

SPECIAL MEETING NORTH SMITHFIELD TOWN COUNCIL

APRIL 5, 2010

KENDALL-DEAN SCHOOL AUDITORIUM

7:00 P.M.

The meeting was called to order at 7:00 P.M. and began 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 was also in attendance. Town Solicitor Nadeau did not attend as he was ill.

SEWER PROJECT PAY REQUESTS

MOTION by Mr. Leclerc, seconded by Dr. Benoit, and voted 4 to 1 (Mr. Zwolenski voted no) on a roll call vote to approve payment to James J. Geremia & Associates, Inc. for Invoice No. 18 dated February 28, 2010 for Phase III design services in the amount of \$85.55.

MOTION by Mr. Leclerc, seconded by Dr. Benoit, and voted unanimously on a roll call vote to approve payment to James J. Geremia & Associates, Inc. for Invoice No. 18 dated February 28, 2010 for Phase IB construction administration and resident inspection services in the amount of \$1,133.11.

GRINDER PUMPS

MOTION by Dr. Benoit, seconded by Mr. Leclerc, and voted unanimously on an aye vote to move this item up on the agenda.

Dr. Benoit had received a call from a resident of Pacheco Drive whose pump alarm had gone off. This person followed the proper procedure to have the pump serviced and Dr. Benoit was concerned with some of the questions asked of and responses given to this resident. There appears to be a defect in the grinder pump and he asked how better information could be disseminated to other owners.

Sewer Commission Chairman Shawn Kane explained that he and Mrs. Hamilton will be drafting a letter that will have pertinent new information for residents.

Project Engineer James Geremia has contacted the manufacturer to schedule a meeting to review all the concerns about the grinder pumps. Mr. Geremia will provide a report to the Sewer Commission regarding the warranties and subsequently the report will be provided to the Town Council.

Mr. Kane added that someone in the Sewer Department is working on a temporary fix.

SKATEBOARD PARK

Public Works/Parks and Recreation Director Raymond Pendergast informed the Council he has been advised by the Interlocal Trust that repairs must be done at the skateboard park or the ramps must be dismantled due to liability issues. There have been numerous complaints of vandalism, graffiti and foul language at the skate park

and throughout Pacheco Park. Mr. Pendergast stated the destruction of fencing has been a continuous problem. It is repaired only to be vandalized again within a week and Mr. Pendergast does not have the funds to continually make these repairs. Rules and regulations have been instituted and posted for the skateboard park users and they are blatantly ignored. Few, if any, skaters wear the proper protective gear. Mr. Pendergast asked the Council for permission to disassemble the skate park equipment and reevaluate the situation.

When asked by Mr. Leclerc, Mr. Pendergast explained that a couple of the ramps did not pass the inspection of the Trust and would either have to be repaired or removed. Two have already been removed.

Mr. Biron wondered if the Benetti family had been notified since they were an integral part of getting the skateboard park established. He

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also asked if there might be any interest in trying to sell the equipment rather than storing it for years.

MOTION by Mr. Leclerc, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to disassemble the skateboard park and reassess what to do with it at a later time based upon the recommendations of the Chairman of the Parks and Recreation Commission and the Parks and Recreation Director as well as because of the cost of repairs, the current status that it is in, the

tagging, the liability of the town, the violation of rules, the inappropriate behavior and the number of times the police department has had to respond.

Mr. Zwolenski cautioned Mr. Pendergast to check into any concerns because of the use of federal funds prior to dismantling.

Also Mr. Lovett recommended that the Town Solicitor weigh in on this before the skateboard park was taken down.

MOTION by Mr. Biron and seconded by Dr. Benoit to direct Mr. Pendergast to notify the Substance Abuse Task Force and the Benetti family about the dismantling and whichever federal agency involved regarding guidelines that would enable the town to sell the equipment rather than having it being stored.

The **MOTION** was amended by Mr. Biron and the second was amended by Dr. Benoit to include that the Public Works Director would come back to the Town Council with a report.

On a roll call vote, the **MOTION** as amended was approved unanimously.

RI LEAP PROGRAM

Mr. Pendergast informed the Council that he had gone out to bid for this federal- and state-funded repaving program and the numbers

came in at \$50,000 less than expected. He wished to add three more streets and the Department of Transportation has stated they need a Council resolution indicating that the town is in agreement with this.

MOTION by Mr. Zwolenski, seconded by Mr. Biron and Mr. Leclerc, and voted unanimously on an aye vote to ask the Town Solicitor to create a resolution that will address overlaying the following streets under the RI LEAP program: Buxton Street from the intersection of Quaker Highway to new pavement, Maple Avenue from Victory Highway to new pavement on School Street, Pound Hill Road from Providence Pike to Black Plain Road, Elizabeth Avenue from St. Paul Street to new pavement, Mowry Road from Route 7 to the Burrillville line (new pavement), Pine Hill Road from Pound Hill Road to cul-de-sac, Black Plain Road from Pond House to Route 104 and Pound Hill Road after The Pines to the bridge area.

WE THE PEOPLE COMPETITION

MOTION by Mr. Leclerc, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to move this item up on the agenda.

Mrs. Hamilton commented that there is \$1,000 available from a Finance Department line item.

MOTION by Mr. Zwolenski, seconded by Mr. Leclerc, and voted 4 to 1 (Mr. Biron voted no) on a roll call vote that the town issue a \$1,000 check for the We The People students to be taken from the Finance

Department budget.

Mr. Biron felt this would be setting a precedent and those funds may be needed elsewhere.

COMMUNITY DEVELOPMENT BLOCK GRANT

Town Planner Robert Ericson explained this funding request is for low to moderate income families. He has proposed the following: Housing Rehabilitation - \$32,000; Marshfield Commons Affordable Housing Development and Neighborhood Safe Drinking Water Initiative - \$175,000; Senior Bus for the North Smithfield Non-Profit Mini-Bus - \$28,000; Heritage Hall, Economic Development - \$3,950; and Affordable Housing Land Trust Operations - \$3,000 for a total of \$249,750.

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MOTION by Mr. Leclerc and seconded by Mr. Zwolenski to approve the application for the Community Development Block Grant in the amount of \$249,750.

Mr. Leclerc amended his MOTION and Mr. Zwolenski amended his second to include that the Town Solicitor review the application prior to being submitted to the state.

The MOTION as amended was approved unanimously on an aye vote.

CHARTER REVIEW COMMISSION

Mr. Lovett had received a communication from the Charter Review Commission stating they needed an extension of time to April 19, 2010 for its presentation of recommendations to the Town Council.

MOTION by Mr. Biron, seconded by Dr. Benoit, Mr. Leclerc and Mr. Zwolenski, and voted unanimously on an aye vote to add this item to the April 19th agenda.

2ND READING ORDINANCE AMENDMENT RE: USE OF RECREATIONAL VEHICLES

Mr. Leclerc, Mr. Zwolenski and Mr. Biron stated for the record they were not happy with state legislation that ties the town's hand in determining a fine amount for violations of this ordinance.

MOTION by Mr. Biron, seconded by Dr. Benoit, and voted 3 to 2 (Mr. Leclerc and Mr. Zwolenski voted not) on a roll call vote to approve the following ordinance: "It is ordained by the Town Council of the Town of North Smithfield as follows: That the Code of Ordinances, Chapter 15, Section 15-13, entitled, "Use of Recreational and Other Vehicles on Public and Private Property", be amended as follows: Sec. 15-13. Use of Recreational and Other Vehicles on Public and Private Property. (a) No person shall operate, cause to be operated, park, walk or drive a motor vehicle or motorized vehicle of any nature and kind (except for handicap or medical purposes) in town-owned public parks, public walkways, grassy areas, trails, recreational facilities,

open space areas or in any area within the Town where motor vehicles are not allowed, except in designated parking and traveling areas, except for the specific purpose of authorized maintenance or operation of such area, or for public health, safety or handicapped purposes, or without first obtaining and having in his possession written permission from the town for such operation. (b) No person shall operate, cause to be operated, park, walk or drive, or have in his possession while trespassing, a motor vehicle of any nature and kind which has been determined by the Department of Motor Vehicles for the State of Rhode Island as unsuitable for operation on the public way and is not eligible for registration for that use, including but not limited to any recreational vehicle, so-called "all-terrain vehicle", motorcycle, dirt bike, minibike, moped, go-kart, motorized scooter or cycle, motorized tricycle, snowmobile or quad cycle, on a public street or highway, public park, public walkway, grassy area, trail, recreational facility, open space area, or in any area within the Town where motor vehicles are not allowed, or on the private property of another, without first obtaining and having in his possession written permission from the property owner for such operation. Any person granting such permission shall be responsible to insure that the noise and other condition generated by such use shall not be a nuisance or annoyance to the surrounding neighborhood or neighboring properties. No such permission may be granted for any commercial or other use in violation of applicable zoning regulations. (c) Penalty – Any person violating Sub-sections (a) and (b) hereinabove shall be subject to a fine of \$100 for each offense, or

such other amount as may hereafter be authorized by Rhode Island law, including but not limited to R.I.G.L. §31-3.2-4.1, and may be held responsible for the cost of all environmental remediation. Any vehicle used in violation of this Ordinance may be impounded and may be towed and stored at the owner's expense. All such fines shall be paid to the town clerk, to be directed for the purpose of the enforcement of the ordinance (first to be directed to vehicle operating and maintenance costs), and such storage and towing fees paid to the entity designated by the police to tow and store such vehicles, or as may be otherwise required by any court of competent jurisdiction, including but not limited to the District Court of the State of Rhode Island or any Municipal Court of the Town of North Smithfield. (d) Eluding an Officer – No person

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illegally operating any vehicle in violation of Sub-sections (a) or (b) hereinabove or otherwise shall elude a police officer upon being signaled to stop or upon being told to stop, including any action by a police officer in telling or signaling any vehicle operator to stop by any oral statement, siren, flashing light, hand signal or other signal, whether the police officer ordering or signaling the stop is in or on a vehicle or on foot. Such prohibited eluding shall include but is not limited to acts consisting of failing to stop, increasing speed, changing direction, turning off lights or taking similar steps to avoid or escape from a police officer. Any person apprehended in violation of this section shall be subject to a fine of \$100.00 for each offense,

or such other amount as may hereafter be authorized by Rhode Island law, in addition to the penalty set forth in Sections (a) and (b) above. This ordinance shall take effect on the date of passage and in accordance with the Town Charter.”

**NORTH SMITHFIELD FIRE & RESCUE SERVICE, INC. CONTRACT
MOTION** by Mr. Biron, seconded by Mr. Leclerc, and voted unanimously on an aye vote to move this item up on the agenda.

Mr. Leclerc, Mr. Lovett and Mrs. Hamilton felt this topic should be discussed in executive session since the contract has not yet been established. It was continued to April 19, 2010 in executive session.

**1ST READING ORDINANCE AMENDMENT RE: OPEN BURNING
MOTION** by Mr. Biron, seconded by Mr. Leclerc, and voted unanimously on an aye vote to move this item up on the agenda.

Mr. Leclerc read the proposed ordinance which constitutes the first reading. The second reading will be scheduled for April 19, 2010.

RESOLUTION RE: JUDICIAL FAIRNESS LEGISLATION
Mr. Lovett recused himself from this discussion.

MOTION by Dr. Benoit, seconded by Mr. Biron and Mr. Zwolenski, and voted unanimously (4 to 0) on a roll call vote to adopt the following resolution: “WHEREAS, At the special meeting of the North

Smithfield Town Council held on April 5, 2010, at 7:00 P.M. in the Kendall-Dean School Auditorium, at which time a quorum of the Council was present and acting throughout, the Council discussed various legislative amendments intended to protect the public treasury and also to protect public officials and employees from suits against them in their personal capacities; and WHEREAS, The North Smithfield Town Council finds that cities and towns are being faced with ever increasing demands upon their finances and that public officials and employees are increasingly and unfairly confronted with threats of personal liability from their official acts on behalf of the public they serve; and WHEREAS, The North Smithfield Town Council finds that the legislative restrictions imposed upon the cities and towns relative to their ability to raise revenue have severely hampered the operations of municipal government; and WHEREAS, The North Smithfield Town Council finds that the current state of the law in Rhode Island imposes unfair burdens upon municipal government, its public officials and employees, and the taxpayers of Rhode Island's cities and towns due to a statutory scheme that imposes unreasonable liability upon the cities and towns of Rhode Island; and WHEREAS, The North Smithfield Town Council finds that legislative reform is necessary in order to adequately protect municipal governments, their officials and employees and the taxpayers from inequitable treatment due to the current state of the law with respect to municipal liability; and WHEREAS, Legislation is currently pending in the General Assembly in the form of five (5) bills: H7278; H7777; H7277; H7280; and S2349 that would ensure the

equitable treatment of public entities by amending the following sections of the Rhode Island General Laws: a. §9-31-3. Limitation of damages – Cities, towns, and fire districts; 2. §10-6-2. “Joint tortfeasors” defined; and 3. §9-21-10. Interest in civil actions. NOW, THEREFORE, BE IT RESOLVED that we, the North Smithfield Town Council, respectfully request that the General Assembly support H7278, H7777, H7277, H7280 and S2349. BE IT FURTHER RESOLVED that the Town Clerk is hereby instructed to submit a copy of this resolution to the North Smithfield State Senators and State Representative in the Rhode Island General Assembly seeking their consideration and support of H7278, H7777, H7277, H7280, and S2349.”

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FISCAL YEARS 2009, 2010 AND 2011 BUDGETS

Mrs. Hamilton noted that if a particular business at Dowling Village is operational by the end of calendar year 2010, the town may be able to pro-rate an additional \$20,000 to \$40,000 of tax revenue as well as some tax revenue for the land being used. These two things could amount to an additional \$100,000 for the town.

Mrs. Hamilton believes there will be a \$133,000 reduction in state aid for education.

Expenditures for this fiscal year appear to be on track although additional costs have occurred this past week due to the flooding.

FEMA will reimburse at a 75 percent rate for personnel, vehicles, materials and rentals required to date with the possibility of actually receiving 100 percent. Later Mrs. Hamilton will submit further requests for reimbursement for washed out roads.

Sewer Commission Shawn Kane stated that he, Mr. Pendergast, and Sewer Superintendent Manuel Alvarez met with the Budget Committee last week and presented a fiscally sound operating budget that will reduce the rate to the same as two and one-half years ago. It will also increase the reserve in the contingency fund.

Mr. Leclerc informed his fellow Council members that he has requested from both the town and the school department by April 15th an expense document, a revenue document and a document encompassing the budgeted to actual to balance remaining in each individual line item.

**RESOLUTION RE: MANDATORY CONTRACT CONTINUATION
LEGISLATION**

Mr. Lovett recused himself from this discussion.

MOTION by Mr. Biron, seconded by Mr. Zwolenski, and voted unanimously on a roll call vote (4 to 0) to adopt the following resolution: “WHEREAS, Current state law does not provide for mandatory continuation of either municipal employee or school teacher collective bargaining agreements; and WHEREAS, A Superior

Court justice ruled on March 15, 2010 that state statute, defining when a contract ends, obviates any contract clause agreed to which allows for the continuation of a public employee labor contract; and WHEREAS, School districts and cities and towns have seen a calamitous reduction of state aid; and WHEREAS, There exists a \$210 million dollar revenue/expenditure gap in the current FY 2010 budget and over an anticipated \$400 million revenue/expenditure gap for the FY 2011 budget that will result in further state aid reductions; and WHEREAS, Taxpayers are already burdened by some of the highest property taxes nationally; and WHEREAS, School districts and cities and towns must comply with RIGL §44-5-2, that caps the property tax levy imposed by municipalities; and WHEREAS, According to §16-2-9(d) “The school committee of each school district shall be responsible for maintaining a school budget which does not result in a debt.”; and WHEREAS, School committees may require employee concessions to comply with the aforementioned state statutes; and WHEREAS, 2010 – S2603 would mandate that an expired contract shall continue under all the same terms and conditions of employment; and WHEREAS, This would serve as a disincentive for unions to bargain in good faith and allow existing employee wages and benefits to continue unchanged indefinitely thus forcing districts to possibly violate RIGL §44-5-2 and 16-2-9(d). NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of North Smithfield respectfully requests the Rhode Island General Assembly to oppose 2010 – S2603 that mandates expired teacher contracts must continue all the existing terms and conditions of employment;

and BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to every State Senator, State Representative and the Governor.”

MUNICIPAL COURT

Mr. Biron wanted to discuss funding for the Municipal Court but was told by Mr. Lovett that the bill was sent back to the House Committee.

If it dies there, the town will not be able to have a Municipal Court.

Mrs. Hamilton stated she will speak with Representative Newberry and report back to the Council.

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GRACE PERIOD FOR TAX COLLECTIONS

Dr. Benoit has received calls from senior residents who are finding it a challenge to meet their tax obligation on the 15th of the month because they don't receive their checks until after that date. He feels there should be a grace period. Dr. Benoit spoke with the Assistant Tax Collector, Mary Jean Perry, who was not in favor of this.

In speaking with Mrs. Perry, Mrs. Hamilton was told that there have been several changes to the due dates over the past few years and allowing for a grace period would require an adjustment to the software that is very costly. To determine a discretionary date would be very difficult.

Mr. Leclerc asked if Mrs. Perry could attend the next meeting to provide more information.

DISTRIBUTION OF ADMINISTRATOR'S MESSAGE

Dr. Benoit was disturbed that the Administrator's e-message is sent to probably 600 residents but some Council members do not receive it. He asked if she would consider putting the message on the website, but at the very least to send it to all Council members.

Mrs. Hamilton agreed to do so and stated she was totally against arbitrarily eliminating anyone who wanted to receive her message.

ST. PAUL STREET BRIDGE

Mr. Lovett had received notice that a truck had gotten stuck under the St. Paul St. bridge. He saw that there is an old sign at the beginning of the street that notes 11' 8" ahead and another smaller one at the church. He questioned whether there was any way to get a more visible sign at the beginning of St. Paul Street.

Mr. Leclerc noted the first step should be to request the police department to review the situation and determine if there is a problem.

WATER DEPARTMENT

Recently Mr. Biron met with several members of the town

administration. He has a number of issues that appear to have been unresolved.

Mr. Biron asked if any town employee is monitoring the quarterly meter reading that is done at Rhodes Avenue. Mr. Alvarez commented that when former Finance Director Jill Gemma was here, she would have someone check the meter if there was a question with the billing but that has not been done since she left.

Second, the City of Woonsocket charges per cubic feet and the town charges per gallon. Mr. Biron wondered how the conversion is made.

Mr. Alvarez explained that the former Assistant Tax Collector did have a calculation to make the conversion.

Third, Mr. Biron asked if the town's billing rate at least equals what the town is being charged by Woonsocket.

Fourth, Mr. Biron said businesses are paying three times what they were paying in the third quarter of 2008. He questioned what constitutes a unit. Owners of the Village Haven have been paying water bills that they believe to be excessive and have been unable to get any answers.

Mr. Shawn Kane proposed that an independent auditing firm be hired to audit the water enterprise fund solely. This report should include recommendations on what to do about a failing infrastructure.

MOTION by Mr. Biron to move forward with a forensic audit of the water department. There was no second. Council members felt the matter should be investigated further first.

EXECUTIVE SESSION

**MOTION by Mr. Leclerc, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to enter into executive session at 10:03
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P.M. pursuant to RIGL 42-46-5(A)(2) to discuss the North Smithfield Police Department contract.

MOTION by Mr. Leclerc, seconded by Dr. Benoit and Mr. Biron, and voted unanimously on an aye vote to come out of executive session at 10:20 P.M. and to seal the minutes. No motions were made and no votes were taken.

MOTION by Mr. Leclerc, seconded by Dr. Benoit, and voted unanimously on an aye vote to adjourn at 10:21 P.M.

Respectfully submitted,

Debra A. Todd, Town Clerk