gymnasium from 6:00am to 8:00pm. At the Annual Town Budget Meeting the entire call of the meeting will be discussed, amended as necessary and all but the Town and School Budgets will be voted on. Mr. Muller seconded and put it to a vote.

Mr. Muller said that he thought this was an admirable vote. Anything that increases voter participation is admirable. There are many organizations that call for this. However he has a number of concerns, primarily because of the speed in which this has to be done. He would actively support this when there is sufficient time.

He is concerned about the issue of disenfranchising when we switch to a machine ballot, he is concerned about the separation of budget components where you are voting on part of the budget but not voting on Debt Service and Capital. You are creating uneven votes for items that the Town is committing too. We have potentially a large number of people voting on Operating Budgets and potentially a very small number voting on Debt Service and Capital Expenditures.

The way this is structured without having the ability to figure out where we go, we are reducing input into the process so while you may have more people voting you will have many fewer actually constructively contributing to those numbers to be voted on. He said attendance will be a significant issue at the ATBM knowing that you are not casting a deciding vote. He is concerned about the two tier system where you will have Townspeople voting on items and then effectively vetoed by other people in Town a week later. He is also concerned about the potential cost.

Mr. Muller said for those items, disenfranchisement; separation of budget components; reduction of input into the process; concern about attendance; the subsequent veto capability of a portion of the Town over another vote of the Town and the potential cost he cannot support it this fiscal year. He thinks it is an admirable goal, we should look at the process and have all of these questions answered but he cannot vote to support it tonight.

Mr. Gilbert said that Democracy is messy, always has been, always will be. This is the first time that he knows of where the Town has an opportunity to come out over an extended time frame and vote on a budget. It is a great idea and we will figure it out and get it done. Mr. Gilbert and Ms. Weinstein voted yes, Mr. Muller no.

**Discussion/decision regarding setting a date to walk the proposed cemetery sites.**

After a brief discussion Mr. Muller made a motion to set a date of Saturday May 1, 2010, to walk the proposed cemetery sites at 11:00am. Mr. Gilbert seconded and the motion passed unanimously.

**Discussion/decision regarding the Booster Barn-** Ms. Weinstein said the Booster Barn was on the agenda for a couple of reasons. Mr. Machson had asked to see a copy of the letters of intent and one of the things that she notice in the letters was that there was no starting date for reimbursement by the different groups. Mr. Figliola had assured her that was not a big deal. Ms. Weinstein said all the groups with exception of the Booster Barn will start as soon as the project is completed. The Booster Barn will start a year after. Mr. McMahan, President of the Boosters said that was correct.

Mr. McMahon said that there were two issues. One being how do we get this finished? The commitment was that it would be built by November 2009 and it is still not finished. Ms. Weinstein said that the floors have been completed but one of the hold ups is CL&P because of the power outages and issues that they have faced over the pass two weeks. They could paint this weekend and then they could get the equipment put in. The real hold-up is that we are still waiting for answers from DEP.

Mr. McMahon said that they had a completion date of last November so the fact that we had storms a couple weeks ago should not be why the electric was not hooked up. Mr. Conte said he was given the project three days before school started last September. Mr. Bliss wanted to get it done by November but that was not a realistic date to do that much work. As we got into the project we found that the fill that was put in that area was unsuitable. The cold weather set in and it is a masonry building and that held up the block work.

Mr. McMahon said that the longer this takes the more money they are losing. Mr. Conte said once the floor is in they can get all of there equipment in there. Right now they are waiting for the power and they have to decide if they are doing concrete or asphalt sidewalks around the building.

Ms. Weinstein said that the hold-up is really the permit from the DEP. Ms. Kulikowski has been following up on this. She would keep Mr. McMahon and Mr. Figliola in the loop with any progress/ or lack thereof made with the DEP.

Mr. McMahon said the second issue was heat in the bathrooms. He said it was his understanding that the heat in the bathrooms came to \$13,550. Mr. Conte said that that was incorrect, he has \$11,075. Mr. McMahon said that this is private money and they are responsible to the individual sport clubs and people who gave them this money to do another capital project for the Town and no one came to them and said they were going to spend the money on heat. Ms. Weinstein said she does apologize for that however no one called her once to follow-up on any of the projects as well.

Mr. McMahon said the bathrooms are used for two weekends in November for football games so we spent \$11,000 or \$13,000 of private money to heat for two weekends. Mr. McMahon had information on electric heaters that sell for \$328. He said had there been no discussion about their money. Mr. Conte said that Mr. McMahon was quoting the price of the unit and not the price of the insulation and the additional work in the attic to place the units in. Mr. McMahon said we had no voice and it was private money.

Mr. Muller said that it's private money in 20 or 30 years and its Town money at this point. Mr. McMahon said the target dates are seven years. Mr. McMahon said that the money was not spent efficiently. Mr. Conte said if the pipes froze, which it would in a block building, it would have completely destroyed the inside of the building.

Mr. Gilbert asked if the Boosters were going to cover the cost of putting in the heat. Mr. McMahon said the presidents of the club have said since they did not have a voice in this

and it was not discussed with them and it was not in the original plan which everyone looked at. Mr. Gilbert asked, what would happen if in a reasonable discussion, you came to the conclusion that John and Gayle made a good decision. Mr. McMahon said we would be right behind you. Mr. Gilbert said the group signed up for ½ million in expenditures and the question is, is that a reasonable expenditure to protect that asset?

Ms. Weinstein said that essentially the groups gave the Town permission to spend up to \$513,000. Mr. McMahon said in accordance to the plan that agreed with. At no time in the plan was there ever a heating unit. Mr. Gilbert said he thought that good faith was important. Mr. Gilbert said that when you think about whether or not to cover this, they have to think about the decisions that were made were made in good faith and from a pragmatic stand point were reasonable decisions. If they were then he feels that they have to consider covering the cost.

Mr. McMahon said that they will absolutely consider it because the building inspector tells me “you need heat in the building” then we need heat. The issue is, could it have been done more financially prudently and because they had no say in how the money was spent, then we sit back and say, someone made the decision to spend this money which was off the reservation. We have come up with a bunch of solutions that are significantly cheaper, let’s figure it out.

Mr. Muller said that the total funds committed are just shy of \$495,000, is there any disagreement about that number. Mr. McMahon said he did not know. Mr. Shaner said that at a meeting they had last week they are in an over budget position of close to \$9,000 over the \$513,000. Mr. Muller asked how we got there from \$495,000. Mr. Shaner said it is all the invoices that have been taken into account. There was one invoice for the carpenter in the neighborhood of \$13,000. Ms. Weinstein said that Mr. Landry ran the numbers again and it came to \$494,700.

Mr. McMahon said that they were consulted on other things like using block which was going to be \$71,000 cheaper. They were going to use the additional funds to hard wire the scoreboard. Ms. Weinstein said that was not what they made the supplemental appropriation for. Mr. McMahon said that they all agreed in a group that was a good thing to use those funds for. In addition there were sidewalks and they were not in the original plan but they are needed.

Ms. Weinstein said that on a smaller scale when she looked through Mr. Figliola numbers she saw almost \$600 for printing. She said she was shocked to hear that he put in \$600 dollars worth of receipts to put the binders together. She did not approve that expense to be charged to the project.

Mr. McMahon said their thought process is, lets figure out what the real cost should have been and the Town cover what the balance is and they will bear the other part. Mr. Muller said the clubs all committed to \$513,000 and he feels that if there are change orders for whatever reason, whether there is consultation or not, that is what everyone signed up for going into it.

Mr. Muller proposed that if the heating as proposed can be handled within the original budget it shall become so. If other variables that are not yet determined cause the number to exceed \$513,000, and we know that the heating is a fixed number, than he would look at covering the differential attributable to that. He said the budget of \$513,000 should stand. Ms. Weinstein said that also needs to go to the Board of Finance. Mr. McMahon said then what we do is redact all the other things that the school asked them to put into that \$513,000.

Mr. McMahon said if they had not spent the money they would have reduced the amount that the Town loaned them. They would have used it for other capital projects. Ms. Weinstein said if at the end of the day the project comes in over the \$513,000 then we will sit down and talk again and they get to go to the Board of Finance.

Ms. Weinstein asked if they started to sell the bleacher seats. Mr. McMahon said that they attempted to, and people do not believe that the project is going to get finished.

Mr. Machson said this discussion tonight epitomizes just one of the many things that are wrong with this. They consider this their private project and they consider John their public representative engineer on the project and they get Rack's guidance but they also have the position that they have veto power over different portions of the project.

Mr. Machson said what we have here is a bunch of well meaning parents who saw a need and wanted to get a project done and the way they went about it was wrong. The reason that is, is because that we cannot control what's happening and we could have a repeat of Revson field.

Mr. Machson said that this is not private money. There is \$513,000 of Town money that was given by the Town over the past two years using the Board of Finance to appropriate the money under its extraordinary powers under the Town charter, when none of that should have been done. This was a project that the Boosters knew about for years and when this was discussed over the years including in the Norwalk Hour there were several references to this should have been brought up at the Town meeting. Margaret Wirtenberg said that this did go to a Town meeting.

Mr. Machson said that this could have been put in the Town Budget and this could have been weighed against a number of other factors. There is no agreement as to how this project would take place. The Board of Finance approved the expenditure of the \$513,000. Mr. Machson said the Town told them that this was going to be a loan and there were notes. The notes consist of five letters. The Gridiron club said that they would like to formally commit to a \$5,000 but suggested that it had to be approved by it's by laws. It further says that it is conditioned upon all other Weston clubs and teams continuing to make their commitments meaning that it is conditioned upon various unforeseeable events outside of their control.

Mr. Machson said that is not a note. He said that the Board of Finance and the Selectmen had no business saying that we had notes to guarantee these payments, which we do not have. Ms. Weinstein said she had spoken to Town Attorney who felt the letters were strong enough to serve as promissory notes. The one issue she did bring up was there was no start date for the repayment.

Mr. Machson asked what the repayment schedule was. The letters promise a total of \$13,000 per year on a \$513,000 loan. The cost of the money to the Town is about \$15,000 so therefore the repayment schedule does not equal the cost of the money to the Town. At \$13,000 per year it will take 40 years to repay. Mr. Machson said that the Board of Finance, the Board of Selectmen took a group of well meaning folks at their word who said that they will give pay back the money without any repayment schedule.

Mr. McMahon said the turf field replacement fund has no agreement and they have been repaying that for at least seven years. We are a small town and we make commitments. Well meaning individuals have put in over 2.6 million dollars of private funds. They have also just put in \$225,000 for lights on the soccer field. We now have an issue over \$11,000 but they will work it out with Mr. Conte. That is the way Weston works. Mr. McMahon said he appreciated what Mr. Machson had to say, but he was wrong.

Mr. Machson said that what he has seen in the last several years in the Board of Selectmen's budget is that there have been a number of expenditures that have gotten the Town into trouble or that have been misspent because instead of going through the normal process, they went to the Board of Selectmen.

#### **Open Items-**

##### **Ongoing update**

**Grants- Gayle Weinstein-** No new news

##### **Tickler file, discuss as updated**

**Reimbursement from State for school projects- Tom Landry-Tracy**  
Kulikowski said that there were 163 change orders total on the High School project which were filed by O&G to the State. They were first approved by the School Building Committee in consultation with the architect, the owner's representative and O&G. Several months later the change order came back through with the same set of signatures and then the First Selectman signs them and they are filed with the State. The State determines eligible and ineligible cost for the reimbursements.

To date about 72 of the change orders have been sent to the State. They are waiting to hear back from the State. There are several others that either Woody or Gayle have signed. A total of 127 out of 163 have been signed. There are 36 that have not been signed yet and she is working with O&G to find some missing paperwork on some of the change orders. Each one is

different and has to be done individually. Mr. Landry said they have to go as a block so if 8 out of the 10 are done they still can not go.

Mr. Landry said all of those add up to \$970,000. The 36 that are outstanding are around \$300,000 so \$670,000 has been figured out.

**Lachat- Gayle Weinstein-no news**

**Fuel Cell- Gayle Weinstein-** No new news. Don Gary is working with UTC and CL&P to try to get the last details to eventually put that to some sort of plan of action.

**Discussion/approval of the Special Board of Selectmen's meeting of February 3, 2010, and February 25, 2010, Special joint Board of Selectmen and Planning and Zoning meeting of March 2, Board of Selectmen's minutes of March 4, 2010 and Special Board of Selectmen's minutes of March 15, 2010 and March 23, 2010.**

Mr. Muller made a motion to approve the minutes of the Special Board of Selectmen's meetings of February 3, 2010, February 25, 2010, the Board of Selectmen's minutes of March 4, 2010, Special Board of Selectmen's minutes of March 15, and March 23, 2010 as amended. Mr. Gilbert seconded and the motion passed unanimously.

**Any other business to come properly before the meeting- None**

At 9:30 Mr. Muller made a motion to enter into executive session. Mr. Gilbert seconded and the motion passed unanimously.

**Executive session- Police Contract Negotiation**

ATTENDANCE: The meeting was convened at 9:33 pm in the First Selectman's Office by Chairman Weinstein, with Selectmen Gilbert and Muller present. Also in attendance were Town Administrator Landry, and Police Commission members Phillips, Shupack and Gralnick.

DISCUSSION: The meeting was called to discuss the status of Police negotiations. The Board was informed of recent positions and possible counter offers. No votes were taken

ADJOURN: At 10:05 pm, a motion to adjourn executive session (Dan Gilbert, David Muller second) passed by unanimous vote. At 10:06 pm, a motion (David Muller, Dan Gilbert second) to adjourn the meeting passed by unanimous vote.

Respectfully submitted

Judy M. DeVito  
Administrative Assistant  
Approved 5/19/10

