

TOWN COUNCIL
Town of Trumbull
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TOWN HALL
Trumbull

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Minutes
April 27, 2011

CALL TO ORDER: A special meeting of the Trumbull Town Council was called to order at 6:51 p.m. by Chairman Carl A. Massaro, Jr. All present joined in a moment of silence and the pledge of allegiance.

ROLL CALL: The Clerk called the roll and recorded it as follows:

Present:

David Pia	Debra Lamberti	James Meisner
Kristy Waizenegger	Suzanne Testani	
Michael Rappa	John DelVecchio, Jr.	
Ann Marie Evangelista	Carl A. Massaro, Jr.	
Robert J. Pescatore, Jr.	Tony Scinto	
Mary Beth Thornton	John Rotondo	
Michael J. London	Jeff Jenkins	

Absent: Mark Altieri, Jane Deyoe, Roberta Bellows, Martha Jankovic-Mark, Chad Ciocci, and Daniel Helfrich.

Also Present: Mr. Daniel Nelson, Chief of Staff, Director of Finance Maria Pires, Town Attorney Dennis Kokenos.

Chairman Carl A. Massaro, Jr. exercised his right not to vote unless otherwise noted.

Councilman Pescatore called point of order. The resolutions, which are a subject of this meeting are out of order; Mr. Pescatore read a letter dated April 22, 2011 addressed to Town Council Chairman Carl A. Massaro, Jr. with regard to this special meeting and the consideration of the vetoes of the First Selectman for the 2011- 2012 budget into the record. (Charter Language cited in the letter was not read into the record - See Full Letter Attached).

The Chair clarified that the Trumbull Town Charter does not allow the town council to adjourn or postpone this meeting for a legal analysis to be completed; the Charter requires a special meeting to be called not more than ten (10) days from when a veto has been noticed through the Town Clerk to the Town Council Chairman; today is the ninth day, there would be no further time to call a meeting. Councilman Pescatore's letter had been received and forwarded to the Town attorney for an opinion on the matter prior to this meeting.

Town Attorney Dennis Kokenos stated that in March of 2011 he had been approached by the First Selectman's office for a legal opinion in the event of a dead lock by the Board of Finance and the validity of the veto power if the deadlock were to take place. Attorney Kokenos explained that the issue is whether the budget had been adopted under Section 3B (i) or Section 3D. The First Selectman was aware of the sensitivity and requested the legal opinion before acting. The most germane issue is that Section 3D does not talk about adoption; adoption of the budget is in 3B ; 3D speaks to what happens if there is inaction by the Board of Finance, what happens to the powers of the Board of Finance and who assumes those powers. The only part of the Charter that speaks to adoption of the budget and a date certain is 3B (i). The analysis given by Attorney Kokenos to the First Selectman was that if the budget had been adopted under 3B (i) then veto powers exists. The Charter does not allow the budget to be adopted any other way except under 3B (i); the language is clear as to where the powers are derived; therefore the veto power still exists.

The Chair stated that Attorney Kokenos legal opinion had been distributed to the full Trumbull Town Council in advance of this meeting.

The Chair stated that there was no motion on the floor for discussion or debate, but would allow questions from the council.

In response to Mr. Pia, Attorney Kokenos confirmed that the budget had been adopted under Section 3B (i), the veto powers of the first selectman are intact and the Town Council should move forward to either override the veto or sustain the veto.

Mr. Pescatore stated that the council acted with BoF powers, with the ability to add line items, to add or reduce the budget without constraint of the first selectman on April 14, 2011. Chapter IV, Section 3B (i) reads as, "The Town Council shall consider the budget recommended by the BoF", the word recommended is both sections, "and shall adopt and submit a budget to the first selectman no later than April 30th", the key word of that section is "and". Mr. Pescatore noted that the sections read as "recommended by the BoF" in both sections, this requirement has not been met, respectfully disagreeing with the Town Attorney's opinion and spoke to the council as acting in violation of the Charter.

Attorney Kokenos explained that the Board of Finance is not a legislative body, the Town Council is, the BoF is a recommending body; the Charter takes that into account. Per the Charter, if the BoF fails to recommend the responsibility falls to the legislative body to submit the budget. The Town Council considered the budget submitted by the first selectman, the only budget before the council, and derived the powers to adopt the budget from 3B (i). Section 3D contemplates what happens to the additional powers of the BoF that the Town Council does not have if the BoF did recommend a budget. The Charter is very well written in this portion. The Charter recognized that the BoF has powers that the Town Council does not and it would be improper by inaction by the BoF to not allow those powers to be vested into the Town Council. The only portion of the Charter which allows adoption of the budget is Section 3B (i). The Charter is a checks and balance Charter. When interpreting the Charter you have to include all of the checks and balances that were in place, it would be dangerous to interpret the Charter in a way which would cut portions out of the Charter. The only way to adopt the budget is under Section 3B (i) therefore the veto power exists.

Mr. London spoke to the two different points of view at this meeting; one from an attorney who specializes in this area and another from someone who is not an attorney, speaking in favor of the council proceeding based upon the attorney's opinion.

Mr. Rotondo explained that he had understood the Charter to be read as if the if the BoF budget adopted a budget the First Selectman has the right to veto If that budget is not adopted there is no right to go back, otherwise the first selectman could veto a budget and go back to his original submitted budgegt, the checks and balances are then lost.

In response to Mr. Rotondo, Attorney Kokenos explained that if the BoF deadlocks and does not recommend a budget and comes back to the Town Council, then the BoF and the Executive Branch have been eliminated from the process. The Town Council would then be the only body considering the budget. The budget process with the Executive Branch moves to the BoF, Legislative and back again to the Executive Branch; if you were to interpret that the veto does not exist than the Town Council is the only body to consider the budget; which is in contradiction to the process with checks and balances as outlined in the Charter. Attorney Kokenos stated that Mr. Rotondo's question of the Charter is important to ask and had looked at it from that perspective as well, but in order to keep the integrity of the Charter there would have to be veto power, otherwise without veto power it would cut everyone out and only the Town Council would consider the budget; explaining that is not the intention of the Charter.

Mr. Rotondo stated that 3B(i) reads as though the budget had been recommended by the BoF; if the Town Council is meeting the test of 3B(i) and acts as the BoF it should be noted that it can not be both, in the event of a veto the budget would go back to first selectman's budget. Mr. Rotondo struggled with the legality of the same definition meaning two different things. Attorney Kokenos clarified that it does not, the process is as follows: the budget was submitted by the first selectman, the BoF had the obligation and the power to look at, consider and recommend a budget; that was not done, the budget considered by the Town Council with BoF powers was the first selectman's budget, this budget could only be adopted by Section 3b(i). If it was to revert back it would have to revert back to the Town Council considered. If it were to be considered without the checks and balance intended by the Charter, it would be a dangerous precedent where the Town Council is the only body or branch to consider the budget. If the Town Council does not approve of the veto, the Town Council has the option to over ride the veto; the Charter allows for it to come back to the Town Council again after the veto for a final decision. The inaction of the BoF is a rare circumstance which has not happen before.

Ms. Thornton spoke to the case of Arminio vs. Butler, where a veto was made by the first selectman to the budget; in 1978 the State Supreme Court ruled that the veto was not in accordance with the Trumbull Town Charter. Ms. Thornton stated that she had spoken to people who had made the revisions to this current Charter, explaining that the veto language is in the particular areas of the Charter due to the Arminio vs. Butler case. The veto language is not included in 3D because they did not feel veto power should be applied in 3D. Ms. Thornton respectfully disagreed with the Town Attorney's opinion.

In response to Attorney Kokenos, Ms. Thornton confirmed that there was a deadlock of the BoF in this 1978 case. Ms. Thornton moved to appeal the decision of the Chair to move these resolutions to the floor.

The Chair clarified that an appeal could be made after he made a ruling.

The Chair appreciated everyone's attention and concern on this matter. The Chair has read and reviewed the Charter numerous times and the opinion letters with regard to this question. If the language were taken literally it might be concluded one way, but if the principles which are fundamental in the governance of any body are considered it is clear there are checks and balances. The process of the Trumbull Town Charter is clearly delineated, how the budget is prepared and promulgated through various boards and council. Conversations with the council members with regard to the provisions of the Charter and how they work have taken place. It is the Chair's opinion that the veto power does exist, it has to exist, in that the veto power is backed up by this body having the right to reassemble and vote on the veto acts of the first selectman. That ultimately should satisfy everybody with the concern as to whether this is a valid veto power or not, because ultimately the adoption of the budget in its final terms rests with the Town Council. Sometimes when analyzing in a legal way one has to reverse analyze to see what the effects would be, if a certain course were chosen or certain opinion adopted. This is a very responsible body noting that this council took 5 hours to debate the 2011-2012 Budget. The Chair was proud of the honest and open debate of the budget meeting and on the veto issues. If the position that there is no veto is adopted when the BoF deadlocks, that would empower the BoF to take away the very important check and balance process. If the Chair were to rule that there was no veto power, the Town Council could have created an entirely different budget, it could have expanded the appropriations to unlimited amounts and could have decreased appropriations to unlimited low levels, it may seem that when the Chair rules that there is veto power, that he is empowering the first selectman, but to rule that there is no veto power when the BoF deadlocks would be to empower the Town Council with something they do not have in a way that was not the way the Charter was structured or intended to be carried out.

The Chair ruled that the veto power of the First Selectman exists, the vetoes were duly exercised in a timely manner; this meeting had been duly noticed and is occurring at an appropriate time.

Moved by Ms. Thornton to appeal the Chair's ruling to hear these resolutions, seconded by Mr. Pescatore.

The Chair clarified that vote is a majority vote; the question before the body is whether the Chair has properly ruled and that this meeting has been properly called.

The Chair called for a vote.

VOTE: Motion carried 8-6 (Against: Thornton, Pescatore, DeVecchio, Rappa, Rotondo and Meisner)

Mr. Pia stated that he came to the meeting thinking that the council should not be voting on these items, but after hearing debate and hearing the Chair's remarks with regard to what would happen if the council were empowered by the inaction of the BoF and what could happen in the future with a different Town Council if that council were so empowered, speaking in favor of the checks and balances in place and believes the council is doing the right thing by moving forward to vote on the vetoes.

Town Attorney Kokenos stated that this sends a message to the BoF to recommend a budget and to stay true to the process.

The Chair called for Mr. London to move the first item of business of the agenda.

Ms. Thornton called point of order, stating that she respectfully disagreed with the Chair's ruling, that this was not a legal meeting and that the Town Council is not working in accordance of the Charter.

Ms. Thornton, Mr. Pescatore, Mr. Meisner, Mr. Rotondo and Mr. Meisner left the meeting at 7:24 p.m.

1. RESOLUTION TC23-162: Moved by Mr. London, seconded by Ms. Testani.
BE IT RESOLVED, That line item (Building Department 01023200-501101 Salaries-FT-Permanent reduction of \$57,907) in the Town Council adopted budget for fiscal year 2011-2012 as approved by the Town Council, be and the same is hereby adopted, the veto of the First Selectman notwithstanding.
The Chair explained that an affirmative vote for this resolution would be in support for the council action which was a reduction of this line item a no vote would support the veto. There is a requirement of 14 votes which is 2/3 of the full body.

Mr. DelVecchio left the meeting at 7:25 p.m.

A vote took place but was ruled out of order by the Chair and stricken due a lack of quorum at 7:25 p.m.

2. RESOLUTION TC23-163: BE IT RESOLVED, That line item line item (Human Resources 01013000-501101 Salaries-FT-Permanent reduction of \$5,941) in the Town Council adopted budget for fiscal year 2011-2012 as approved by the Town Council, be and the same is hereby adopted, the veto of the First Selectman notwithstanding.

There being no longer a quorum, the meeting adjourned at 7:26 p.m.

Respectfully Submitted,

Margaret D. Mastroni
Town Council Clerk