

**AMENDED  
BOARD OF FINANCE  
Minutes  
May 23, 2011**

**CALL TO ORDER**

Vice Chairman Andrew Palo called the Board of Finance meeting to order at 7:15 p.m. at the Town Hall, Trumbull, Connecticut. All those present joined in the Pledge of Allegiance.

Members present and absent were as follows:

**PRESENT**

Vice Chairman, Andrew Palo  
Ken Martin, Jr.  
Elaine A. Hammers  
Tom Tesoro  
Paul Lavoie  
Cindy Penkoff, Alternate  
Perry Molinoff, Alternate

**ABSENT**

Steven C. Lupien  
Alex Remson, Alternate

**Also Present:** Tim Herbst, First Selectman; Maria Pires, Finance Director; Dennis J, Kokenos, Esq.; Deputy Police Chief Michael Harry

Vice Chairman Palo indicated that Mr. Molinoff would be sitting in for Mr. Lupien. He then introduced the newest member of the Board of Finance, Mr. Paul Lavoie. He then went on to read Mr. Lupien's comment for the record, as he requested:

"Mr. Chairman, I want my protest noted here and in the record at the meeting. The date was changed for a meeting that has been on our calendar for quite some time, to accommodate a new appointed member at the expense of an elected member. We publish and accept the calendar in advance to allow us, all volunteers, to schedule around the published dates. To randomly change a meeting date with insignificant rationale is unacceptable. -- Stephen Lupien"

Mr. Palo then went on to read his memo to the Board members, for the record:

"All: As you probably know by now, Paul Lavoie has been appointed by the First Selectman to fill a vacated position left by Mark Smith. To be fair to him and to give him time to get up to speed, I am considering moving our meeting to May 23, 2011. This is not the only reason, though, that I am considering this. We still do not have solid revenue figures from the State of Connecticut and these few extra days might be just what we need to get a much clearer picture from them. As you know, those revenue figures play an important role in our mill rate calculations. We need to decide as a body on a mill rate by May 25 per the Charter. Please let me know your thoughts a.s.a.p. I would also be appreciative if one of you could please forward this to Paul, and copy me on this as well, so I have his email address going forward. Thanks. -- Andy Palo"

**PUBLIC COMMENT**

There was no public comment.

**ELECTION OF OFFICERS**

Mr. Palo indicated that the Board needed to elect officers in accordance with a legal opinion from Attorney Kokenos that was requested by F/S Herbst concerning this topic. He went on to add that all questions be directed to Mr. Kokenos.

First Selectman Herbst provided copies of the minutes from the Board of Finance meeting held March 9, 2006 and the meeting held March 10, 2011. He indicated that he asked for the legal opinion since there has never been this much turnover, in less than a year, involving the elected Chairman and Vice Chairman.

First Selectman Herbst indicated that a situation similar to the one the board is facing with elections occurred in March 2006 when the Chairman, Bernard Helfrich, passed away.

The March 9, 2006 meeting minutes confirm that the Vice Chairman was elected to the position of Chairman when the Chairman, Bernard Helfrich, passed away. The sitting Vice Chairman did not automatically ascend to the position of Chairman. In addition, George Areson, a newly appointed member, was elected to the position of Vice Chairman; the sitting Secretary did not automatically ascend.

First Selectman Herbst then indicated that he wanted to get clarification to make sure that the Board is operating consistent not only with its own rules of procedure but with Robert's Rules of Order and past practice. If you look at the March 2011 minutes, there seems to be no basis under Robert's Rules of Order, your rules of procedure or with past practice to support what was done.

Mr. Palo then stated that according to the March 10, 2011 minutes, what Mr. Smith did was incorrect. The First Selectman agreed.

Mr. Palo read the following into the record from the minutes of the March 9, 2006 meeting:

"Election of Officers: Mr. Shapiro nominated Cathy Mc Gannon for Chairman seconded by Mr. Tesoro. Motion carried unanimously. Mr. Tesoro nominated George Areson for Vice Chairman, seconded by Mr. Shapiro. Motion carried unanimously."

Mr. Palo then read the following into the record from the minutes of the March 10, 2011 meeting of the Board of Finance:

"The Chairman noted that the Board needed to elect a new secretary since the current secretary, Andrew Palo, moved up to Vice Chairman once the Vice Chairman moved up to Chairman."

Mr. Tesoro noted that the former Chairman then cited Robert's Rules of Order after making the statement and there was no objection at that point. Mr. Molinoff noted that there was a vote to elect a new secretary and that vote carried and Mr. Martin became the Secretary. The Chair indicated that there was no election for the Chairman, and then went on to read the following into the record from Robert's Rules of Order:

"When the bylaws of an organization provide for a president-elect, it is usual to provide also that if the president should be absent, or if the office of the president should become vacant between elections, the president elect shall preside if present or shall fill the vacancy. Unless such provision is made, the first Vice-president would preside or complete the president's term."

Mr. Palo indicated that this is what Mr. Smith used to move from Vice-Chairman up to Chairman and apparently to move the Secretary to Vice Chairman. Mr. Martin indicated that he did not agree with how the former Chairman handled the election of officials. He does not understand why he is the Secretary and not Mr. Palo.

Mr. Tesoro indicated that the Chairman elevated the Secretary to Vice Chairman by chair decision and no one objected. Mr. Tesoro then went on to say that we have one precedent with the passing of Mr. Helfrich; and now we have another precedent since no one disagreed with what was done, so we have conflicting precedents. Therefore, what controls is Robert's Rules of Order. That is what our rules say.

Ms. Hammers indicated that she agrees we have two differing precedents although Robert's Rules of Order allows the Vice Chairman to move up, it does not provide for the Secretary to move up. It is specific on the duties of the Secretary. It states that the Secretary only acts to open the meeting and must immediately call for a vote of a Chairman Pro Tem. Therefore, we officially have two secretaries, since Mr. Palo did not resign.

First Selectman Herbst asked if everyone agreed that the rules and procedures do not provide for the mechanisms utilized by the Board on March 10, 2011. The Board members in part indicated they did not fully agree. He then asked where it is indicated in Robert's Rules of Order that the Secretary was to ascend to Vice Chairman.

Mr. Molinoff indicated that the Chair made the ruling to ascend the Secretary, and there were no objections. It was at that time someone should have called a point of order; however, it was voted on, and the minutes were approved, another meeting took place and there were no objections, and now at this point it is done.

Mr. Palo asked if voting for Mr. Martin validated what Mr. Smith did. Ms. Penkoff asked if Mr. Smith had the right to do what he did, and do we compound it by allowing it to go on. When you recognize a problem, it should be corrected. Mr. Molinoff then asked where in Robert's Rules of Order it says that the Secretary cannot ascend. Ms. Penkoff went on to add that our rules take precedence, unless we do not have a rule, and then Robert's Rules takes over. But, she added, we have a rule to elect officers and we did not do that so Robert's Rules should take over. Mr. Tesoro indicated that he did not agree.

Mr. Kokenos indicated that Vice Chairman Smith ascending to Chairman was appropriate; however, the action to ascend the Secretary to Vice Chairman was in conflict with Robert's Rules and inappropriate. There is nothing in Robert's Rules to accommodate the automatic ascending of the Secretary to Vice Chairman nor does it provide for the Chairman to make the ruling. If you allow this, you have nullified Robert's Rules. A vote should have been held to elect the Vice Chairman. To rectify the situation, we need to elect a Chairman, Vice Chairman, and a Secretary.

Mr. Tesoro then indicated that he felt the meetings over which Mr. Palo presided as acting Chairman and Chairman were held improperly and now we have a problem. Mr. Herbst added that there is a precedent in Town where a meeting was illegally conducted and when the problem was identified, it was corrected.

First Selectman Herbst indicated that in accordance with the precedent set in 2006, and in keeping with Robert's Rules of Order, and the rules of procedure we need to elect a Chairman ProTem for this meeting. In addition, we also need to elect a Chairman, Vice Chairman, and Secretary.

Mr. Molinoff indicated that there is no provision in Robert's Rules of Order stating what Mr. Smith did was incorrect. Ms. Hammers indicated that Robert's Rules are very specific. If the Chair makes an error, it needs to be corrected. Mr. Tesoro indicated that he does not think it was wrong. Mr. Molinoff indicated that we have already accepted what Mr. Smith did and we should leave it alone. He does not feel that what took place was wrong. Mr. Martin indicated that we should follow what we did in 2006 and conduct elections. Ms. Penkoff indicated the meetings that were held were fine; if you do not have officers one, two and three and you have a quorum, anyone can open the meeting. Mr. Tesoro indicated that he does not agree. Mr. Molinoff indicated that after Mr. Crooks died if someone had suggested elections that would have been fine; however, a series of actions took place that were considered acceptable and now we are saying they are unacceptable. If someone feels we need new elections, they should motion for new elections and it will pass or it won't and if it doesn't we should just move on. Mr. Martin indicated that we should follow the same procedure used when Mr. Helfrich died in 2006.

Mr. Palo called a recess at 7:45 p.m. Mr. Palo reconvened the meeting at 7:55 p.m.

Mr. Kokenos addressed Mr. Molinoff's assertion that because a point of order wasn't taken when former Chairman Smith took an action that was improper means that the action has been approved. Robert's Rules of Order, Section 23, page 244 talks about when points of order and appeals are to be taken. The only exception to the rule that a point of order must be made at the time of the breach arises in connection with breaches that are of a continuing nature, in which case a point of order can be made at any time during the continuance of the breach.

Mr. Tesoro indicated that individual members are not to ask for a legal opinion. Ms. Hammers indicated that she did not ask the attorney, she asked the First Selectman. Mr. Tesoro indicated that the Bonding issues approved when we didn't have a valid Chairman will need to be addressed.

It was decided to elect a Chairman Pro Tem for the remainder of this meeting who would then conduct the remaining elections.

Mr. Martin moved, seconded by Mr. Lavoie, to elect Ms. Hammers Chairman Pro Tem.

Vote: 3/3/0 (against: Tesoro, Molinoff, Palo) motion failed.

First Selectman Herbst called a point of order, citing Chapter III, Section 5 from the Town Charter:

**Relation to boards and commissions.**

A. Except as otherwise provided in this Charter, the First Selectman shall be a member, ex officio, of all boards, commissions and special committees, but he/she shall not have any voting power unless any such body shall, as a result of a tie vote, fail to organize or elect necessary officers, in either of which case the First Selectman shall have a tie breaking vote.

It was noted that nominations were still in progress.

Mr. Tesoro moved, seconded by Mr. Molinoff, to elect Mr. Palo Chairman Pro Tem.

Vote: 3/3/0 (against: Martin, Hammers, Lavoie) motion failed.

Mr. Tesoro moved, seconded by Mr. Molinoff, to elect Mr. Martin Chairman Pro Tem.

Vote: 5/0/1 (abstain: Martin) motion passed. Mr. Martin was elected Chairman Pro Tem.

The meeting was turned over to Mr. Martin, as Chairman Pro Tem. Mr. Martin called for nominations for Chairman of the Board.

Mr. Lavoie moved, seconded by Mr. Martin, to elect Ms. Hammers Chairman of Board.

Mr. Palo commented that he can only vote for an elected member. Mr. Martin indicated that while Mr. Palo brought up a good point he had confidence in Ms. Hammers based on past actions. He went on to add that her political and practical opinions more closely align with his. He does not think he and Mr. Palo have discussed their opinions properly, or as much as they should have, over the last few months. This is why he nominated Mrs. Hammers, and that is why he would vote for her. He has a lot of respect for Andy; he is a man of conviction; he has his opinions and you can't fault a person for that. Although he wouldn't vote for him in this case, it is certainly nothing personal; he thinks he is a good man, and he wanted this for the record.

Mr. Molinoff indicated that he wanted to reinforce the opinion Mr. Palo expressed. There are three elected members voting tonight and although the votes of appointed members count the same, the

people of the Town elected these individuals and one of these elected officials should be elected Chairman. He does not feel that it would be appropriate for Ms. Hammers to be elected Chairman.

Mr. Martin indicated the First Selectman was voted in by the residents, and he appointed Ms. Hammers to the Board.

Vote: 3/3/0 (against: Tesoro, Molinoff, Palo)

Mr. Tesoro spoke to the members indicating that Mr. Palo stepped up and handled the meetings in the absence of the Chairman, and has proven himself, and as an elected member of the Board should be elected Chairman.

Mr. Tesoro moved, seconded by Mr. Molinoff, to elect Mr. Palo Chairman of Board.

Vote: 3/3/0 (against: Martin, Hammers, Lavoie) motion failed.

Mr. Palo moved, seconded by Mr. Molinoff to elect Mr. Tesoro Chairman of Board. Mr. Tesoro declined the nomination. There were no further nominations.

Since there were no further nominations, First Selectman Herbst indicated that he would cast his vote for Ms. Hammers as Chairman of the Board of Finance. First Selectman Herbst then stated that Ms. Hammers has been an 8-year member of this Board and two-time Chairman, former state representative, a member of the Pension Board, Finance Director of the town, and is eminently qualified, which is why he appointed her to the Board. He went on to add that, without getting political, over the course of the last couple of months we have had for the first time in more than 15 years the Board of Finance failing to adopt the budget, and failing to properly elect officers. It is time to move forward, and he will be voting for Ms. Hammers because she will move forward. He went on to add that he is confident that with Ms. Hammers on the Board and an outstanding man like Mr. Lavoie we will move forward.

Ms. Hammers as Chairman of the Board continued the meeting.

Ms. Hammers called for nominations for Vice Chairman.

Mr. Martin moved, seconded by Mrs. Hammers, to elect Mr. Palo Vice Chairman.

Vote: 5/0/1 (abstain: Mr. Molinoff)

Mr. Palo was elected Vice Chairman.

Mr. Kokenos indicated that we have had an acting secretary the entire time, but we should elect a Secretary.

Ms. Hammers called for nominations for Secretary.

Mr. Palo moved, seconded by Mr. Lavoie, to elect Mr. Martin Secretary.

Vote: 4/0/2 (abstain: Molinoff and Martin) motion passed

Mr. Martin was elected Secretary.

Mr. Kokenos explained that the meetings held previously were considered legal and quoted from Robert's Rules of Order.

The legality of the Bond Resolutions and Tax Suspense list signed by Mr. Palo was discussed. Mr. Tesoro requested a legal opinion on these two items. Ms. Hammers indicated that she would have discussions with Attorney Fasi about the Bond Resolutions. It was suggested that we get a written opinion letter. As far as the Suspense List, a town attorney would address that issue.

### **TRANSFER OF FUNDS 4-21-03**

Motion made by Mr. Palo, seconded by Mr. Tesoro to approve item number 4-21-03 Transfer From 01022000-522203 Ancillary to 01022000-581888 Capital Outlay in the amount of \$3,581.

Discussion followed.

Vote: Passed unanimously 6-0

### **SETTING OF MILL RATE 05-11-05**

Mrs. Pires indicated that the town would realize additional state revenue of \$702,084, as follows:

- ECS Grant - Last year \$2,600,000 to \$3,031,988 this year. The state is giving us additional funds since there is no ERA funding this year. ERA funds of \$439,000 went directly to the BOE last year.
- Property Tax Relief - New - \$263,084

The most recent numbers were received from the state as of 5/13/2011. Municipalities were assured they would be receiving their funds.

Mrs. Pires indicated that the total needed for the budget was \$140,444,325. Mrs. Pires addressed the following changes:

#### R-2 - Special Education

- Changed from \$600,000 to \$650,000; spoke with State and we are projected to receive \$755,000; however, not comfortable using the \$750,000 which is derived using historical information.

#### R-7 - Town Permits and Fees and Fines

- Actual fees were annualized to project fees. Projections then discussed with department heads and adjusted, if needed.
- Decreased revenues - disposal area and compost.
- Cell Tower increase in revenue - changed from last year; this is an increase for Indian Ledge; fixed long-term contract; possible add-ons to existing; not projecting a new cell tower.
- Disposal Area decrease - Mr. Marsilio looking into this - needs better idea of what is going into these revenues; scrap metal might be down - is someone paying more than we are; electronics might be costing us to remove or trailer used to store.

#### R-8 - Town Revenue - Other

- Interest Income - Mr. Ponzio indicated that he is very comfortable with his projection of \$275,000; we have \$7-8 million in government backed securities at a +/- 2% return.
- Miscellaneous - We are still getting checks from CRA as a claim reimbursement.

#### R-9 - Reimbursement by WPCA & Golf Course

- For services we provide; income stable but our prices going up and we are supplying salaries and benefits to employees. Planning to revisit next year and evaluate fees for other services that might be used.

The proposed mill rate is 25, an increase of .46 in the mill rate, or 1.87% from last year.

Discussion followed regarding whether we should use all the additional funds being received from the State.

First Selectman Herbst indicated that during the process of preparing his budget, there was a discussion about utilizing a portion of the surplus realized from the previous fiscal year to offset the mill rate increase this year. One of the reasons why this was proposed was that there was a certain element of unknown with what would happen with the state budget. There was a concern that if we took a hit with our state or municipal aid that we take the initiative to use our cost containment practices and surplus and use a portion of that of to offset the mill rate increase while maintaining a healthy fund balance increasing our pension contributions.

He went on to add that the governor wants to avoid municipal aid reductions at all costs. Over the last several months, we have had time to evaluate the budget and impact of possible reductions in state and municipal aid. The 1.87% increase does not factor in the \$700,000 surplus; however, we need to consider next year's budget. An additional \$1.7 million will be coming onto the book in debt service for the high school, the teachers will be getting raises, etc., and he feels that we will need to use it then.

Mr. Tesoro moved, seconded by Mr. Molinoff, to reduce account R-3 Education Grants Other by \$200,000.

Discussion followed.

Mr. Tesoro withdrew the motion.

Mr. Tesoro moved, seconded by Mr. Molinoff, to reduce account R-3 Education Grants Other by \$150,000.

Vote: 3/3/0 (against: Hammers, Martin, Lavoie) motion failed.

Mr. Martin moved, seconded by Mr. Lavoie to accept the mill rate of 25.00 as presented.

Vote: 3/2/1 (against: Tesoro, Molinoff) (abstain: Palo) motion passed.

### **DISCUSSION ITEMS**

Ms. Penkoff mentioned that there was a question last week on the bonding regarding the \$10,000 renovations for the Town Clerk's office. In speaking with the Town Clerk, she was told that these renovations should have been done seven years ago. Apparently, there is electronic equipment in the vault used for looking up information and it needs to be moved out because according to Connecticut State Law you cannot have an electrical device in the vault, only an electric light. In addition, they are running out of space in the vault and in the office and these estimates are for shelving, relocating and reconnecting the equipment.

### **ADJOURNMENT**

There being no further business to discuss, Mr. Tesoro moved to adjourn, seconded by Mrs. Hammers. The Board of Finance adjourned by unanimous consent at 9:15 p.m.

Respectfully submitted,

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Phyllis Collier  
Clerk, Board of Finance