

SPECIAL MEETING NORTH SMITHFIELD TOWN COUNCIL

APRIL 4, 2016

KENDALL-DEAN SCHOOL AUDITORIUM

7:00 P.M.

The meeting began at 7:00 P.M. with the prayer and the pledge to the flag. Council members present were Ms. Alves, Mrs. Nadeau, Mr. Soly, Mr. Zwolenski and Mr. Boucher. Town Solicitor Iglizozzi was also in attendance. Town Administrator Hamilton was on medical leave.

OTHER POST EMPLOYMENT BENEFITS

MOTION by Mr. Boucher, seconded by Mr. Soly, and voted unanimously on a roll call vote to move this item up on the agenda.

Ms. Colleen Bodziony of the Interlocal Risk Management Trust was present to inform the Council members about the Trust OPEB Funding Program. This Program is structured as a multiple-employer trust in accordance with Section 115 of the Internal Revenue Code and complies with GASB 45 as an irrevocable exclusive benefit trust solely to fund retiree health care benefits. Members are able to invest their assets in one of three investment pools which have been designed specifically by Vanguard for The Trust OPEB Funding Program. These portfolios include: conservative, balanced and growth. Ms. Bodziony explained monthly fees would be paid to the Public Agency Retirement Services (PARS), Vanguard and US Bank. As more members join, fees will go lower.

Acting Town Administrator/Finance Director Jason Parmelee noted currently Town funds are in a separate savings account.

MOTION by Mr. Zwolenski, seconded by Mrs. Nadeau, and voted unanimously on a roll call vote to ask the Budget Committee to review this program.

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EXECUTIVE SESSION

MOTION by Mr. Boucher, seconded by Mrs. Nadeau, and voted unanimously on a roll call vote to enter into executive session at 7:40 P.M. pursuant to RIGL 42-46-5(A)(2) Sessions pertaining to collective bargaining or litigation to discuss the Woonsocket Interjurisdictional Wastewater Agreement.

MOTION by Mr. Zwolenski, seconded by Mrs. Nadeau, and voted unanimously on a roll call vote to come out of executive session at 8:40 P.M. and to seal the minutes. No motions were made and no votes were taken.

WOONSOCKET INTERJURISDICTIONAL WASTEWATER AGREEMENT

MOTION by Mr. Boucher and seconded by Mrs. Nadeau to adopt the resolution authorizing the Town Solicitor to demand arbitration under the Town's Interjurisdictional Wastewater Disposal Service Contract

with the City of Woonsocket. This motion was later withdrawn.

MOTION by Mr. Zwolenski, seconded by Mr. Boucher, and voted unanimously on an aye vote to open up discussion to the public.

In response to a question from Daniel Halloran, Mr. Boucher stated the Town of North Smithfield has looked at every conceivable avenue in dealing with the sewer issue but they are all off the table at the present time.

Town Planner Robert Ericson commented that this whole process has created an enormous amount of risk in investment by people who live in town and for those who are looking to invest in the town. The uncertainty has created issues for economic development.

MOTION by Mr. Zwolenski, seconded by Mrs. Nadeau, and voted unanimously on a roll call vote to close the public comment.

MOTION by Mr. Boucher, seconded by Mr. Zwolenski, and voted unanimously on a roll call vote to adopt the following resolution: “WHEREAS, the Federal Environmental Protection Agency, the State of Rhode Island, the Commonwealth of Massachusetts, the City of Woonsocket, the Town of North Smithfield, the Town of Blackstone, and the Town of Bellingham have joined in a plan to establish a Regional Wastewater Collection and Treatment Project under the United States Clean Water Statute; and WHEREAS, for almost forty

years, the Town has disposed of its wastewater at a treatment and collection facility (the “Facility”) owned and operated by the City of Woonsocket, Rhode Island (the “City”) pursuant to an interjurisdictional wastewater disposal service contract dated as of December 7, 1977 between the Town and the City (the “Contract”); and WHEREAS, the City -- with full knowledge that the Town has no practical option but to continue to utilize the Facility and has relied upon the City’s legal and equitable duty to treat the Town fairly and equitably as its partner -- has abused its effective monopoly power over the manner by the Town is compelled to dispose of its wastewater and breached the Contract by, inter alia: (1) ignoring its statutory and contractual obligation to create an official board for the purpose of adopting policies and programs with respect to the Facility; and (2) unilaterally attempting to impose onerous new financial terms upon the Town by: (a) reducing the total flow capacity allocated to the Town (from 3 million gallons per day (“mgd”) to 1.9 mgd) by which the Town’s contribution to capital costs was to be calculated under the Contract; while at the same time (b) maintaining the Town’s capital cost contribution percentage as if no reduction in flow capacity had been made by imposing a new, arbitrary “Host Fee” which bore no relation to the actual cost of operating the Facility, contained an escalator clause linked to the consumer price index, which would (unlike a capital contribution) continue indefinitely and which the City proposed to place into its General Fund; and when unable to coerce the Town’s agreement, by (c) arbitrarily attempting to terminate the Contract, effective as of November 1, 2016, and then

alleging that the Town had breached the Contract and would be liable for certain damages caused by the City's termination; and WHEREAS, since the City attempted to terminate the Contract, the City and Town have been attempting to negotiate a settlement of their differences with respect to the Contract, and the proposed new contract, to no avail; and WHEREAS, the Contract provides

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that "[a]ny controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof," Contract, § 16.03 at 26, and further, that "the decision of the arbitrators or a majority of them, when reduced to writing and communicated to the parties to such proceeding through their designated representatives, shall be final and binding on the parties." Id., § 16.06 at 28; NOW, THEREFORE, THE TOWN COUNCIL HEREBY RESOLVES: (1) that the Town Solicitor is authorized to demand arbitration under the Contract on behalf of the Town, and consonant with the budget communicated to the Solicitor, to retain such legal and other experts, and to take whatever additional legal measures he deems necessary, to attempt to ensure that: (a) the Town is compensated for the damages it has sustained as a proximate result of the City's breaches of the Contract and inequitable conduct; (b) the City meets its legal and equitable obligations to the Town and signs a new interjurisdictional

wastewater disposal service contract which apportions costs in an equitable manner; and (c) the Town is able to continue to use the Facility under equitable terms during the course of any arbitration or legal proceeding.”

MOTION by Mrs. Nadeau, seconded by Mr. Boucher, and voted unanimously on a roll call vote to circulate the prepared press release and to post it on the Town’s website.

PUBLIC BUILDINGS IMPROVEMENT COMMISSION RE: MUNICIPAL BONDS

MOTION by Mrs. Nadeau, seconded by Mr. Soly and Mr. Boucher, and voted unanimously on a roll call vote to move this item up next on the agenda.

Joseph Cardello, a member of the PBIC, noted that PARE Corporation has submitted the one hundred percent design plan for the roads and an amendment to the contract for construction services. Construction should begin sometime in June. Originally there were 29 roads listed in the Casali report but Mr. Cardello stated the committee was looking more at the length of roads to be done well and it came out to be 5.9 miles. The roads to be done are Iron Mine Hill Road, Sayles Hill Road, Black Plain Road and Pound Hill Road with full depth reclamation and a four-inch pavement overlay. This should make the roads last fifteen to twenty years. Those four roads could take up the entire amount of the bond but, if not, there are

some alternate locations.

MOTION by Mrs. Nadeau, seconded by Mr. Zwolenski, and voted unanimously on a roll call vote that the municipal and road bonds be placed first under Old Business on future agendas.

Mr. Parmelee stated that the Kendall-Dean building is back on track as of today with Studio Meja as far as the consultants and the outline of the scope.

Michael Rapko, a member of the PBIC, noted that certain documents need to be provided to Mr. Parmelee by April 15th so he can get them to bond counsel. There are also a number of small issues that need to be resolved such as vacating Kendall-Dean, moving expenses, trailers, security, etc.

The Public Safety Complex will not be touched until Kendall-Dean is done and that is expected to take about a year.

The town is seeking an historic grant for up to \$150,000 for Kendall-Dean. Town Planner Robert Ericson is working with the architect on this.

MOTION by Mrs. Nadeau and seconded by Mr. Boucher to go out for a Request for Proposals to go out to bid for an Architect's Field Representative for the construction of Kendall-Dean.

This motion was later withdrawn due to comments made by Mr. Paul Vadenais and Mr. Joseph Cardello.

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MOTION by Mrs. Nadeau, seconded by Mr. Zwolenski, and voted unanimously on a roll call vote to appropriate an amount not to exceed \$5,500 from the bond money for asbestos and lead testing.

Mrs. Nadeau reported that the schools are off the table for this year. The PBIC had not been told that one hundred percent design documents were needed for Stage II. Even Mr. Lindberg had been taken aback by that information.

Paul Vadenais of 31 Greenwood Street wonders how the town can finance a project without completed construction documents. It hasn't gone out to bid and the cost is unknown. There are too many unknowns with this project. He suggested hiring a construction manager who would oversee all subcontractors as well as the architect. Mr. Vadenais asked if the Town Council had approved design documents and was told no.

MOTION by Mr. Zwolenski, seconded by Mr. Boucher, and voted

unanimously on an aye vote at 10:05 P.M. to extend the meeting to 10:30 P.M.

PUBLIC HEARING RE: ABANDONMENT OF SECTION OF MCMULLEN AVENUE

Town Planner Robert Ericson explained the site in question is all wetlands and there is no hope of it ever being developed. A resolution was received from the City of Woonsocket abandoning that portion of McMullen Avenue located there. Mr. Ericson feels the City of Woonsocket has actually done North Smithfield a favor because the forty-foot width they abandoned won't change the land value, it will add value to the house which North Smithfield will get.

Mr. Zwolenski liked the idea of having a buffer area in North Smithfield.

MOTION by Mrs. Nadeau and seconded by Ms. Alves to abandon the section of McMullen Avenue from Stanley Street approximately seventy feet to the Town of North Smithfield municipal line.

Roll call: Ms. Alves - yes; Mrs. Nadeau - yes; Mr. Soly - no; Mr. Zwolenski - no and Mr. Boucher - no. The motion failed 3 to 2.

RESOLUTION REQUESTING GENERAL ASSEMBLY TO AMEND RIGL 16-77.4 (CHARTER SCHOOLS)

MOTION by Mr. Boucher, seconded by Mrs. Nadeau, and voted

unanimously on a roll call vote to move this item up next on the agenda.

MOTION by Mr. Boucher, seconded by Mr. Zwolenski, and voted 4 to 1 on a roll call vote (Ms. Alves voted no) to adopt the following resolution: “WHEREAS, the Town of North Smithfield contributes a significant portion of local revenue derived from property taxes to the education of students in the district’s public schools, and WHEREAS, Rhode Island state law mandates that the local school district pays the annual per pupil expenditure, which includes a significant taxpayer contribution toward a student’s tuition to attend privately operated charter schools and mayoral academies, and WHEREAS, student enrollment in privately operated charter schools and mayoral academies does not require approval from local school committees and town councils, and WHEREAS, tuition-paid charter schools will burden the Town of North Smithfield’s local budget, and WHEREAS, North Smithfield’s investment in its own public schools has clearly resulted in high levels of student achievement as evidenced by multiple performance measures of student success, and WHEREAS, the RISE Mayoral Academy charter school application identifies the Town of North Smithfield as a participating town/sending district in its charter application, and WHEREAS, the North Smithfield School Committee adopted a resolution on April 14, 2015 to support the passage of 2015-H 5160 and 2015 - S 0087 that would require approval of the local school committee and town council of each included municipality, by either resolution or ordinance, prior to the approval

of a new Mayoral Academy Charter School application by the Rhode Island Board of Education, and WHEREAS, the North Smithfield Town Council held a public hearing on April 20, 2015, and heard testimony from residents of the Town of North Smithfield who oppose the inclusion of the Town of North Smithfield as a participating town/sending district to the

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RISE Mayoral Academy, and WHEREAS, the North Smithfield Town Council adopted a resolution in opposition to the inclusion of the Town of North Smithfield as a participating town/sending district to the RISE Mayoral Academy on April 20, 2015. WHEREAS, there are presently five (5) students from the Town of North Smithfield enrolled in the RISE Mayoral Academy for the 2015/2016 school year. NOW, THEREFORE, BE IT RESOLVED that the North Smithfield Town Council respectfully requests that the General Assembly amend RIGL 16-77.4 to add: RIGL 16-7.4-1 (c) A “mayoral academy” charter school application that identifies the Town of North Smithfield as a participating town/sending district shall not be approved by the board of education unless the North Smithfield school committee and the North Smithfield town council supports the mayoral academy’s charter school application. Such support shall be provided either by resolution or ordinance, after at least one public hearing. For purposes of this chapter, a mayoral academy shall not be created by the elected town administrator of the Town of North Smithfield without the approval of the North Smithfield town council. BE IT

FURTHER RESOLVED that the North Smithfield Town Council respectfully requests that the General Assembly amend RIGL 16-77.4 to add: RIGL 16-77.4-9 No student from the Town of North Smithfield shall be eligible for enrollment in the RISE Mayoral Academy without approval of the North Smithfield town council and the North Smithfield school committee. Such approval shall be provided either by resolution or ordinance, after at least one public hearing. This section shall not apply to five (5) North Smithfield Town students presently enrolled in the RISE Mayoral Academy.”

AGREEMENT WITH FIRST STUDENT

Mr. Iglizzi explained this Memorandum of Understanding came about because of a zoning violation. Assistant Town Solicitor Stephen Archambault met with the alleged violator and worked out an agreement. First Student will relocate some of their vehicles from Railroad Street to a site located at 468 Comstock Road, which is properly zoned. Environmental standards would be complied with there. In exchange for relocating buses, the zoning complaint would be dismissed.

Mr. Soly believes the complaint stems from Section 6.13 of the zoning ordinance as it relates to these buses being in a residential area. He commented that the land on Railroad Street was bought in 1982 and has been a school bus yard since he can remember. Mr. Soly believes the company is zoning compliant and the complaint should be dismissed as well as the company’s appearance in Municipal

Court. He also thinks the buses can be left where they are.

MOTION by Mr. Zwolenski, seconded by Mr. Boucher, and voted unanimously on a roll call vote at 10:35 P.M. to extend the meeting to 10:45 P.M.

Zoning Official Carl Johnson noted that there were approximately sixty unregistered, unlicensed vehicles on the property and could possibly constitute a junkyard. The unused buses would be the ones moved to Comstock Road and the ones used to pick up the students would remain at Railroad Street.

MOTION by Mr. Boucher, seconded by Ms. Alves, and voted unanimously on an aye vote to continue this matter to April 18, 2016.

**BROOKSIDE EQUESTRIAN FARM EXTRACTION OF MATERIALS
CONSISTENT WITH ZONING VARIANCE**

MOTION by Mrs. Nadeau and seconded by Mr. Zwolenski to direct the zoning official to research what is going on at Brookside Equestrian Farm in regards to extraction.

Mr. Soly's concern with the extraction from property owned by MCS is that there has already been a ruling in 2012. It was determined that MCS is in compliance with the Zoning Board's decision of June 22, 1999. The cease and desist order that was issued in 2012 is lifted and they were advised that they may continue to excavate and remove

materials as they had been doing. The town of North Smithfield was provided with the excavation and restoration plans and it was noted that the Zoning Board accepted the improvements with no restrictions

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on subsequent operations and that they were not cited for any violations.

Roll call vote: Ms. Alves - yes; Mrs. Nadeau - yes; Mr. Soly - no; Mr. Zwolenski - yes; and Mr. Boucher - no. The motion carried 3 to 2.

The matter was continued to April 18, 2016.

(Mrs. Nadeau left at 10:45 P.M.)

APPOINTMENT OF 2ND ALTERNATE TO PLANNING BOARD

MOTION by Mr. Soly, seconded by Mr. Boucher and Mr. Zwolenski, and voted 4 to 0 on an aye vote to move this item up next on the agenda.

MOTION by Mr. Soly, seconded by Mr. Boucher and Mr. Zwolenski, and voted 4 to 0 on a roll call vote to appoint Michael Fournier as the 2nd Alternate to the Planning Board. This is a one-year term that will expire on December 1, 2016.

RI RENEWABLE ENERGY FUND AWARD OF GRANT

Mr. Parmelee explained that this is the first grant that Julian Dash has secured and it is a \$350,000 grant. Funds shall be used towards completing a 2500 kW solar array installation at Pound Hill Road and Oxford Road. Mr. Dash would receive a ten percent finder's fee.

Because there were some unresolved questions, the Council members asked for further clarification at the next meeting.

MOTION by Ms. Alves, seconded by Mr. Soly, and voted 4 to 0 on an aye vote to adjourn at 10:51 P.M.

Respectfully submitted,

Debra A. Todd, Town Clerk