

**REGULAR MEETING NORTH SMITHFIELD TOWN COUNCIL**

**SEPTEMBER 21, 2009**

**KENDALL-DEAN SCHOOL AUDITORIUM**

**7:00 P.M.**

**GOOD & WELFARE**

**Sewer Project**

**Mr. Marc Baillargeon of 32 Pacheco Drive questioned whether tap water or pool water going into the system would affect the sewer use fee.**

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**REGULAR MEETING**

**The meeting began at 7:00 P.M. with the prayer and the pledge to the flag. Council members present were Dr. Benoit, Mr. Biron, Mr. Leclerc, Mr. Zwolenski and Mr. Lovett. Town Administrator Hamilton and Town Solicitor Nadeau were also in attendance.**

**APPROVAL OF MINUTES**

**MOTION by Mr. Leclerc, seconded by Dr. Benoit, and voted unanimously on an aye vote to approve the minutes of July 20, August 3 & 17 and September 8, 2009.**

**PAYMENT OF BILLS**

## **Monthly Bills**

**MOTION by Mr. Leclerc, seconded by Mr. Biron and Mr. Zwolenski, and voted unanimously on a roll call vote to approve payment of the following: General Fund - \$167,098.45; Sewer - \$492,872.69; Water - \$239.66; School Department Wire Transfer - \$1,888,197.00; and Fire Department Wire Transfer - \$200,146.67 for a total of \$2,748,554.47.**

## **NSF&RS Inc. Payment Request**

**Mr. Lovett noted that this item should be discussed in executive session.**

**MOTION by Mr. Zwolenski, seconded by Mr. Biron and Mr. Leclerc, and voted unanimously on an aye vote to table this discussion to October 5, 2009.**

## **MIGRATION OF TOWN WEBSITE TO NEW SERVERS**

**Mrs. Hamilton explained that she sought three quotes for the website support plan and the lowest quote came from Brave River Solutions for the amount of \$160.00 per month. She added there would be an initial, one-time fee of \$225.00 for the migration from the current support service, Embolden Designs.**

**The Council members asked to see a contract before approval.**

**MOTION by Mr. Leclerc, seconded by Mr. Biron and Mr. Zwolenski, and voted unanimously on an aye vote to authorize the Town**

**Administrator to obtain a contract from Brave River Solutions that can be reviewed by the Town Council along with the two other quotes that were received.**

#### **TRAFFIC STUDY RE: GREENE STREET/NORTH MAIN STREET**

**Mrs. Hamilton asked permission to have the Public Safety Commission assist her in conducting a traffic study at the intersection of Greene Street and North Main Street. The signal that is there is not functioning on one side and is antiquated.**

**MOTION by Mr. Leclerc, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to authorize the Town Administrator to contact the Public Safety Commission to conduct a traffic study at Green Street/North Main Street to see what options are available.**

#### **LIZ DEVELOPMENT**

**In a memo to the Council, Town Planner Robert Ericson wrote that Town Solicitor Rick Nadeau and Attorney Michael Kelly are still negotiating a resolution to Elizabeth and Graves Avenue work that will go before the Planning Board on October 1, 2009. The Planning Board retained \$131,494 of the Phase II bond at its last meeting to call on October 1 if there is no satisfactory resolution.**

#### **CHERRY BROOK**

**Additionally, Mr. Ericson wrote that in 2008, several engineering firms responded to the Town's RFP for a study of Cherry Brook flooding,**

apparently with no knowledge of a very good 1968 Cherry Brook study. He has discussed the 1968 study with one of the firms, and they realized the opportunity to update and leverage it by focusing on the three major flow constrictions. This can be done for under \$4,000, a tenth of the 2008 proposed cost.

## **RI LEAP RESOLUTION**

Public Works Director Raymond Pendergast explained a resolution is required by the state before any work commences. He has submitted a

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list of streets to receive the overlay to the Department of Transportation.

**MOTION** by Dr. Benoit, seconded by Mr. Leclerc, and voted unanimously on an aye vote to place approval of the RI LEAP resolution on the agenda for October 5, 2009.

## **AWARD OF BID RE: ROAD OVERLAY**

**MOTION** by Mr. Biron, seconded by Mr. Leclerc, and voted unanimously on a roll call vote to award a bid to Cardi Corporation for \$198,267.00 for street improvement (overlay) based on the RI LEAP program that will provide funding to the town up to \$250,000.00.

## **CONSERVATION COMMISSION MINUTES**

**MOTION by Mr. Leclerc, seconded by Mr. Biron, and voted unanimously on an aye vote to receive and place on file the minutes of July 14 and August 11, 2009.**

#### **PUBLIC SAFETY COMMISSION MINUTES**

**MOTION by Mr. Leclerc, seconded by Mr. Biron, and voted unanimously on an aye vote to receive and place on file the minutes of August 11 and 25, 2009.**

#### **SEWER COMMISSION MINUTES**

**MOTION by Mr. Leclerc, seconded by Mr. Biron, and voted unanimously on an aye vote to receive and place on file the minutes of July 15, 2009.**

#### **DRAINLAYER'S LICENSE – CRUZ CONSTRUCTION CO. INC.**

**MOTION by Mr. Leclerc, seconded by Dr. Benoit, and voted unanimously on an aye vote to approve a drainlayer's license to Cruz Construction Co. Inc.**

#### **2009 SEWER PROJECT**

**Concerns were raised by Right Sewers, Inc. members Mariellen Sheridan, Carol Nasuti and Robert Thurber that included proper notification of the proposed ordinance amendment, waiver of fees, grinder pump costs, warranty time frame, maintenance and warranty costs, ISDS inspections, the inability to purchase a grinder pump directly through either the manufacturer or distributor and the intent**

**of the Council versus what was written in the ordinance.**

**Mr. Thurber stated that, in an effort to minimize the assessments to those in Phases IA and IB, Right Sewers is asking the Council to consider removing the design costs for Phases I, II and III from the project cost and spread those charges across the entire tax base of the town in the same manner as the curb to curb asphalt overlay. Right Sewers also requested that the police detail charges be removed.**

**In response to these comments Mr. Lovett said his intent had been to move forward with the sewer project. The Sewer Commission had come up with a plan to provide sewers in areas where residents needed them and in areas to improve economic development. Mr. Lovett's suggestions at the July 13th meeting to extend the connection time and to waive some of the fees was based on his belief that the project would move forward, at least through Phase II. When the project was halted, the project changed. The town lost the opportunity to obtain a low interest rate and nearly two million dollars in stimulus money. The town also lost the chance for economic development in the Great Road area.**

**Project Engineer James Geremia responded to a question about purchasing grinder pumps and explained that the resident's contractor would be able to order directly through the distributor, F. R. Mahoney & Associates. He added that the manufacturer is aware**

**the project has been stopped but is willing to hold the price of \$2,793.00 for the one-year duration. Mr. Geremia also explained that the extended warranty will only apply to those people who connect within the first year, after that there is the standard two-year warranty.**

**When questioned by Mr. Lovett, Mr. Geremia confirmed the project can be done at a future time. There is a facility plan and approved plans and the town can go out to bid at any time. The motion on July 13th excluded the town from the bond sale from the State Revolving Fund.**

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**Excluding the town from that bond sale also excluded the town from \$2.3 million in subsequent phases of stimulus money as well as \$500,000 from the interceptor bond fund.**

**Mr. Leclerc did not agree with the ordinance section pertaining to the purchase of grinder pumps. He did agree with two septic system inspections but thought homeowners should have more than 60 days to connect once they learned they had a failed system. Mr. Leclerc has received numerous calls from residents who disapproved of receiving a credit rather than a rebate.**

**Mr. Leclerc continued that he was not against the sewer project, but with the information he had, he felt the project could be placed on hold. He had concerns with the number of equivalent dwelling units**

**and with where the sewers were being installed.**

**Mr. Geremia recommended having completed, approved plans for Phase III because the town has already spent a good deal of money on engineering, surveying, soil analysis and structural work. If in several years the town wants to continue the project, the cost to modernize some of the technical specifications would be minimal.**

**Mr. Zwolenski felt there was a good argument for removing the cost of overlay from the project but the design costs belong in the phases that they go to and should not be passed on to residents not included in this project.**

**Mr. Lovett questioned how residents in Phases II and III could be assessed for the design costs when there is no Phase II and III.**

**Mr. Geremia suggested that new Sewer Districts could be developed for those two areas just to cover the costs. If those two phases will proceed in the future, the town could pay the design costs now and then assess those residents later.**

**Mr. Nadeau brought to the Council's attention that if it is decided to back out costs, whether it's paving or design and engineering, those costs have to be borne by the general fund, and the town has the limitation of \$3050 which means that money would have to be accounted for in next year's budget and in every budget for the next**

twenty years.

**MOTION by Dr. Benoit and seconded by Mr. Leclerc to draft whatever documents are necessary to establish sewer districts for Phases II and III to cover the cost of design and engineering for those phases.**

**Mr. Nadeau had a serious concern that would be illegal. You would be establishing a sewer district where you have no intention of putting in a sewer. The project has been stopped and those people would be getting a special tax unrelated to any benefit.**

**Dr. Benoit withdrew his motion and Mr. Leclerc withdrew his second.**

**Mr. Nadeau had an issue with backing out any costs and assigning them to the general population based on the fact there was a vote that specifically called for the people who were in the districts to pay for those costs. His understanding, in speaking with the Sewer Commission chair, is that, in the past, road repaving was paid for by those within the sewer district except in the case of the interceptor bond.**

**Mr. Geremia offered to provide various cost scenarios for the next Council meeting.**

**MOTION by Dr. Benoit and seconded by Mr. Biron that there be no public comment allowed regarding the sewer project at the Council**

**meeting scheduled for October 5, 2009.**

**Roll call: Dr. Benoit – yes; Mr. Biron – yes; Mr. Leclerc – no; Mr. Zwolenski – no; Mr. Lovett – yes. The motion carried 3 to 2.**

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**(MOTION by Mr. Zwolenski, seconded by Mr. Leclerc, and voted unanimously on an aye vote at 10:25 P.M. to extend the meeting to 10:50 P.M.)**

#### **DEM VIOLATIONS ON ANDREWS TERRACE**

**Dr. Benoit noted that the Council has been informed by Mrs. Hamilton that violation notices have gone out to some residents on Andrews Terrace.**

**Mrs. Hamilton added there are two residents who have received notices of violation regarding their septic systems and they have been given ten days to respond. She has been working with the Planning and Zoning departments in search of any new products that may be available.**

**Mr. Geremia explained there is a bottomless sand filter that is a mini treatment plant used in small areas where there is no room for a**

**septic system.**

**Dr. Benoit believed the cost to be approximately \$24,000. Since everyone is so concerned with the aquifer, he would like the town to consider compelling anyone with a cesspool in Phase II to put in a new system that meets DEM standards.**

**Mr. Nadeau doesn't think the Council could target any one part of town for something like that.**

**Ms. Chris Carey of 12 Andrews Terrace stated her family has been trying to get sewers in that area for 30 years to no avail. She is one who received a letter from DEM and needs assistance.**

**(MOTION by Mr. Zwolenski, seconded by Dr. Benoit, and voted unanimously on an aye vote at 10:50 P.M. to extend the meeting to 11:00 P.M.)**

**The Council discussed the possibility of a modified Phase II and Mr. Lovett said he would contact Mrs. Briggs to see if the Sewer Commission could meet prior to October 19th to discuss it.**

**2ND READING SEWER ORDINANCE AMENDMENT RE: 2009 SEWER DISTRICT ASSESSMENT**

**MOTION by Mr. Biron, seconded by Dr. Benoit, and voted unanimously on an aye vote to table the second reading to October**

19, 2009.

**2ND READING ORDINANCE AMENDMENT RE: LEGAL FEES REIMBURSEMENT**

**MOTION by Mr. Biron, seconded by Dr. Benoit, and voted unanimously on a roll call vote to approve the following ordinance as a second reading: “It is ordained by the Town Council of North Smithfield, RI as follows: Code of Ordinances, Part II, Chapter 2, Article XVI is hereby amended to add the following new Section 2-223: 1. This Legal Fees Reimbursement Policy applies to all Town Council members, the Administrator, employees, paid and volunteer board and commission members, the Solicitor and the Assistant Solicitor (each a “Covered Person”) of the Town of North Smithfield (the “Town”) at any time when (a) notice of any and all legal claims or lawsuits (individually and/or collectively, a “Claim”) is received by a Covered Person for any Covered Act (as such term is defined hereinbelow) or (b) a Claim is threatened and/or filed against a Covered Person for any Covered Act if, and only if, said Covered Act occurred in the performance of the Covered Person’s duties on behalf of the Town. No legal fees incurred by a Covered Person shall be reimbursed pursuant to this Policy for any act or omission occurring outside the scope of the Covered Person’s duties on behalf of the Town. 2. Within ten (10) days of the receipt of any notice or threat, and/or the filing of any Claim, a Covered Person shall provide written notice to the Town Council and to the Town Solicitor of such notice, threat, or filing. The Town Solicitor shall then investigate the facts**

surrounding such Claim. 3. If the Town Solicitor determines that the Claim may be defended at no cost to the Covered Person by either (a) the Town Solicitor and/or the Assistant Town Solicitor or (b) the Rhode Island Interlocal Risk Management Trust, then such determination shall be conclusive, and the Covered Person shall be deemed to be ineligible

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pursuant to this Policy for the reimbursement of any legal fees or expenses incurred by the Covered Person if such Covered Person chooses

to retain private legal counsel ("Private Counsel") to assist and/or defend the Covered Person against the Claim. 4. If the Town Solicitor determines for any and all reasons that the Claim may not be defended with reference to the Covered Person by either (a) the Town Solicitor and/or the Assistant Town Solicitor or (b) the Rhode Island Interlocal Risk Management Trust (the "Trust"), then such determination shall be conclusive, and the Covered Person shall be deemed to be eligible pursuant to this Policy for the reimbursement of any legal fees or expenses incurred by the Covered Person if such Covered Person chooses to retain Private Counsel to assist and/or defend the Covered Person against the Claim; provided, however, that no such legal fees or expenses incurred by the Covered Person in connection with any Private Counsel retained by the Covered Person to assist and/or defend the Covered Person against the Claim

shall be eligible for reimbursement hereunder unless and until such Private Counsel and such Covered Person enter into a written contract for fees and expenses related to legal services provided to the Covered Person relating to the Claim, and the terms and provisions of such written contract relating to hourly rates and expenses are equal to or less than the hourly rates and expenses then paid by the Town to the Town Solicitor and/or the Assistant Town Solicitor for similar services. 5. If the Claim is made against the Town Solicitor, then each and every reference in Paragraphs 1-4 hereinabove to "Town Solicitor" shall be deemed to mean "Assistant Town Solicitor". If the Claim is made against both the Town Solicitor and the Assistant Town Solicitor, then the Town Council may by simple majority vote determine to retain Special Counsel to provide advice to the Town Council, and under such circumstances, each and every reference in Paragraphs 1-4 hereinabove to "Town Solicitor" shall be deemed to mean "Special Counsel". 6. Legal Fees Reimbursement Process. A. Definitions. As used herein, the following terms shall have the following respective meanings: "Covered Act" means any act or omission of a Covered Person in the Covered Person's official capacity with the Town and while serving as such or while serving at the request of the Town as a member of the governing body, officer, employee or agent of another entity. "Councilor" means any member of the North Smithfield Town Council. "Excluded Claim" has the meaning set forth hereinbelow. "Expenses" means any reasonable expenses incurred by the Covered Person in connection with the defense of any claim made against the

**Covered Person for Covered Acts including, without being limited to, legal, accounting or investigative fees and expenses of bonds necessary to pursue an appeal of an adverse judgment.**

**“Proceeding” means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.**

**B. Indemnification. Subject to the exclusions hereinafter set forth, the Town agrees that it will indemnify the Covered Person against and hold the Covered Person harmless from any Expenses.**

**C. Advance Payment of Expenses. By the adoption of this Policy, the town agrees that it will pay the Expenses of the Covered Person in advance of the final disposition of any Proceeding except to the extent that the defense of a Claim against the Covered Person is undertaken pursuant to Paragraph 4 hereinabove. The advance payment of Expenses will be subject to the Covered Person’s first agreeing in writing with the Town to repay the sums paid by the Town hereunder if it is thereafter determined that the Proceeding involved an Excluded Claim or that the Covered Person was otherwise not entitled to indemnity under this Policy.**

**D. Exclusions. The Town will not be liable to pay any Expenses (an “Excluded Claim”): (a) For which payment is actually made to or on behalf of the Covered Person under any insurance policy as may be maintained by the Town with the Trust, or otherwise (except for any excess beyond the amount covered by such insurance); (b) For which the Covered Person is otherwise indemnified or reimbursed under any insurance policy as may be maintained by the Covered Person, or otherwise; (c) With respect to a Proceeding in which a final judgment**

or other final adjudication determines that the Covered Person is liable to the Town for: (i) a breach of the Covered Person's duty of loyalty to the Town; (ii) acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law; or (iii) any transaction from which the Covered Person derived an improper personal benefit; (d) If a final judgment or other final adjudication determines that such payment is unlawful. E. Notice to Town;

Insurance. Within ten (10) days after

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receipt by the Covered Person of notice of the commencement of or the threat of commencement of any Proceeding, the Covered Person will, if

indemnification with respect thereto may be sought from the Town under this Policy, notify the Town (as notice, the Town has any insurance in effect, whether with the Trust or otherwise, the Town will give prompt notice of the commencement of such Proceeding to the Trust or other insurer in accordance with the procedures set forth in the policy or policies in favor of the Covered Person. The Town will thereafter take all necessary or desirable action to cause the Trust or such other insurer to pay, on behalf of the Covered Person, all Expenses payable as a result of such Proceeding in accordance with the terms of such policies.

F. Indemnification Procedures. (a) Payments on account of the Town's indemnity against Expenses will be subject to the Town's first determining that the Expenses result from a claim which is not an Excluded Claim. Such a determination

shall be made pursuant to the terms and provisions set forth in Paragraph 4 hereinabove. The determination required by this subparagraph (a) will be made within sixty (60) days of the Covered Person's written request for payment of an Expense, and if it is determined that the Expense is not an Excluded Claim, then payment will be made forthwith thereafter. (b) Payment of a Covered Person's Expenses in advance of the final disposition of any Proceeding will be made within sixty (60) days of the Covered Person's written request therefore. From time to time prior to the payment of Expenses the Town may, but is not required to, determine (in accordance with subparagraph (a), above) whether the Expenses claimed may reasonable be expected, upon final disposition of the Proceeding, to constitute an Excluded Claim. If such a determination is pending, payment of the Covered Person's Expenses may be delayed up to an additional ninety (90) days after the Covered Person's written request therefore, and if it is determined that the Expenses are not an Excluded Claim, payment will be made forthwith thereafter. G. Rights Not Exclusive. The rights provided hereunder will not be deemed exclusive of any other rights to which the Covered Person may be entitled under the laws of the United State of America or the State of Rhode Island, the Town's Charter or Code of Ordinances, the vote of the Councilors, or otherwise, both as to action in the Covered Person's official capacity and as to action in any other capacity while holding such office, and shall continue after the Covered Person ceases to serve the Town in an official capacity. H. Enforcement. (a) The Covered Person's right to indemnification

hereunder will be enforceable by the Covered Person in any court of competent jurisdiction. (b) In the event that any action is instituted by the Covered Person under this Policy to enforce or interpret any of the terms of this Policy, the Covered Person will be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by the Covered Person with respect to such action, unless the court determines that the material assertion or assertions made by the Covered Person as a basis for such action was or were erroneous. I. Severability. If any provision of this Policy is determined by a court to require the Town to perform or to fail to perform an act which is in violation of applicable law, this Article shall be limited or modified in its application to the minimum extent necessary to avoid a violation of law, and, as so limited or modified, this Policy shall be enforceable in accordance with its terms. J. Amendment. No amendment of this Policy shall be effective as to a Covered Person without his or her written consent. This ordinance shall become effective upon passage and all Ordinances or part of Ordinances inconsistent herewith, are repealed.”

## **REDEVELOPMENT AGENCY**

**MOTION** by Mr. Leclerc and seconded by Mr. Zwolenski to table this discussion to October 5, 2009 to enable the Solicitor to review it.

Mr. Lovett was unfamiliar with five of the ten people willing to serve on this agency and wondered if he could receive some kind of background information on each.

**Mr. Leclerc amended his MOTION, Mr. Zwolenski amended his second, and it was voted unanimously on an aye vote to table the discussion to October 5, 2009 with the understanding that the Council would receive additional information on each candidate, i.e. years in town, background and specialty.**

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### **APPOINTMENTS TO HISTORIC DISTRICT COMMISSION**

**There were no appointments.**

### **ORDINANCE REVIEW COMMITTEE**

**There was no appointment.**

### **COMMITTEE FOR 911 MEMORIAL**

**Dr. Benoit indicated that a prior Town Council had approved the establishment of a permanent memorial park in memory of Amy Jarret. There presently is no memorial in the state with the five names of those who perished on September 11, 2001. Amy's sister, Alicia Curran, and her mom, Marilyn Trudeau, have offered to spearhead a fundraising committee.**

**MOTION by Dr. Benoit, seconded by Mr. Leclerc, and voted unanimously on an aye vote to move forward with establishing a memorial park commission.**

## **CHARTER REVIEW COMMISSION**

**Dr. Benoit felt it was time to reestablish a Charter Review Commission to review and update the Charter and to report its suggestions to the Council.**

**(MOTION by Mr. Zwolenski, seconded by Dr. Benoit, and voted unanimously on an aye vote at 11:16 P.M. to extend the meeting to 11:30 P.M.)**

**The Council agreed that the role and charge of a commission would need to be established in any motion that was made.**

**The discussion was continued to the October 19th meeting for a review of a draft and appointments.**

## **COMMUNICATIONS**

**MOTION by Mr. Biron, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to place on file the following: A.) Animal Control Monthly Report for August 2009; B.) NSF&RS Inc. Monthly Incident Report for August 2009; C.) Resolution Opposing Consolidation of Municipal Departments from the Town of Burrillville; D.) Resolutions Opposing Binding Arbitration for Teacher Contracts from the Towns of Burrillville, East Greenwich and Glocester; E.) Resolution Urging Support of US Supreme Court Opinion in *Carcieri V. Salazar* from the Town of Glocester; F.) Resolution Opposing**

**Reinstatement of Mt. Hope Bridge Toll from the Town of Portsmouth; and G.) Resolution Re: Ovarian Cancer Awareness Month from the City of Providence.**

## **EXECUTIVE SESSION**

**MOTION by Mr. Biron, seconded by Mr. Leclerc, and voted unanimously on an aye vote to enter executive session at 11:23 P.M. pursuant to RIGL 42-46-5(A)(2) Sessions pertaining to collective bargaining or litigation to discuss the Andoscia claim and potential School Department litigation.**

**(Mr. Zwolenski left the meeting during executive session.)**

**MOTION by Mr. Leclerc, seconded by Dr. Benoit, and voted unanimously on an aye vote to come out of executive session at 11:35 P.M. and to seal the minutes. No motions were made and no votes were taken.**

## **T. ANDOSCIA CLAIM**

**MOTION by Mr. Leclerc, seconded by Dr. Benoit, and voted unanimously (4 to 0) on an aye vote to deny the Andoscia claim issued to the Town of North Smithfield.**

**MOTION by Dr. Benoit, seconded by Mr. Leclerc, and voted unanimously on an aye vote to adjourn at 11:36 P.M.**

**Respectfully submitted,**

**Debra A. Todd, Town Clerk**