

RTM Meeting
January 8, 2019

The call

1. ~~To take such action as the meeting may determine, upon the recommendation of the Board of Finance and a request from the land owner, Gerald F. Romano, Jr, to approve the acceptance of a gift of real property to the Town located at 0 Compo Road North, on the Northeast corner of North Compo Road and Main Street in accordance with Section 2(C) of the Policy for Gifts to the Town.~~
2. To take such action as the meeting may determine, upon the recommendation of the Board of Finance and a request of the Director of Public Works, to approve an appropriation in the amount of \$70,000.00 from the Capital and Non-Recurring Account for the conversion of the two (2) Town Hall boilers from oil to gas fueled burners, and removal of the existing underground Oil Tank.
3. To take such action as the meeting may determine, upon the recommendation of the Board of Education, to not reject the agreement between the Westport Board of Education and the Westport Education Association, Inc. covering the period of July 1, 2019 – June 30, 2022.
4. To take such action as the meeting may determine, upon the petition request of at least 2 RTM members, to approve an ordinance to prohibit the storage, disposal, or use of fracking waste or any products or by-products thereof in or by the Town of Westport. (First Reading. Full text available in the Town Clerk's Office.)
5. To take such action as the meeting may determine, upon the recommendation of the Town Labor Attorney, to not reject the Police Pension Arbitration Award dated December 7, 2018 between the Town of Westport and AFSCME Council 4, Local 2080 covering the period of July 1, 2016 – June 30, 2024 pursuant to CGS Section 7-473c(d) (12).
6. To take such action as the meeting may determine, upon the petitioned request of at least 20 electors of the Town of Westport, pursuant to Town Code Section 30-95, to review and reject the action of the Conservation Commission regarding the applications from Summit Saugatuck LLC for 187 rental units on Hiawatha Lane Ext.

Minutes

Moderator Velma Heller:

We welcome those who are joining us tonight in the Town Hall auditorium, as well as those watching us streaming live on westportct.gov, and those watching on Optimum Government Access Channel 79 or Frontier Channel 99. My name is Velma Heller and I am the RTM Moderator. On my right is Jackie Fuchs, the RTM Secretary. Tonight's invocation will be delivered by Will Haskell, State Senator-elect. He will be inaugurated tomorrow night. He is our State Senator who represents Westport, Weston, Wilton, Ridgefield, Redding, Bethel and New Canaan. It's a big job as you can see. I would like to add he is a graduate of Staples High School and a Georgetown graduate, as well. Now, I'd like to turn it over to Will.

Senator-elect Will Haskell:

Thank you so much for inviting me to deliver tonight's invocation. It's a privilege to be with you on the eve of the Legislative session which begins tomorrow. I am thrilled to be here in Westport Town Hall where I have so many great memories.

May Government at every level represent our best qualities, not our worst instincts. May courage and compassion and common-sense drive our decision making process. When we disagree, may we always remember that each of us has sacrificed time with family and friends to help make our community just a little bit better. Thank you for all the work that you do.

Dr. Heller:

Thank you for all the work you will do, Will.

There were 32 members present. Ms. Cady, Mr. Mall, Ms. Rea and Mr. Carey notified the Moderator that they would be absent. Ms. Kaplan notified the Moderator that she would be late.

There were no corrections to the minutes of the November or December meetings. If you have not time yet to read them and if as you read them you come up with any corrections, you can let Jackie or Patty Strauss or me know and we will see to it that it is taken care of.

Announcements

January birthday greetings to Kristan Hamlin, Lois Schine, Jack Klinge, Lou Mall, Brandi Briggs, and Mark Friedman. Happy birthday. Congratulations everybody.

RTM Announcements

Peter Gold, district 5:

This is just a heads up that there is, in the RTM packet, a report of the joint meeting Long Range Planning, Transit and Finance Committees dealing with the Westport Commuter Bus System. We had a meeting in December. We had a presentation from the Westport Transit District on the bus system. We received the results of the survey that was done by the Transit District. They got a response from over 1,700 people. If you haven't read the report, I would urge you to read it. The highlights of the report and the executive summary are that over three/fifths either strongly or somewhat agree that the commuter buses should be funded and even if the Connecticut funding is cut by \$100,00, 40 percent believe the Town should make up the full \$100,000. Another 24 percent believe the Town should make up \$50,000 so there was strong support in the survey for the bus system. The presentations were discussed at the meeting and a summary of the comments were included in the report. If you haven't read it, again, I urge you to do so.

Matthew Mandell, district 1:

Happy New Year everybody. The Chamber of Commerce is putting together the fourth Supper and Soul. It is a series where you get to have a meal at one of eight different restaurants in Westport. It started with five so they are getting to gain strength and

becoming interested in the project. This is the fourth and we are changing the music again. We started with rock; we went to blues and country and now we are doing folk rock. So the idea is to curate different music and introduce it to Westport. I'm asking all of you to help me make this project work, help me bring money into the economy of Westport by bringing people in, eating at the restaurants and seeing this and help me help you have a phenomenal time. People come. They have meals with their friends, with their relatives, with their spouses and then they go see a great show. Afterwards, they can take their tickets back and have Happy Hour pricing of drinks in any of these eight restaurants. Supper and Soul will be on Feb. 9, Saturday night. The name of the band is David Wax Museum. I just saw them in New Haven last weekend at Café Nine. They are phenomenal. It's an entirely different type of sound. It's Americana music. One plays a violin. Another does accordion. It is phenomenal music. So try something new. Come on out. Supper and Soul. I have some flyers. Just to let you know, I just booked the band for April 6. It's going to be a bluegrass band. The idea is we are going to continue to bring different types of music to Westport, bringing people to downtown, spending their money in Westport and having a great time. Come on out. Supper and Soul. Feb. 9.

Jack Klinge, district 7:

Happy New Year from this person, as well. This Sunday is the second of four for the winter of Senior Center music concerts. As you know, they are free with a lunch. This lunch is sponsored by and with chicken wings donated by Dunville's. So, we'll have good food, doors open at one o'clock. The Fairfield Counts, a big band sound, will be playing at two o'clock. It's a particularly important event for me personally and for the Senior Center and for the Friends of the Senior Center because the Senior Center just opened its expansion this past week so you can see the entire Senior Center and its extra 4,000 square feet but even more importantly, our benefactor for these concerts for the last 15 years has been the Levitt Foundation and as you know we lost Mimi this weekend and we are much saddened by the loss. But we hope they will continue to be supportive of our concerts. Come out to hear a great concert. Get a great lunch. Take a look at the Senior Center and give a little nod to the Levitt's, as well.

Committee meetings

Wendy Batteau, district 8:

The Environment Committee is meeting on Thursday, 1/10, at 7 p.m. in room 309.

Dr. Heller:

The next regularly scheduled RTM meeting will be on Feb. 5.

The first item of the call is now item #2.

The secretary read item #2 of the call - To approve an appropriation in the amount of \$70,000.00 from the Capital and Non-Recurring Account for the conversion of the two (2) Town Hall boilers from oil to gas fueled burners, and removal of the existing underground Oil Tank.

Presentation

Pete Ratkiewich, Director, Public Works:

The impetus for this project is the avoidance of a \$200,000 cost to remove the oil tank from Town Hall and to replace it. Our capital forecast in fy2019 has the removal and replacement of the Town Hall oil tank which is right behind the stage here. We tried to be creative and talked with Southern Connecticut Gas Company and found that they would extend the gas line into Town Hall at no cost to us as long as we converted the two boilers to natural gas. In your package is an estimate of the cost of converting those two boilers. The estimates that we got were in the amount of \$70,000. The two boilers and burners in them are 44 years old; the oil tank is 34 years old. It has been our policy across Westport to try to remove all underground oil tanks and, where necessary, to replace them and try to put them above ground. So you can imagine if we had to put an above ground tank back here behind Town Hall. It would be very visible. If we have to put an underground tank, it would be very expensive so we felt this was a much better option. There is quite the payback on it, as well. One of our consultants estimated that at the cost of \$1/100 cubic foot for natural gas, we'll save about \$20,000 /year. We are actually paying about \$.60/100 cubic foot so there is a significant savings. After discussion with the RTM Finance and Public Works Committees we have gone out to bid for this project. Bids will come in on the 18th of this month. We expect to do a little bit better than the estimate. We'd like to move forward with this as soon as we can and have Town Hall hooked up this year.

Committees report

Finance and Public Works Committees, Seth Braunstein, district 6:

I won't rehash what Pete said. He pretty much covered what I would want to address. I would just highlight that this is an effort to forestall a large capital expense and by converting the boilers to accept natural gas as opposed to oil, we will extend their useful life in addition to the very real annual savings that we will be achieving. There will be a 50 percent reduction in our annual fuel costs for Town Hall by moving to natural gas. So I would just note when we met back on Dec. 18, we had a 5 – 0 unanimous vote by the Finance Committee and although the Public Works Committee did not have a quorum, the four members who were present did support this request and I recommend that we do the same.

Members of the Westport electorate – no comments

Mr. Wieser read the resolution and it was seconded.

RESOLVED: That upon the recommendation of the Board of Finance and a request of the Director of Public Works, the sum of \$70,000.00 from the Capital and Non-Recurring Account for the conversion of the two (2) Town Hall boilers from oil to gas fueled burners, and the removal of the existing underground Oil Tank, is hereby appropriated.

Dr. Heller: It has been moved and seconded to approve the resolution just read.

Members of the RTM

Catherine Calise, district 2:

Has there been a soil test done to determine if there has been any leakage underground?

Mr. Ratkiewich:

No. There has not. Usually they test the soil as they take the tank out.

Ms. Calise:

In my experience, sometimes they do test the soil before it is taken out. I absolutely agree with this. We need to do it. So, thank you.

Christine Schneeman, district 9:

I am also completely in support of the move from oil to natural gas. We have a natural gas line to our home and it just kills me that we are still burning oil. As a result, we have been looking into it and this makes me know just enough to be dangerous. I just was curious. The boilers are 44 years old and we are not replacing the boilers yet, just using some type of conversion kit to make them use gas instead of oil and this will extend the life 10 to 15 years, we think. Is it possible that the boilers themselves might fail in the interim and we might end up having to replace the boilers themselves and spend the extra \$120,000 to then replace the boilers themselves. The second question is, I think what we learned is there is a loss of efficiency when you convert an old oil boiler to a gas boiler so that you are not getting the same level of efficiency as if you put in a new boiler. I'd like your opinion on those two questions.

Mr. Ratkiewich:

We looked at taking both boilers out and replacing them with one high efficiency boiler. The cost is a little bit more for a high efficiency boiler. What we looked at was if one of the boilers goes down, we always have the second to rely on. As far as the age goes, we have had our Environmental Systems Corporation come in and look at the boiler units themselves and they felt they could be cleaned and continue to be used. It is the burners will come out and be replaced with a gas burner. They are very heavy industrial boilers.

By show of hands, the motion passes unanimously. 31-0

The secretary read time #3 of the call - To not reject the agreement between the Westport Board of Education and the Westport Education Association, Inc. covering the period of July 1, 2019 – June 30, 2022.

Presentation

Colleen Palmer, Superintendent:

As you all are aware, periodically, it is incumbent on the Board of Education to renegotiate its contracts and we were just finishing this year a three-year contract with the WEA, our teacher's association. There are very strict guidelines about when you start. We started this summer. We had representation from the RTM with Lou Mall; we

had representation from the Board of Finance with Brian Stern and Jim Westphal and we want to thank those public officials as well as members of the Board of Education. I want to thank the WEA. I thought we had a very positive collaborative negotiation that we are presenting to you this evening, a contract has been signed by both parties. We are asking that you do not reject the contract. The financial overview, I am going to call on Elio Longo to speak to but beyond the finances which fell within the range of other common contracts of teachers in this region of the State, Also, we were able to achieve some change in language which will allow us to enhance the educational experience for our students. So, there are opportunities to embed an advisory period in our high school; for our teachers to receive our students at the elementary level coming off the buses; we have some greater flexibility in scheduling our teachers and, again, I know that John Horrigan, who is Co-President of the WEA, who is here this evening, I thought of all the various contract negotiations that I have participated in, this was collaborative, it was productive and I think it yielded a contract that is fair to both parties.

Elio Longo, Chief Financial Officer, Board of Education:

In summary, the projected cost for the WEA contract for the fiscal year '20, '21 and '22, by year, fiscal year '20, total projected cost, an increase of approximately \$1.5 million, 3.02 percent; in fiscal year '21, year two, incremental costs of \$1.6 million or 3.17 percent; in fiscal year '22, year three, incremental costs of \$1.6 million, 3.06 percent. Total projected cost for the three year contract is 9.25 percent on a simple percentage basis, compounded, 9.54 percent. The agreement calls for a one percent increase in stipend positions. The total three year projected cost for the one percent increase to stipends is approximately \$44,000. There is a cost offset in terms of insurance. The Administration, the Board of Education and the WEA have agreed to an employee contribution cost-sharing of 19.5 percent, which is the current year. In year one of the contract, it is fixed at 19.5 percent. It will increase by one percentile point in years two and three where WEA, bargaining group employees, will contribute in year three 21.5 percent premium cost-sharing for medical, Rx and dental coverage. The offset to the contract for three years is a cost avoidance to the Board of Education, to the Town in the amount of \$386,000. The net cost of the contract over three years is approximately \$4.4 million; that is off of a base of approximately \$54 million annually for WEA employees.

Committees report

Education, Finance and Employee Compensation Committees, Christine Meiers Schatz, District 2:

The RTM Education, Finance and Employee Compensation Committees met on Dec. 18 and the committee members present voted unanimously to recommend that the RTM take no action with respect to the agreement between the Board of Education and the Westport Education Association. I wrote a detailed memo regarding the meeting which, hopefully, answered many of your questions. There are copies here on the stage which members of the public are welcomed to grab a copy of. I'm not going to read it but I did want to emphasize a couple of points that were in it. First, with respect to procedure, the RTM has two choices tonight with respect to a regular majority vote. If we take no action, then the agreement becomes binding. If we reject the agreement,

then we would trigger the arbitration process described in the Connecticut General Statutes. In a subsequent arbitration, it's possible that all bargaining points in the agreement could be at play and not just the terms that the RTM finds objectionable. Arbitrators would choose the best and final offer from the Board of Education and the WEA issue by issue which could result in a less favorable contract for the Board of Education. On the flip side and as resident Don Bergmann pointed out, it could result in a more favorable contract for the Board of Education. At the joint committee meeting, Attorney Mooney, who is the attorney for the Board of Education, explained that in his 20 plus years of experience with the Town of Westport, he is not aware of any occasion where the Board of Education rejected a teacher contract. On the whole, he could only recall only one rejection of a teacher contract which occurred in Stamford about 42 years ago. By mentioning this, I am not implying that we should take no action with respect to the agreement just because rejection is rare. This is an important contract, which based on reasonable assumptions will likely constitute around 29 percent of the Town's yearly budget. Instead, I'm pointing out that municipalities generally allow these kind of contracts to become binding because that is usually the more prudent course of action. At least in the opinion of the joint committees, their agreement here is no exception to that general principal.

By way of background information, a mediator assisted the Board of Education and the WEA during negotiation process and both Dr. Palmer and WEA President John Horrigan told committee members that they were happy with the end result. With respect to salaries, I'm not going to repeat the numbers that Elio mentioned but I did want to point out that those projected salary increases are based on the assumption that all of the teachers currently in the system are going to stay in the system, nobody new is going to come in and nobody is going to leave. Generally, the Board of Education tries to replace somebody who is senior with somebody who is less expensive at the point of time when they are hired. So, when we hear about the cost projections, it is possible that what it actually will cost will be lower. I did want to emphasize another point that Attorney Mooney made in our committee meeting which is that the project percentage cost increases are typical of Fairfield County, Dr. Palmer referred to that, and especially for Fairfield County DRG A. Just by way of comparison, New Canaan just recently completed negotiations with respect to their teacher contract and year by year, they are one to two percentage points away from Westport. In total, the percentage increases for Westport is 9.25 percent and for New Canaan, it's 9.27 percent. So, we're competitive with them. Elio went over the medical insurance contributions. I just wanted to point out that the number for year one was set through the insurance contract when the medical insurance was negotiated as part of the switch to the Connecticut State Partnership Plan. The Board of Education estimates that the higher contribution percentage will result in a total cost avoidance of \$387,839 over the three-year term of the agreement. I was going to speak about some of the other important changes in the contract but Dr. Palmer referred to them.

Members of the Westport electorate – no comments

Mr. Wieser read the resolution and it was seconded.

RESOLVED: That upon the recommendation of the Board of Education, the agreement between the Westport Board of Education and the Westport Education Association, Inc. covering the period of July 1, 2019 – June 30, 2022, is hereby not rejected.

Dr. Heller:

On that note, I would like to ask Mr. Bloom, who is here, if he would answer a question. Given the wording of our resolution that it is “not rejected”, under previous circumstances, we have always said that a yes vote meant it is not rejected. If the committee is recommending that we take no action, how then shall we proceed? Shall we continue as we have always done? Take no action would mean no vote, right?...Except that’s not what our resolution says. We can stay with the resolution should we wish. I am trying to go by what puts us in a legally appropriate framework.

Lauren Karpf, district 7:

My understanding, and Jeff and Lou you can correct me, I thought we didn’t vote to take no action. We voted not to reject.

[From the audience: They both have the same outcome.]

Dr. Heller: It’s not the outcome. I want it to be consistent with the resolution.

Ms. Karpf: I think it is.

Dr. Heller:

I know that “take no action” is another possibility but that is not what our resolution says.

Mr. Bloom:

I was just going to ask the Moderator if you could repeat that resolution because my partner Mr. Dugas heard it differently than I did and I just want to make sure that the yes means the right thing and a no means the right thing.

Dr. Heller:

That upon the recommendation of the Board of Education, the agreement between the Westport Board of Education and the Westport Education Association, Inc. covering the period of July 1, 2019 – June 30, 2022, is hereby not rejected.

Mr. Bloom:

“...is hereby not rejected.” So a yes vote means you agree it should not be rejected.

Dr. Heller:

That’s what we’ve always done in the past. I just wanted it to be aligned.

Members of the RTM

Ms. Meiers Schatz:

I hesitate to say this because I feel like it might be an academic point but I would suggest we take a vote on whether to reject the contract and taking no action is the same. Never mind. It's all the same.

Dr. Heller:

Let's talk later. I know this is something that goes back and forth and I just want us to be clear what we're doing.

Mr. Mandell:

You realize that this is the single largest expenditure in our Town. It should be discussed and not just voted upon willy nilly. While I am comfortable with the negotiation, I do have a question. In terms of budgeting moving forward, when you come to us in May, how much percentage increase in the budget does this drive? I was looking at *Westportnow* this morning. You were coming forward with 2.69 percent and the Board of Finance was saying come in at 1.69, what drives the number that you are looking for with this number? We are looking at this and saying this is going to be a three point some-odd percent increase we're paying our teachers but what percentage increase in your budget is that? So, in May, we'll be saying we already approved that.

Dr. Palmer:

If you are looking at the increase in the cost in dollars, if we maintained exactly the same workforce, we are looking at an increase of approximately \$1.5 million. We have a very special situation this year in that we are planning to operate seven school facilities rather than eight. So, we anticipate that there will be a reduction in force in most of our bargaining units which is going to, for this one budget time, bring down the salary line below what it would normally be because we are not going to have the same workforce. So, typically, if you took \$1.5 million on our base, if you had exactly the same workforce, it's 1.3 percent of the overall budget for this contract if the entire workforce were maintained. My CFO reminds me we have increased over the past two years the anticipated savings from turnover, those are the teachers who are exiting the system, from \$100,000 to \$450,000. We met that goal this year and we are keeping that in as the budget assumption so that's a mitigating force to the \$1.5 million, which is \$1 million which is less than one percent. So, we take all of those factors into account and you have the work force that we budget for and anticipate that we will be hiring teachers that are coming into the profession at a lower salary.

Mr. Mandell:

So now we have the basis for the increase. When we are looking at it in May, we always hear 'the fixed costs that we can never change.' Now we have a basis for it. I'm pretty comfortable with the work that you guys have done but it is incumbent upon us to understand where we are going so in May, okay, we are looking at \$1.6 million but with the reduction, it becomes .9 percent? So, we have an idea. Clearly the reduction in the workforce going from eight to seven, in two years when we go back from seven to eight will be a sudden jump back. So that's something else we have to be thinking about. But these are the things the 36 of us have to understand. Even though we get some emails

that say we are not doing our job properly. I think we are doing our job properly and we should move forward gracefully. Thank you for your information. Job well done.

Mr. Braunstein:

Matt got this started with the biggest component of the budget. Dr. Palmer made reference to the fact that this is a unique year that we will be facing. Can you give us, and it may be too early, if that's the answer, but is there any sort of preview of the incremental expenses beyond the reduction in workforce which will be an offset related to the plans for this year or the foreseeable next couple of years as we work through the Coleytown issues? What other drivers are going to complicate your issues. Would it be better to discuss now or would it be better to just wait until a little bit further in the process?

Dr. Palmer:

Because we'll have a different configuration of our budget, we will have to add two school buses at \$180,000 to the very raw and preliminary number that was shared at the Board of Education meeting last night. I want to remind you that we have had just six work days since the Board of Education made its decision of the configuration of our schools. It is an evolving budget. I will present an executive summary to the Board of Education on Jan. 22 so we are moving very quickly. The incremental change for transportation is included in that preliminary number. The other deliberate strategy on technology, when we are having our professional staff sharing classrooms more, we are looking at putting technology in docking stations and on laptops so wherever the teachers are they have mobile technology for all of the elementary schools, which is a \$300,000 increase. Beyond that, you'll see the staffing plan when we are able to refine it and reveal it. Anticipated cost for portable classrooms is not included in that number and we don't have a cost estimate for that number; Our consultant will provide that on Jan. 22. As soon as we have those numbers, obviously, we'd have a conversation with Town officials managing that.

Mr. Braunstein:

What I really should have done is made sure I saw the meeting last night, so I apologize for that. Do we have an expected timeframe on when the comprehensive facilities study will be completed, just so when we go through the broader discussion points, it would be helpful for everybody to make sure that, at this point, there aren't any unexpected expenses that need to be incurred as we have to make all of the decisions that have to be made.

Dr. Palmer:

A comprehensive RFP has been launched by the district and it is due back shortly for an architectural engineering firm to come in and review our entire portfolio of our facilities and review and a 10-year master plan to maybe look at what comes first, what comes second. That firm will also take the input of the district, the educational vision, the future of Westport education right now. We will be working through April to refine that ---Do we want to create the same structure that we have? Do we want something different? Where are we going? Our educational team will hand off its work to the

architects, engineers, mid-April so that that team could say, okay, given the schools that you have, here are different scenarios to achieve what you are hoping to achieve. It gives choice to the district. We modeled our RFP after the master planning process of Greenwich Public Schools. So, if you go online to Greenwich Public Schools, you'll see a finished document that will show you the kinds of options it presented; behind that document, you have to dig a little deeper, it does show a review of the infrastructure. What this will do, it will give the Town a very nice 10 year plan of what is required investment in the facilities year by year so for planning purposes we can make sure that we care for all of our facilities.

Ms. Batteau:

I think Matt's question was a good one. What are we to make of the dollar amount with respect to the tentative budget we are going to see next spring? But given all the unknowns, we don't even know what schools are going to be open, whether CMS is going to be open next September, there are so many unknowns, so much dust still flying, the fact that the administration and the teacher's union came together amicably and agreed to a contract in the midst of this uncertainty in which they're both happy and fits together in the context of DRG A contracts, it's extraordinary enough and we should focus on this rather than the overall budget planning which presents so many unknowns. I think we should just simply go ahead and vote for this and I would endorse this contract.

Kristan Hamlin, district 4:

I just want to say, in the five and a half years that I've served on the RTM, I don't think I've ever seen a better written committee report than the report that Christine Meiers Schatz wrote. It was very analytical. It was very detailed. It was so excellent that I found that I was convinced that adopting the recommendation of the committee made the most sense. So, I just wanted to give a shout out. Congratulations. You did a wonderful job.

By show of hands, the motion is not rejected which means a vote in favor of the agreement. 32-0

The secretary read item #4 of the call - To approve an ordinance to prohibit the storage, disposal, or use of fracking waste or any products or by-products thereof in or by the Town of Westport. (First reading.)

Presentation

Ms. Batteau:

I'll be very brief. We first introduced this for a first reading in May. Since then we've reviewed it and there have been some other circumstances going on in Connecticut and we've made a very short but probably substantive change giving the Town office 30 days after voting on the ordinance before the ordinance actually takes effect for them to be able to change over forms they use and make other changes they need. This is as per the 53 other Connecticut Towns that so far have passed the exact same wording as

in this ordinance including recently Stamford and Greenwich; Also, Hartford, New Haven, Norwalk, Newtown, Milford, Redding and 45 others. Fifty-five towns and cities have so far enacted this ordinance, two of them slightly different language. Ridgefield and Weston are also voting this week. This month I'll send out a detailed memo to everybody about the reasoning behind the necessity for passing this proposal. I hope we'll be able to look at it in February. You may remember that Jonathan Steinberg, our State Representative spoke about this last May and he'll be speaking about it as will some other people who are familiar with the process going on all over the State in February.

Dr. Heller:

This item will be referred, is being addressed by Environment, Ordinance and Public Works? Will Public Works be involved?

Ms. Batteau:

I think Environment Committee. I don't know about Public Works. This was brought to the RTM by the entire Environment Committee. The members are the petitioners.

The secretary read item #5 of the call - To not reject the Police Pension Arbitration Award dated December 7, 2018 between the Town of Westport and AFSCME Council 4, Local 2080 covering the period of July 1, 2016 – June 30, 2024 pursuant to CGS Section 7-473c(d) (12).

Presentation

Attorney Floyd Dugas, Bercham Moses, Labor Counsel to the Town:

This is the last chapter in a process that began in 2012 when I was directed by representatives of the RTM, Board of Selectmen and Board of Finance to look at all the pensions in Town and to seek changes in an effort to streamline them, bring them in line with other pensions to reduce the overall pension costs. For the benefit of those of you who were not involved in that whole process, very briefly, we were prohibited in 2012 from negotiating with police and fire because they had a so-called lock out provision which barred us from doing so. We negotiated with the Public Works bargaining union and the Town-wide which also included Board of Education employees and achieved favorable results in both of those. We started in 2016 with police and fire. In evaluating those pension plans, one of the things that we looked at was how does the pension, item by item, compare with others around the State. What we found was that there were three areas, at least, where the pensions for police and fire were outliers. By outliers, I mean pensions that were richer than norm. There was also some anecdotal evidence at the time that Westport had among the highest, if not the highest, retiree costs in the State and certainly the region so we looked very hard. We worked with a pension advisor and identified those areas that were outliers and focused on those particular changes. As some of you may recall, we had previously reached a tentative with both police and fire under their pensions. The agreement was reached in August 2017. I was here in October 2017. Among other things, some police officers came when we were presenting the fire pension and expressed some concerns and reservations and,

ultimately, the tentative agreements with those groups that were reached at that time and with their representatives did not get approved by the unions. One or more agreements did get approved by you but the unions did not approve the contracts. So, we began arbitration process but we were able to reach a second tentative agreement. The only difference between the first tentative agreement and the second is, as a concession, we agreed to reduce the contributions from 10 percent that employees paid, which was on the higher side compared to other communities down to nine percent. That agreement was taken back. It was ultimately approved by fire but it was rejected by police. We were required to proceed with arbitration. I have provided you with a copy of the award. I have also provided a summary. I can briefly summarize the arbitration award by saying it conforms exactly to the first tentative agreement that we reached. The only difference between the second tentative agreement and what the arbitration panel approved is that whereas the Town was willing to go with a nine percent contribution, reduce it from 10 percent to nine percent for the employees, the ultimate result of the arbitration is that the pension contribution stayed at 10 percent. Otherwise, effectively, the arbitration award reflects the tentative agreements that were reached. From a procedural standpoint, now that an arbitration decision has been reached, it permits this body to reject it if it wants. What happens if you reject it? It would go to a second arbitration panel. That arbitration panel cannot take any new evidence. It looks at the evidence from the first panel. Anecdotally, I can tell you that 85 to 90 percent of the time where there is a second panel, they approve the award that was issued. Typically, that is not a productive and fruitful process and, frankly, it can be a very costly one. The last time I was involved in one in Trumbull, it cost over \$100,000 and resulted in the same result. I think this is a very good arbitration award. It is obviously consistent with the tentative agreement which we were willing to enter into but, importantly, it addresses those areas where the contract was an outlier so it brings the contract in line with other benefits around the State. Police with over 20 years of service are protected. It also introduced the concept of a hybrid plan for new hires, a defined benefit and defined contribution plan. The cost savings associated with this decision for the Town is approximately \$41 million over the next 20 years. That's roughly equally divided between pension and retiree health insurance costs that are associated with some of the changes in the contract. I think it's a very significant result and my recommendation to you would be to vote not to reject or take no action whatsoever. If you take no action, after tonight, then the arbitration award stands.

Committees report

Employee Compensation, Finance and Public Protection Committees, Jimmy Izzo, district 3:

We had a joint meeting and we basically came to the recommendation to not take any action.

Dr. Heller: Which according to our resolution means not to reject.

Members of the Westport electorate – no comments

Mr. Wieser read the resolution and it was seconded.

RESOLVED: That upon the recommendation of the Town Labor Attorney, the Police Pension Arbitration Award dated December 7, 2018 between the Town of Westport and AFSCME Council 4, Local 2080 covering the period of July 1, 2016 – June 30, 2024 pursuant to CGS Section 7-473c(d) (12), is hereby not rejected.

Dr. Heller: The resolution has been presented and seconded.

Members of the RTM

Ms. Hamlin:

I was in the meeting and we went over some of the things that we learned in the decision award. I think it would be worthwhile if Mr. Dugas would come up and answer some questions so we could elucidate that for people so we could understand where we are in this. Mr. Dugas, in the decision and award, it indicated that one of the things that the panel of three arbitrators considered in terms of relevance was that Westport has underfunded pension liability of slightly under half a billion dollars. Is that correct?

Mr. Dugas: Yes. That's my recollection.

Ms. Hamlin:

The pension benefits and costs were 21.5 percent of the Town budget since 2015. Correct?

Mr. Dugas: Correct.

Ms. Hamlin:

One of the thing that was very compelling to me is the arbitrators mentioned that in surveying the surrounding towns in Fairfield county that Westport's pension liability is significantly higher than all of the surrounding towns. It said that on a per capita basis we have \$3,795 and the next closest is Fairfield and we are 50 percent higher than Fairfield. Correct?

Mr. Dugas: That is my recollection.

Ms. Hamlin:

On page eight of the arbitration stated the average of the surrounding municipalities, removing New Canaan which was very, very low, is around \$800 per capita. Correct? [Correct.] That means Westport is at least 450 percent higher than the other towns in Fairfield County. Correct?

Mr. Dugas: That is consistent with my recollection.

Ms. Hamlin:

Wealthier towns, like Darien and Greenwich have a mere fraction of our per capita pension liability. Isn't that right? [Correct.] So, to put this in context, if the per capita liability is \$3,795, if you are a family of five, the burden on your family is \$18,975, the pension liability.

Mr. Dugas:

Obviously, it is not assessed that way but you could look at it that way.

Ms. Hamlin:

Taking together both the pension benefits that the Town provides as well as salaries and other benefits, Westport probably pays on a per capita basis more than any other Town in the State. Correct?

Mr. Dugas:

Certainly, salaries and benefits are very, very competitive. How that compares with infrastructure that other larger cities and Towns would have, I'm not sure how that would factor in but certainly in terms of salary and benefits, Westport is very, very competitive.

Ms. Hamlin:

With a 401K, there is often time matching with an employer but the employer gives less than the employees. Correct? [Correct.] What is the ratio for employer and employee for Social Security?

Mr. Dugas: It's equal.

Ms. Hamlin:

What we're doing here is contributing about 2.6:1 so we are contributing significantly higher than what the employees are contributing, correct?

Mr. Dugas: I haven't done that math but that sounds feasible.

Ms. Hamlin:

This is a much more attractive retirement program than Social Security or 401K's because the employer is paying a lot more than the employees are. Correct?

Mr. Dugas: Absolutely.

Ms. Hamlin:

And that's still the case, correct? [Correct.] If I'm correct, the Police, in 2017, after we voted not to reject, they voted not to approve the settlement and ended up doing worse in arbitration than if they had settled. Is that correct? [Yes.] To get to arbitration from that point, we incurred about \$69,000 in cost for the arbitrators, for you and for others. Is that correct?

Mr. Dugas: That is correct.

Ms. Hamlin:

Your legal fees are very reasonable but it was \$69,000 of taxpayer money that was spent on this effort where they could have settled and gotten a better deal. [Correct.] You had mentioned that there were three areas where you saw we were outliers. You

mentioned the highest retiree costs in the State or region. I didn't hear the other two areas.

Mr. Dugas:

Actually that wasn't an area where we are outliers. The first area outlier is, if you have a provision where you predecease your spouse where you make an election, the benefit to the employee with that election, here in Westport for Police and Fire, there was no actuarial reduction. The second area was that the COLA could max out at four percent; a third of the pensions in the State have no COLA, a third have a very modest COLA, around two percent and a third have more but four percent was way out of whack on the high side. The third area is that the normal retirement date was age 49 and 20 years which was low. That has two impacts. One impact is on the pension. The other is the cost of retiree health insurance. The earlier they retire, the bigger the number. Those were the primary areas.

Ms. Hamlin:

Those answered all my questions. Thank you so much for your help to the Town. We greatly appreciate it.

Ms. Calise:

To clarify, by taking no action is that the same as a no vote? I know you said it but I want to make sure I understand it.

Mr. Dugas:

If you take no action, that means that the arbitration award stays in place. The motion was "not to reject".

Dr. Heller:

The way the resolution is stated, and that's what we have to vote on is not to reject. It's the same.

Mr. Dugas:

So, a yes vote would be not to reject and a no vote would be to reject.

Ms. Calise:

How did the police officers, men and women that this affects, how do they feel about this?

Mr. Dugas:

I can't answer that question. I haven't talked to them so I don't know the answer. I'm sure they were hoping for a better outcome so some of them I'm sure were disappointed.

Ms. Calise:

Given that, this change doesn't take into consideration the people that this affects. You have officers who have been on the force one year to 20 years. Police men and women

make life changing decisions when they come to any Town to sign a contract to work here. I believe we need to honor the contract for these people. In the beginning of this report, I disagree with a couple of things. It says the Town is fairly conservative. I don't generally agree with that. I think in the last five or six years, the Town has spent over \$2 million on studies throughout Town; I find it shameful that we can spend over \$800,000 on bathrooms at south beach while we cannot support our Police. I think we can find the money in other areas and we shouldn't be touching their pension or the whole ball of wax that we are dealing with here. Look at it this way, you are working for a Fortune 500 company for 20 years. You sign a contract. You shake on it. Your retirement date is up and before you go out the door, you are expecting to get a pension and benefits for your family, everything has changed. How would we feel if that happened to any of us? Essentially, that's what's happening to our men and women on the force. There is an 85 to 90 percent chance that it would not be changed with a second arbitration. That means that also there is a 10 to 15 percent chance that it would be changed. I think people need to think along those lines. What if there is the possibility that we can change it? I think if our police men and women are not happy with this, we need to go back to the drawing board so that we come to a decision where they are and, quite honestly, if the Town can't support the police, who can they support? They are out there supporting us day and night. I think we need to support them. I think we need to give them the contract that they were promised. They are out there doing the work standing up straight and tall doing the work protecting us day and night. We need to come together to protect them and support them. I ask you to consider that.

Ms. Schneeman:

At risk of beating a semantic dead horse, I'm going to resurrect the issue that we had. Sorry Velma. I am not intending to make a motion but resurrect an issue that came up with the teacher's contract. I am not a member of any of the three committees that met earlier but I did sit in on the meeting because I wanted to understand it a little bit better before tonight's meeting. Jimmy said that their collective decision was to recommend no action, not to recommend "not rejecting" the contract. What I heard, and don't let me put words in any of your mouths, come up and correct me if I'm wrong, what I heard was a sentiment that there was disappointment on behalf of the Police Force that they had ended up in a place where they will be contributing 10 percent to their pensions rather than nine percent which had been in the tentatively agreed to agreement. Now, it was the Police Union's decision. They voted against that contract and put themselves into arbitration. That is a fact. That's where we are. I heard there was some disappointment that they now have a different deal than the Fire Department, which is not, in fact, as good for the members of the Police Force. As a result, it appeared the committee members would prefer not to take any action rather than vote not to reject it which is kind of tacitly agreeing to it. Do you see what I mean? So, I understand there doesn't seem to be an appetite for motions around semantics but I just wanted to try to clarify that there is a difference between voting not to reject something and I was very happy to vote not to reject the teachers' contract. I feel like the teachers should be getting hazard pay at this point given everything that is going on this year and will continue the next year or two. I felt a good vote of confidence for the teachers over the next few years in Westport and move forward versus maybe feeling in this case we understand how we

got here and the Police Union was a key actor in getting us to this place but we don't feel good about it. That's personally what I feel. I don't know that I want to raise a motion to change what it is we're voting on but I wanted to explain that sentiment.

Lois Schine, district 8:

Since I was the one who asked Floyd Dugas to go to arbitration on the Police contract in 2012, I would like to say that the reason that I did so then and I believe it is still correct is because the police had a very generous defined benefit plan. If you follow what is happening in the State of Connecticut and elsewhere, we are going broke because of these kinds of plans. They have been changed for all the other Town employees. The Police were outliers. It seemed to me we had to come to a more reasonable agreement about how their benefits were paid. I'm glad we finally have accomplished that. Catherine, I think we pay our police very well and I think their plan now is a pretty generous one.

Ms. Meiers Schatz:

My issue is just with the wording of the motion. You review these type of agreements. What language do you typically see in the resolutions?

Mr. Dugas:

What the statute says, similar to the teacher's statute, you have the ability to reject the reward so normally it would be phrased as a motion to reject the reward. A yes vote would be to reject and a no vote would be not to reject. I can understand why it is a little confusing the way we do things in Westport.

Dr. Heller:

I think we are not going to litigate how we write the motions at this point. But I think it is a very good idea for us to discuss this at some point. Since this is the resolution that we have, I think we are going to vote on the resolution as it stands. The outcome is the same whether we vote not to reject or take no action, we are supporting the arbitration agreement. I'm sure that the Police will get this but I do understand the questions. If we want to think about the way we word the resolutions at some future time, we certainly should do that.

Ms. Hamlin:

I'd like to address my friend Cathy Calise's comments. I have the greatest respect for you, Cathy, but one of the things that I have to share with you is that employers really have to find balance. As I said in the committee, when you're a private employer, you have to find balance between your shareholders between one set of employees or one employee asking for something and fairness to all of your other employees. When you are a public employer, your shareholders are your taxpayers. They are your constituents and you have to find a balance between what's fair to the taxpayers and what's fair to, in this instance, the Police Union and what's fair to all your other employees. If you were running a law firm, for instance, and you wanted to attract first year associates and you decided to pay them more than second, third and fourth year associates, you would create a lot of esprit de corps problems with all the other

associates because of the imbalance. So, what we've done here is we really have struck the best balance. The contract before was not fair to the taxpayer; not fair to our constituents. We have a fiduciary obligation. We should, as employers, treat employees fairly. It's a balance between the constituents, the other employees who are being treated in a grossly disparate way. They don't have nearly as attractive an agreement. We made very clear at the outset that we pay 450 percent more than the average of other Fairfield County towns for our pensions. For you to say we're not being fair to our Police is evidence free. We are being so generous with our Police and, in this instance, the Police knew there was precedent with the Public Works Department in the town. They knew that taking it to arbitration was going to result in a worse situation. I stood here in 2017, looked at the police and said 'If you go to arbitration, you could get a much worse result.' That was exactly right. There's a cost. Whenever, In litigation, you decide not to settle and you go to trial, and you make the employer incur hundreds of thousands of dollars for the trial, you take the risk of not getting the same deal than the union that decided to settle and thereby not impose those wasteful costs on their employer. In this case, we spent \$69,000 additional taxpayer money since October 2017, for this arbitration. That's money that was taken away from taxpayers, could have been spent on education, could have been spent on transit, could have been spent on a lot of things. The police took a position that in my view, in light of the precedent that was going on in the State and locally, the Union leadership, I think, misguided their rank and file taking a position. When you take a position that costs the taxpayer money, there are results for that. This is a bed that they made and need to sleep in. With respect to honoring the contract, I think you misunderstand how these contracts work. It's not like you join an employer and you have a contract for the entirety, that you have a contract for the life. All labor employment contracts have terms. You've seen this with General Motors and the UAW and AT&T and their union. What happens is you have a fixed term and you renegotiate benefits for each term. Pay goes up four years later if it's a four year term, benefits might change. It's never the same thing. It is not ever a contract that lasts for the entirety of your career in labor employment. It is a collective bargaining agreement that has a fixed term and all the terms are up for renegotiation when the term is up. That is the way it has worked in collective bargaining since 1934 when the NLRA, the Wagner Act was passed. So, with all due respect, I think contributing to their pensions 2.6 times more than they contribute, which no one gets with the 401k, which no one gets with Social Security and you're able to retire, the people who have 20 years are able to retire at 49, people with one to 20 can retire at 52, people hired after 2017 get to retire at 55. That's really, really generous. How many of us got to retire at 49? How many of us got to retire at 52? How many of us got to retire at 55? These days, people live well into their 80's and some in their 90's serve on the RTM still. It is a very, very generous agreement. I don't think you have to feel guilty about this. We treat our employees in this Town very well.

By show of hands, the motion not to reject passes 31-1; Calise opposed.

The secretary read item #6 of the call - Upon the petitioned request of at least 20 electors of the Town of Westport, pursuant to Town Code Section 30-95, to review

and reject the action of the Conservation Commission regarding the applications from Summit Saugatuck LLC for 187 rental units on Hiawatha Lane Ext.

Dr. Heller:

As we get into this, I want to remind you of the emails and what was left on the stage. The Environment Committee needed further time to review materials before making a recommendation to the full RTM. Since all RTM members are required to review the entire record, they will also have more time to do so. Accordingly, no resolution, public comment, discussion or action will take place tonight, Jan. 8. However, Town Attorney Ira Bloom will present a brief summary of the WPLO as a guide to help RTM members in their review of materials in preparation for the Feb. 5 meeting when the item will be addressed.

Attorney Bloom:

Good evening Madam Moderator, members of the RTM:

The Moderator asked me to summarize this item tonight to give us a head start in the review so when we return to this on Feb. 5, the RTM will be fully prepared. I'll be talking tonight and again on Feb. 5 on the Waterway Protection Line Ordinance (WPLO). I should note first that every member of the RTM must be familiar with what occurred at the Conservation meetings on this matter. We will be reviewing the Conservation Commission decision and, therefore, you must be familiar with what occurred and the law interprets that to mean that each and every one of you will review all the documents submitted to the Conservation Commission and watch all the videos of the Conservation Commission meetings. I hope all of it by now is uploaded so it is convenient for you to access. It is essential that you do that. I assume some of you have started; maybe some of you have completed, but now you have some additional time until Feb. 5. When you do this review, you will see that the Conservation Commission actually considered two applications. One application was made pursuant to the Town's Inland Wetland Watercourse Law. There are a series of regulations that we have covering wetlands. Wetlands are basically soil types. So, that was one application. You are not reviewing the wetlands component of this. You are reviewing the WPLO, the Waterway Protection Line Ordinance. That is the subject of your review. In the documents, you will see one or the other or perhaps both. It's important to remember that the review by the RTM is limited to the Waterway Protection Line Ordinance only. So, we're not reviewing the Inland Wetland Watercourse Law, only the WPLO. Let me say a couple of things about what the WPLO is. For those of you who have your own code book for Westport, you can follow along in section 30-80. The WPLO, the last word is *ordinance*. It is a law that the RTM passed in 1981. Interestingly, to me at least, I was elected to the RTM in November of 1981 and you might be interested in knowing, back in those days a long time ago, every application of the WPLO whether it was Flood & Erosion or Conservation, every application came to the RTM. Everyone who was putting on a deck or something like that, if it involved the Waterway Protection Line Ordinance, it eventually came to the RTM. We felt we were overburdened by that because we spent quite a bit of time on individuals and all that so it was changed so now I believe it still says some come automatically but otherwise it relies on a petition which is what happened here. So that's why you're reviewing it. So, it was passed in 1981, the WPLO.

It was based upon the State Statute 7-147. You might be interested in know that Westport is one of only two municipalities in the State of Connecticut that have a Waterway Protection Line Ordinance. The other is Glastonbury. No other Town has it so there is not a great body of law developed on it but we've had it since 1981. Also, you'll be interested in knowing people have said it's unfair, it's unlawful but that is not that case. We had a challenge to the WPLO back in 2009. At that point, someone said it was illegal. That was a case that my firm handled and it was upheld by a Superior Court judge, which is a local judge which is not the Appellate Court or the Supreme Court. A trial court judge looked at it and said it was lawful. That's a little bit about the background. What I would like to stress to you tonight is that the WPLO is a very limited and narrow ordinance and, therefore, your review is going to be limited to the narrow issues covered in this ordinance. So, let me try to summarize, analyze this for you. The ordinance protects, not surprisingly, waterways from activities that would cause hazards to life and property or activities that would have an adverse impact of the flood carrying water storage capacity of the waterways and the flood plains. The definition goes on and it covers ground water, surface water, animal, plant, aquatic life, etc. It's a broad covering but it all impacts waterways. It all has to do with just the waterways. In the case that I just referenced, the 2009 case that I just referenced where it was challenged, the judge said, "The term waterway is a term amenable to common understanding." I guess it is. It's defined here and we think of a waterway as a river, a stream, a brook. We are talking about a brook in this application. So, that's what the judge said. It's basically simple to understand. The judge also said back then that any reasonable person would be put on notice as to what activity would be prevented just by looking at the statute. So, it's reasonably clear what you can and cannot do. The Conservation review and your review of what they did should be focused and clear also. So, what is a waterway. It's defined. It's basically a river, stream, brook, etc. and in this matter, as I mentioned, it's a brook. That's the *W*. Waterway Protection Lines...what are the lines? You basically take your waterway and draw lines on both sides of the waterway. Those lines are set at the 25-year storm flood elevation in most cases. That's how you determine the Waterway Protection Lines Ordinance. Those lines are drawn and Alicia Mozian, our Conservation Director, has maps and she'll show you on Feb. 5 where the lines are. It's really that simple. You take the waterway, in this case a brook, you draw the line surrounding it and you look to see if there is some regulated activity occurring within that area. That's what you do. Certain activities are regulated according to the ordinance so, for instance, you cannot dump into this area; you cannot fill; you cannot transfer materials and, most relevant to this application, you cannot construct within these lines without going through the approval process. You can come and get approval but you can't get it without approval. In this application by Summit Saugatuck, you probably know already and, if not, you'll find out by looking at the materials and you'll hear more on the fifth, there is a small piece of sewer pipe that is to be constructed under a culvert. That is the proposed regulated activity. That's what you're looking at in this particular case, nothing more than that. That particular activity occurred within those lines and, therefore, an application pursuant to the WPLO was required. What happens when a person has to apply? They apply to two bodies. They apply to the Flood and Erosion Control Board, which happened in this case. Our Flood and Erosion Control Board reviewed this case by Summit Saugatuck; I think it was back in July of last year.

Then it goes to the Conservation Commission. It goes to both agencies for the WPLO. A petitioner can appeal from one of those or both but there are time limits. The petitions in this case only appealed from the Conservation Commission because the other one, the time limit had expired. There is an appeal only of the Conservation Commission and only of the WPLO in this case. So, you are reviewing the Conservation Commission. What did the Conservation Commission do in this case? This is what you will review before the next meeting. You'll hear that night not only from Alicia Mozian, the Director of the Conservation Department but also Anna Rycenga, the incoming Chairman of the Commission. Both of them are here tonight but they'll be speaking the fifth of February. By the way, the Moderator mentioned that the Environment Committee had the first of their meetings last Thursday and they are meeting again this coming Thursday. Hopefully, there will be a report forthcoming somewhat after that. They had a long detailed meeting last Thursday and will continue this coming Thursday. When you go through the materials you will see and review the excellent reports that were submitted and you will see that the Conservation Commission hired their own experts at the applicant's expense. But that expert witness did a peer review and advised the Conservation Commission. The WPLO gives the right to the RTM to review the decisions as I indicated of either Flood and Erosion or Conservation. Here it's just Conservation. In this case, a group of petitioners pursuant to the Ordinance have asked the RTM to review the Conservation decision on the WPLO, only the Conservation decision and only the WPLO. Actually, the petition erroneously asked you to review the Inland Wetlands decision. That you cannot do. There is no authority to do that so we put that aside. But you will be reviewing the WPLO. You need to see, in my opinion, if the decision by the Conservation Commission grant the WPLO approval to Summit Saugatuck was based on substantial evidence in the record. This commonly means, under the law, the Conservation decision and your decision on Feb. 5 must be grounded on a significant amount of evidence to justify the decision. So there must be evidence that Conservation relied on and evidence that you will rely on in your review. Professional reports are usually considered the strongest form of evidence. You must consider everything else that you come across. Ultimately, sometime on Feb. 5, you will vote on the petitioner's request. You'll have to decide either that Conservation made a proper decision based on substantial evidence that was presented to it or you will decide that the Conservation Commission acted improperly based upon the evidence that you review. Please keep in mind that we are talking about property rights here and the ordinance specifically says that any party aggrieved can appeal your RTM decision to Superior Court. It can result in a lawsuit by anybody who feels aggrieved. Apparently that would include Summit Saugatuck and include some of the petitioners if they are aggrieved. That is a legal term. They have to show that they are harmed in some manner. So, the next step would be litigation in court depending on how this all plays out. We are dealing with property rights and that's why we have to deal carefully and fairly to all sides. I have discussed with the Moderator that I believe you should not have time limits on the petitioners and you should not have time limits on the property owner, Summit Saugatuck. They should be given as much time as they need to present their case because they are talking about property, either the applicant's property or property of some of the people in the area. Whatever the case is, they need full opportunity to address the RTM in this review process. Let me summarize by adding a couple of

additional points saying what the review does involve and what the review does not involve. You may hear about a lot of important issues. You may hear about flooding. You may hear about issues relating to volume of water in that area. Those are important issues. They are not relevant to the WPLO. Those are issues must be taken up in a different forum. The WPLO is very narrow, just looking at this activity within these lines in this particular case. You'll hear a variety of issues. The wetlands issues put before you are not important in terms of the WPLO. Traffic, public safety, critical issues...not part of this analysis. The focus is very narrow as I keep saying. Some of you may know and you may hear more that there is a pending appeal that is now in the Connecticut Appellate Court of the Water Pollution Control Authority which is the sewer authority in Town, that's the Board of Selectmen, an appeal of their denial of an application by Summit Saugatuck for a sewer extension. Trial court in that case ruled in favor of Summit, just so you know what we're talking about. This is not relevant to your review but I just want to complete the picture here somewhat. Summit made an application for a sewer extension and it was denied by the WPCA, our sewer authority, primarily on the grounds that the sewer needed repairs. There was the forced main that needed repairs; the pump station needed repairs. It went back and forth a couple of times but our sewer authority said basically, 'Wait until it's fixed. It's not ready yet. Come back when it's ready.' So they denied the application. Summit appealed that. The trial judge said that the sewer extension permit should have been issued by the Town at such time, when the work is completed and the Town should certify that the work is done. We felt it should wait. That was the judge's decision. We filed a request that the Appellate Court hear that case. We felt there was another related important issue. The applicant needed to get a section 8-24 review from the Planning and Zoning Commission. They did not get that. Nor did they appeal it to the RTM. That's the second issue. I'm sorry if I'm getting into too much law for you but I just wanted to outline that for you. So, we have appealed that and the Appellate Court accepted our request. We have written briefs on that case. That case will take at least another year before we have a decision. I tell you all that but I tell you that it has nothing to do with your WPLO review but you may hear about it and some people think the two are related and I've heard arguments that Conservation shouldn't have considered this because we have an appeal and they said wait. Unfortunately, that is not what the law permits. The Conservation Commission did not have discretion to put this off. They had to hear it. In fact, the WPLO itself said they had to hear it within a certain number of days or it would be automatically approved. They had to move on it and they did. And the case is another application to this property. It is going to be dealt with elsewhere. Again, I would just ask you to keep your eye on this narrow focus here. Finally, I will tell you that the RTM has 90 days to review and that expires on Feb.15 which means that on Feb. 5, you have to make a decision. If you don't, it's deemed to be approved. Conservation would be upheld in that particular situation. For our purposes, you want to be able to make the decision that night. See you on the fifth.

Dr. Heller:

Are there any questions? Should you have any, there will still be an opportunity at the next meeting.

The meeting adjourned at 9:26 p.m.

Respectfully submitted,

Patricia H. Strauss

Town Clerk

A handwritten signature in cursive script that reads "Jacquelyn Fuchs". The signature is written in black ink and is positioned below the typed name of the signatory.

by Jacquelyn Fuchs

Attendance: January 8, 2019

DIST.	NAME	PRESENT	ABSENT	NOTIFIED MODERATOR	LATE/ LEFT EARLY
1	Diane Cady		X	X	
	Matthew Mandell	X			
	Kristin M. Purcell	X			
	Chris Tait	X			
2	Catherine Calise	X			
	Jay Keenan	X			
	Louis M. Mall		X	X	
	Christine Meiers Schatz	X			
3	Mark Friedman	X			
	Arline Gertzoff	X			
	Jimmy Izzo	X			
	Amy Kaplan			X	Arr. 8:04 p.m.
4	Andrew J. Colabella	X			
	Kristan Hamlin	X			
	Lisa Parrelli Gray	X			
	Jeff Wieser	X			
5	Peter Gold	X			
	Nicole Klein	X			
	Karen Kramer	X			
	Greg Kraut	X			
6	Jessica Bram	X			
	Seth Braunstein	X			
	Chas Durkin	X			
	Cathy Talmadge	X			
7	Brandi Briggs	X			
	Lauren Karpf	X			
	John Klinge	X			
	Ellen Lautenberg	X			
8	Lee Arthurs	X			
	Wendy Batteau	X			
	Carla Rea		X	X	
	Lois Schine	X			
9	Charles Carey		X	X	
	Velma Heller	X			
	Kristin Schneeman	X			
	Lauren Soloff	X			
Total		32	4		

Appendix I – Fracking Ordinance

RESOLVED: That upon the petitioned request of at least two RTM members, an ordinance to prohibit the storage, disposal, or use of fracking waste or any products or by-products thereof in or by the Town of Westport, is hereby approved. (First reading. Full text is as follows)

Town of Westport, Connecticut

Ordinance Prohibiting Wastes Generated from Oil & Gas Drilling and Extraction Activities

Purpose.

The prohibition of waste generated from drilling and extraction activities of natural gas and oil is hereby declared necessary for the protection of the health, safety, welfare and property of the residents of the Town of Westport, pursuant to the provisions of Section 7-148 of the Connecticut General Statutes that pertain in any way to the protection of health, safety, welfare and property, as the same may be amended from time to time.

Definitions for the Purposes of this Ordinance:

For the purposes of this Ordinance, the following terms, phrases, and words shall have the meanings given here, unless otherwise clearly indicated by the context:

- a) *“Hydraulic fracturing”* shall mean the fracturing of underground rock formations, including shale and non-shale formations, by manmade fluid-driven techniques for the purpose of stimulating oil, natural gas, or other subsurface hydrocarbon production.
- b) *“Natural gas extraction activities”* shall mean all geologic or geophysical activities related to the exploration for or extraction of natural gas, including, but not limited to, core and rotary drilling and hydraulic fracturing.
- c) *“Oil extraction activities”* shall mean all geologic or geophysical activities related to the exploration for or extraction of oil, including, but not limited, to, core and rotary drilling and hydraulic fracturing.
- d) *“Natural gas waste”* shall mean: 1) any liquid or solid waste or its constituents that is generated as a result of natural gas extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or other contaminants; 2) leachate from solid wastes associated with natural gas extraction activities; 3) any waste that is generated as a result of or in association with the underground storage of natural gas; 4) any waste that is generated as a result of or in association with liquefied petroleum gas well storage operations; and 5) any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.
- e) *“Oil waste”* shall mean: 1) any liquid or solid waste or its constituents that is generated as a result of oil extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or other contaminants; 2) leachate from solid wastes associated with oil extraction activities; and 3) any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.
- f) *“Application”* shall mean the physical act of placing or spreading natural gas waste or oil waste on any road or real property located within the Town of Westport.

Prohibitions:

1. The application of natural gas waste or oil waste, whether or not such waste has received Beneficial Use Determination or other approval for use by DEEP (Department of Energy & Environmental Protection) or any other regulatory body, on any road or real property located within the Town for any purpose is prohibited.
 2. The introduction of natural gas waste or oil waste into any wastewater treatment facility within or operated by the Town is prohibited.
 3. The introduction of natural gas waste or oil waste into any solid waste management facility within or operated by the Town is prohibited.
 4. The storage, disposal, sale, acquisition, transfer, handling, treatment and/or processing of waste from natural gas or oil extraction is prohibited within the Town.
- Provision to be included in bids and contracts related to the construction or maintenance of publicly owned and/or maintained roads or real property within the Town:**

1. All bids and contracts related to the retention of services to construct or maintain any publicly owned and/or maintained road or real property within the Town shall include a provision stating that no materials containing natural gas or oil waste shall be utilized in providing such a service.
2. All bids and contracts related to the purchase or acquisition of materials to be used to construct or maintain any publicly owned and/or maintained road or real property within the Town shall include a provision stating that no materials containing natural gas or oil waste shall be provided to the Town.
3. The following statement, which shall be a sworn statement under penalty of perjury, shall be included in all bids related to the purchase or acquisition of materials to be used to construct or maintain any publicly owned and or maintained road or real property within the Town and all bids related to the retention of services to construct or maintain any publicly owned and/or maintained road or real property within the Town: *"We _____ hereby submit a bid for materials, equipment and/or labor for the Town of Westport. The bid is for bid documents titled _____. We hereby certify under penalty of perjury that no natural gas waste or oil waste will be used by the undersigned bidder or any contractor, sub-contractor, agent or vendor agent in connection with the bid; nor will the undersigned bidder or any subcontractor, agent or vendor agent thereof apply any natural gas waste or oil waste to any road or real property within the Town of Westport as a result of the submittal of this bid if selected."*

Penalties:

This ordinance shall apply to any and all actions occurring on or after the effective date of this ordinance. In response to a violation of this ordinance, the Town of Westport is empowered to a) issue "Cease and Desist" orders demanding abatement of the violation, b) seek any appropriate legal relief, including immediate injunctive relief, as a result of any violation of this ordinance; c) file a complaint with any other proper authority; and d) require remediation of any damage done to any land, road, building, aquifer, well, watercourse, air quality or other asset, be it public or private, within the Town of Westport. The Town of Westport may recoup from the offending person(s), jointly and severally, all costs, including experts, consultants and reasonable attorney's fees, that it incurs as a result of having to prosecute or remediate any infraction of this ordinance. For any violation of this Ordinance, the Town of Westport may also impose fines in the amount of \$250 per violation per day, or such other amount as is allowed by law, and seek any other remedies allowable under the law.

Enforcement

The First Selectman of the Town of Westport, or any Town official designated by the First Selectman, are authorized to pursue penalties against any person(s) who commits violations of this ordinance. The involvement of any Westport officials will not require

testing of waste products to determine chemical contents. Such officials may engage the assistance of DEEP or third party testing facilities to determine the chemical contents of any waste products suspected to violate the terms of this Ordinance.

Severability

If any clause, sentence, paragraph, subdivision, section or part of this Ordinance or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Ordinance or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgement shall be rendered. To further this end, the provisions of this Ordinance are hereby declared to be severable.

Conflicts with other Ordinances or Codes

In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance or code of the Town of Westport, the provision that establishes the higher standard for the protection of the health, safety, welfare and property of the residents of the Town of Westport shall prevail. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance or code of the Town of Westport, which other ordinance or code establishes a lower standard for the protection of the health, safety, welfare and property of the residents of the Town of Westport, the provisions of this Ordinance shall be deemed to prevail, and such other ordinances or codes are hereby declared to be repealed to the extent that they may be found in conflict with this Ordinance.

Transportation

Nothing in this ordinance shall be interpreted to ban the transportation of any product or by-product described herein on any roadway or real property within the Town of Westport.

This ordinance shall take effect thirty (30) days after its legal adoption.