

WATER POLLUTION CONTROL AUTHORITY
Town of Trumbull
CONNECTICUT

TOWN HALL
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5866 MAIN STREET
TRUMBULL, CT 06611

MINUTES
Special Informational Workshop Session
Tuesday, December 5, 2012
Trumbull High School Auditorium

In Attendance:

First Selectman Timothy Herbst
John Marsilio, Director of Public Works
Frank M. Smeriglio, PE, Town Engineer
Joseph Solemene, Assistant WPCA Administrator
Karen Egri, WPCA Vice Chairman
Laura Pulie WPCA Commissioner

First Selectman Herbst opened the special informational workshop session at 4:07 p.m.

OPENING COMMENTS:

The First Selectman welcomed and thanked the residents for coming. Copies of the informational packet that is also available on the Town's website were passed out. He apologized for not being at the public hearing because he had to be at another meeting and another public hearing on that night. This is the second of three informational sessions regarding Phase IV Contract 4 sewer installation and expansion project which is currently set to be completed in North Nichols. Also, if possible a telephone Town Hall meeting is being looked into. At yesterday's session we got a lot of questions that were generic to the entire project and specific to specific properties.

Staff members in attendance and WPCA Vice Chairman Egri were introduced and it was noted Commissioner Pulie is expected shortly. The session format will include a project summary, what is included in the assessments, what has been taken out of the assessments and then questions.

First Selectman Herbst asked how many residents here tonight were at the public hearing in 2002 when this project was originally proposed. There was a show of hands. The reason for bringing this up is because there are a lot of people that are upset and rightfully so. They have very large bills and many people were not expecting a sewer assessment of that size. He asked if that is correct and the response was affirmative. He said residents are asking why is it so high, what costs are factored into the assessment and how did we get to this point. First Selectman Herbst referenced information provided to residents at Public Hearings in 2002 for Projects 1 through 5 which included estimated assessments quoted at \$16,000.00 to \$18,000.00. He pointed out the estimated amounts were given with no cost escalators taken into consideration. He is aware that everyone is upset and everyone has the right to be upset with the assessments because the cost is higher than what was quoted in 2002.

HISTORY REGARDING JOG HILL PROJECT CONTRACT 3:

- The Jog Hill sewer project included about 730 homes and took place right before the North Nichols project.
- In the Spring of 2009 residents got their sewer assessment bills and were upset because their assessments were \$23,000.00 to \$26,000.00 after they had been told the assessments were going to be about \$16,000.00 to \$18,000.00. Residents were never told those figures were estimates.
- Public hearings were held, questions were asked and residents wanted to know why the assessments were so high?
- Escalating costs, two and a half million dollars in change orders and a three and a half million dollar sewer extension drove the cost of that project up. The Project was originally bid at \$15,000,000 and ended at \$21,000,000.

FIRST SELECTMAN TIMOTHY HERBST

SUMMARY: CONTRACT 4 NORTH NICHOLS PROJECT:

The Project went out to bid in the Spring of 2009 and low bid was Mark IV Construction. A bid application of roughly \$27,000,000 was submitted. The First Selectman highlighted the bond authorization process that went before the Board of Finance and Town Council in September, 2009. The traditional formula for establishing the assessment is 75% covered by the homeowner through the assessments and 25% covered by the Town from the general fund. There are approximately 850 houses in this contract and 75% of \$27,000,000 is \$20,250,000 divided by 850 homes equals an average assessment of \$23,800.00 before change orders, oversight costs and final paving. In September 2009 the Town knew assessments were going to be at least \$23,800.00 and an additional Public Hearing was never scheduled. The bond authorization went before the Board of Finance and Council and at no time did they review the bid documents, the bid specifications, the design documents or the contract documents. The bond authorization was approved and construction began about six weeks before he was elected First Selectman and about two and a half months before he took office. Because of what happened in the Jog Hill Project he wanted to cancel Contract 4 and not proceed. He directed his new Town attorneys to review the contract and to find a way to terminate it and stop the project because assessments would be \$25,000 to \$30,000. Based upon the language and the termination provisions in the contract the Town attorneys determined there were not adequate provisions that would allow termination of the contract out of convenience. There are provisions that are known as termination for convenience provisions that basically allow municipalities if they don't have the money or the resources to pull back. The contract's termination provisions basically said the only way we could terminate the contract was for cause if the contractor breached their duties under the contract. That was the only way out of the contract and if we tried to terminate the contract for any other reason the Town of Trumbull would be sued by the contractor for breach of contract and be subject to liquidated damages and a court could have ordered the project to proceed anyway. There was no way out of the contract and no way to terminate it.

At that point we had decisions to make. Do we allow the project to move forward like the last project with very little oversight, very little internal controls or do we make sure we have the proper oversight and controls in place to make sure the problems in Jog Hill did not repeat themselves in this project? John Marsilio was hired in February and one of the first things he said was we do not have adequate oversight on this project. A forensic audit of the previous project found there was not adequate oversight of the project. We brought in Tighe & Bond an independent third party engineer to basically provide oversight to every crew performing work in this project. They came in after 40 percent had already been completed. Not only did they provide oversight on the remaining 60 percent they went back and checked that 40 percent, camera tested and made the contractor go back and make repairs in the initial 40 percent.

The First Selectman commented that he has heard from residents that this project has gone on longer than they would have liked. As an example of delays by the contractor he described problems on Dogwood Lane relating to the contractor starting work there then stopping work on the road because they wanted additional money to complete the pipe installation around Dogwood Pond and the Town refusing to pay the additional money. The

Town has faced the challenge of getting the project done free of defects while keeping the project as close to the bond authorization as possible. We are about 800 feet from total completion on Dogwood Pond. You received a proposed assessment and the final assessment has not been set yet. We are having these meetings so we can hear your frustrations, your concerns and answer your questions.

RECAP:

- Assessments would have been on average \$23,800.00 in 2009;
- There should have been another public hearing allowing residents the opportunity to be heard;
- When residents were told assessments were going to be \$16,000.00 to \$18,000.00 in 2002 they were not told about price escalators;
- When we tried to terminate this contract we could not based upon the provisions in the contract;
- We took the action we deemed necessary and appropriate to make sure that what happened on Jog Hill didn't happen on this project and everything that was installed was free of defects.

ASSESSMENTS:

COSTS BORNE BY THE TOWN AND NOT INCLUDED IN ASSESSMENTS:

- All Tighe & Bond costs have been removed from the assessments.
 - They are providing services to the entire Town.
- All road paving has been eliminated from assessments.
 - Paving was delayed because Tighe & Bond identified defects underground and we made the contractor go back and correct the defects before we commenced final paving.
 - The \$1,000,000 Shelton Road rehabilitation and repaving cost is a Town capital cost because the WPCA took the position from a policy stand point that everybody in Trumbull uses the roads.
- Chimney repairs
 - Much of that cost has been carved out of the assessment.

If this was not done the average assessment in Contract 4 would have been around \$32,000.00. The average assessment on this project is \$22,500.00 and you are being assessed on half a million dollars less than what you would have been assessed on 2009. In 2009 the bond authorization was for \$27,000,000 and now you are being assessed on roughly \$26,500,000.

He said many residents question why assessments are based on frontage instead of just dividing the total cost by the 850 homes. He explained the frontage formula has been in effect since the beginning of the sewer program in the 1970's and every project has used this formula. He does not agree with the formula but that is what is in place and if the WPCA changes the formula then residents in other projects can challenge the setting of the assessments. He discussed comparison assessment figures regarding Jog Hill and North Nichols projects. He noted this project's interest rate of 2.75 percent fixed for twenty years is the lowest interest rate of any sewer project since the inception of the sewer expansion program in Trumbull in the mid 1970's. For 175 foot frontage this project's quarterly payment is less than \$30.00 higher than Jog Hill's quarterly payment. Jog Hill = \$445.69 North Nichols = \$474.41.

Upon her arrival WPCA Commissioner Laura Pulie was introduced by First Selectman Herbst and he noted she became involved because she is a resident of Contract 3. She is an engineer for the Town of Fairfield and she deals with sewer construction regularly and her credentials are a great fit to sit on the WPCA Board.

QUESTIONS AND RESPONSES:

- Wayne Saunders, 141 North Stowe Place. His biggest beef is we hired a contractor to do the work in Nichols after going through all this unnecessary work that happened in Jog hill. He is a contractor himself and when he gives a contract price he sticks to it no matter what. We hired this contractor after all the previous

bad work and then we had to hire another engineering firm because the same thing was starting down here. It is ridiculous that we went that far before we did something to correct it.

Response First Selectman: I absolutely agree with you. I can tell you I did not sign that contract, I did not hire them, nobody sitting here was responsible for negotiating the contract.

- After what we went through in Jog Hill it seems ridiculous to hire that contractor again to do another project. Response: I absolutely agree with you and speaking of the previous project that project was originally bid at \$15,000,000 and that project finished at \$21,000,000. There was two and a half million dollars of undocumented change orders that were approved by the town in the field in many instances before the WPCA had even reviewed or approved them. There was a three and a half million dollar contract extension that was given to this contractor outside of the bid procurement process. I encourage all of you to read the forensic of that project that is on the Town's website or my office will provide a hard copy to you. The actions that we took putting the oversight in on your project was a direct result of what was in that forensic audit and to make sure those problems did not happen again.
- Dogwood Lane is a disaster why didn't the contractor have the specs on this at the beginning? When he was bidding the job didn't he know what had to be done? Response: We inherited this contract and the design plans. The forensic audit talked about how the design specifications were lacking. This contractor bid the job knowing that there was a body of water there and knowing that there was a certain duty of care that you have to take in laying sewer pipe around the body of water. First Selectman Herbst summarized the work delays on Dogwood Lane and the contractor wanting additional money for that area and the Town refusing to pay anything additional. The Town took the position that this is what the bid says and this is what we will pay and that resulted in an impasse. Finally we prevailed and the contractor is honoring the bid price. If we did not do that the assessments would have been higher than what they already are. That is what we have been dealing with and what we've had to handle and we are committed to finishing it in a way that is free from defects so you do not go through what Jog Hill went through.

Mr. Saunders commented that he was under the impression that we were supposed to be all hooked up by last October. He said he had to dig up the back part of his property and patio in order for them to excavate and he did that a year ago in April because we were supposed to hook up to the sewer in October of last year.

- Anthony Serica, 46 Copper Kettle. Is the person who signed the orders out in the field still an employee of Trumbull? Response: No.
- He said he sells cars and he described a scenario where a customer goes into pick up a new car and finds out he owes \$2,000.00 more. If that ever happened his boss would be in jail and he would lose his job. He said we can't say we had to do a lot of extra preparation on your car so you owe more. He got a bill saying the projection is \$32,000.00. He has lived in Trumbull about two and a half years and the agent that sold the house didn't give them any notification that there was going to be a sewer assessment or sewers being put in. He is not sure if he needs a grinder pump and the inspector told him he didn't think he will need it because he thought he is okay. He said he is just okay at 10 feet but, if it went down 12 feet like they were supposed to, then he probably would not need a grinder pump. He said everybody's thoughts were we can get away without any extra money on blasting the last two feet and let the poor suckers in the houses that need the grinder pumps pay more money and then the general public will pay less. He said he learned at the last meeting from a lawyer representing a resident who needs a grinder pump that it is not only a grinder pump that he needs. It is the \$3,500.00 grinder pump, maintaining it, an easement on his property and keeping his septic system active in case of pump failure. If I have to keep my septic system going what do I need a sewer system for? Why should I even be a part in part of it? Why should I even be taxed on it? I'm not going to use it I'd rather just keep my septic going if I have to keep it going anyway. Response from Joe Solemene: The reason the pump is placed in the septic system is in the event of a power failure or if you have problems with the pump you have that septic system as a backup. But, the benefit of having the pump and being connected to the sewers is you have all the benefits of being on a sewer system. You would never have a problem with your leaching fields because they are no longer being used, only in the event of an emergency.

Also, the town residents of the expansion pay for the pumping system you don't pay for that. The pump, the control panel, the installation was all provided by the residents of the contract as compensation for you because you couldn't achieve gravity. The \$3,500.00 that you have to pay in addition to your assessment was an out of pocket cost that every other resident in town would have to assume when they hired a contractor to connect their house by gravity so, don't look at it as if you are paying \$3,500.00 more. You have the ability to put that \$3,500.00 on your assessment and pay over 20 years at a very low interest rate when all of your neighbors are taking that money out of their pocket. Ideally the best way would be gravity, but if you have to pump you do have all the benefits of the sewer system and you have an existing system in place in the event of a failure.

- So I am paying more than anybody else that doesn't have a grinder pump? Response: No you do not. As a matter of fact the \$3,500.00 is an estimate and some people pay more than that to connect their house.
 - So that is just my normal connection fee? Response: That is an out of pocket expense for anyone else that would have a gravity connection.
 - I could replace the septic system if I had to for less. Response: I don't know about that.
- Response from First Selectman: First, I'm sorry that it wasn't disclosed to you when you purchased your home. There is a change in the Town Charter now that says any bond authorization in excess of \$15,000,000 must go before the voters by way of a public referendum. So from now on no more \$27,000,000 bond authorizations without residents saying yes or no and its going to insure the kind of transparency and accountability that was lacking from this project before we brought in oversight.
- Franks Smeriglio informed Mr. Sarica that he would go through the plans in the morning to see if they can figure out options and alternatives to the pump.

Mr. Sarica commented that 4:00 to 6:00 is not the best time for a meeting because most people work and are not able to make it.

- John Terivilliger, 20 MacDonald Road. How much did Jog Hill pay for their assessments? Are we paying \$162.00? Response: The price is based on \$138.00.
- Are we paying for the repairs in the Jog Hill section? Response: No, absolutely not.
- How is that being paid then? Response: They are not being done. They are not being done right now. The town is involved in litigation with the contractor and we have claimed in our pleadings over 600 hundred defects and roughly about \$9,000,000 worth of damages. We are hoping that we are successful through the Court system to recover some money that will allow us to repair the system so we do not have to pay for it by other means. Had we not filed suit the statute of limitations would have run out and then the Town would have been on the hook. We are taking action through the court system to try to recover money to allow us to make the repairs so the burden is not borne by the tax payers.
- When will MacDonald Road be paved? Response: All paving associated with this project will be completed in the spring and summer of the next paving season.
- You mentioned the option of paying quarterly and that would be the responsibility of the homeowners to make payments to who? Response: It would be to the Town and to the WPCA.
- You mentioned the 2.75% interest – does this assessment not include the interest. Response: The total assessment whether its \$20,000.00 or \$24,000.00 that is principal. The breakout of yearly installments and quarterly installments that is principal and interest.
- Is that on the statement that we got? So my \$29,000.00 assessment does not include interest? Response: That is principal correct.

Discussion and comments included interest costs and information provided and included in the informational packet.

- Wayne Saunders, 141 North Stowe Place. Thirty five years ago he constructed his house and he described the system he put in. Why is he forced to hook up to the sewer? Response: Every residence has the

opportunity to apply for an extension of time to connect. When the sewer is released everyone gets a letter and that letter describes two options. We ask you to either make arrangements to connect in 90 days or apply for an extension of time to connect. The extension of time to connect is available to every resident on this contract that is getting a sewer assessment.

- An extension for how long? Response: The extension is good as long as your septic system meets community standards. So if you have a good septic system you can stay connected to that septic system and never have to apply again. The only condition is that you have to pay your assessment whether you are connected or not.
- If I sell the house I have to connect is that it? Response: New residents are required to connect.
- Robert Barnett, 19 Garnet Road. 1) When you knew and you were aware that you only had \$15,000,000 or \$20,000,000 to do this project why wasn't the work stopped and whatever could have been completed at that time completed with the funds available? 2) Why did you go forward with no funding knowing you had problems with the contractor for 3 previous assessments? In 2009 we were presented with 130/foot based on Jog Hill. Since then our property values have probably gone down \$75,000 to \$100,000 on a \$500,000 house. Taxes are going up you can put the numbers anywhere you want but, either in interest rates or water assessments, we are looking at additional taxes of probably \$1,500.00 to \$2,000.00 a house in actuality and that is the cost per family for the next 20 years.

- There was a \$500.00 charge for maintenance built into this contract that you automatically have to pay and if you don't connect you still have \$27.00 a quarter maintenance charge. Why would you have to pay \$500.00 for maintenance when you're being charged \$27.00 a quarter for maintenance and you're not connected and there is no charge to the Town in any of those situations?

Response to the first question: John Marsilio said in September 2009 the entire project was funded and it was bonded for \$27,000,000. It was bonded to the level of the low bidder and he described the bid process for government work. At the time the bid was awarded there wasn't compelling evidence of the latent defects they emerged very shortly afterwards.

Response to the second question: The funding never ran out.

- When the \$27,000,000 ran out why didn't the project stop? Why did other areas continue to get worked on? Why didn't it stop because we didn't have the money and then there would be no contract violation? Response: First Selectman Herbst explained we actually asked that question at the time to determine if there was a way we could stop once it was capped. He described the construction sequence and noted it would have been difficult to come up with a standard for stopping the work. Plus it is all connected and it pumps downhill. Also, there was no provision in the contract for what happens if the town runs out of bond authorization and runs out of money. The First Selectman offered to meet with Mr. Branett and go over the contract.

Response to question 2: Joe Solemene said this is something that is being looked into.

- Paul Scinto, 3395 Huntington Road. Commented that this is a better meeting and is informative. He referenced the information packet and noted the answer to question 3 should have examples, reasons and comparisons so it would be more informative to people. He referred to question 7 in the packet relating to Stratford residents and wanted to know if they are going to hook up why don't they have to pay an assessment? Response: That is a legitimate recommendation. They cannot hook up without going to the WPCA Commission and the Commission can set up the terms and conditions for them to hook up. In light of costs to all the residents the WPCA Commission would probably be favorable towards the equity of having an outside user match the costs that you have to pay.

Comment: First Selectman Herbst said he would not want other residents in other towns who don't pay Trumbull taxes and assessments to pay less and if they ever did get to tie in they would have to pay their share.

- The first payments are due in July and if the project is not ready will we still be getting that bill or do we have to wait until we're able to tie in but, we're still paying for it? Response: We anticipate the last part of this project at Dogwood Pond to be completed in the next 30 to 45 days. It will have to be inspected and then released, so in 60 days everyone should be receiving a letter notifying them that they will be able to connect.
- We start paying in July? Response: July 1st the assessments would go out.
- You anticipate everything will be done and we will be able to tie in? Response: Everything that is a project cost per se that is related to your assessment will be completed.
- Are you saying within 45 days everybody will be hooked up? Within 45 days we are on the last leg of this project. 110,000 feet of sewer pipe was put in and we have 800 feet left unfortunately that 800 feet is critical to the flow of the project.

Comment: First Selectman Herbst noted one of the reasons why we made the decision to break these sessions up into smaller groups is so we could have more of this dialog where we directly respond to questions. Residents voiced agreement. He advised residents there is another session tomorrow from 7:00 to 9:00 and anyone who could not make the 4:00 to 6:00 sessions can attend. Also, if anyone has more questions please come again or schedule an appointment. We tried to make accommodations for senior citizens so they would not have to drive late at night and also for the people that work.

- Douglas Douglas Cleford, 10 Lobersterback Road. Was the asphalt on Shelton Road and Booth Hill Road done by Mark IV? Response: They did no paving other than the temporary paving to stabilize the trenches. All permanent paving has been removed from the contract. Booth Hill Road construction was done in combination with the town of Trumbull highway department and OGM Industries. Shelton Road was bid out as one package separately and the low bidder was Guerrera Construction. The only north south main thoroughfare that was done by Mark IV was Huntington Turnpike and that was only because that is a state highway and was under the State of Connecticut's jurisdiction. Mark IV had a permit taken out and a bond in place for that and it was done with their oversight according to their specifications. We had inspections on all the paving and our inspectors were out there.
- That's not a part of our assessment? Response: No. It is not part of your assessment.
- He lives on a cul de sac and the sewers come 5 feet up into his property but, he has a 175 foot assessment. Response John Marsilio: There is a project cost where the total project gets divided up by the formula. If you only require 5 feet of installation across the front of your property to make a reasonable connection it would be imprudent to extend that main line further along your frontage if you weren't going to use it. I do not have the plans and I don't know the exact installation for your home and how it was installed. But, in an effort to minimize cost if you only need a connection 5 feet past your property line then that was what was designed.
- So, in other words it's a financial break? Response: No it's a financial break for everyone. Your property wasn't the only location where that happened. Why would you want to extend a line across the entire frontage of a property if you only needed the first 5 feet?
- I will deal with that, I just want a financial break? Response: I don't want extra work.
- He has to find out if he needs a grinder pump. Response: Frank Smeriglio said on the letter that went out in November if it had a value of zero for the pump it that means that you are not anticipated to receive the pump.
- Does the town supply the pump? Response: We don't think you need one. There is a category on your letter that would say \$3,500.00 for a grinder pump. According to our sheets it is not required that you need a grinder pump.
- He said the guy that gave him an estimate thinks he needs one. Response: Frank Smeriglio will double check it in the morning.

- Sue Palzoo, 19 Green Ridge Road. How are you finding this affects property values in the Jog Hill Road area? If you sell your home the next buyer has to assume the debt and how does this effect real estate in the area? I'm assessed at \$27,000.00 and it costs \$4,000.00 to hook up so by the time I pay it off I'm up to \$40,000.00, If I wanted to sell my house tomorrow is my home value going to be reduced by \$40,000.00? Response: First Selectman Herbst said according to realtors he has spoken with Trumbull has fared better than all other communities in Fairfield County. There was a report on news 12 about 6 months ago that showed our property values actually came up. In Jog Hill there have been home sales, houses are selling and the values are holding. From a property value stand point, if your septic system is old and its useful life span is questionable it is going to be hard to sell your home because the buyers know most likely they are going to have to replace the septic system.
- Is this a lien on your home? Response: When the assessments are set it will be a lien on your property. If you chose to pay the 20 year option, when you sell your property the Town does not require you or the buyer to make final payment on the remaining amount. If you do sell your house that is a negotiating item as part of the sale of the house.
- Naheed Zaman, 2771 Huntington Road. He moved to Trumbull in 2005 and since then his taxes have gone up and if he sells his house he will lose \$100,000.00. When everything is very low now why is the town making taxes higher every year? Response from First Selectman Herbst: 2005 was 4 years before he became the first selectman and in 2005 Trumbull went through a State mandated re-evaluation and that most likely caused the tax increase that year. Discussion included contacting the tax assessor's office, meeting with the First Selectman and getting clarification and explanations regarding taxes.
- If the project was done on time would not have had to pay this price and what happened to the grant money? Response: In 1972 there was a federal grant around \$12,000,000 and that was used for the trunk line that went from Trumbull's border to the Bridgeport sewage treatment plant.
- The money was for this particular project, right? Response: There were no federal money grants for this project.

Mr. Zaman asked several questions and commented on applying for a job with the Town of Trumbull. He will meet with the Selectman to discuss his issues and concerns.

- Tim Stevenson, 10 Kingsbury Drive. Is the lien on the house transferable to the new buyer with the interest rate or does it go by current interest rates? Response: It is fixed for 20 years and transfers with the ownership of the property.
- The sewer only goes about half way up his property why is he getting a full assessment on the full property? Response: The formula for establishing the assessments does not take into account where that sewer line ends in front of anyone's home. It is a simple formula we inherited it and it's how they have been doing it for over 40 years. It uses lot size and then there is a range that relates to frontage and that is how the assessment is established. The issue of the location of the length of pipe is not a consideration. Frank Smeriglio explained you can't look at it as the cost to install the sewer pipe in front of your house. If your house is 20 feet your 20 feet is useless without your neighbor's 300 feet and then those two lines are useless without other neighbors' feet. There are thousands and thousands of sewer main that has been installed that isn't in front of anyone's house and that value plus pump station values that are shared amongst everyone.
- Robert Turner, 56 Jerusalem Hill. Comment: The frontage situation sounds like you're stuck with it, so be it. I hope that whatever event comes next or when a decision like this gets made that we find a more intelligent means of assessing an individual's expense for a project like this.

- He bought his house in 2004 and was told about the sewers then. In September 2009 he received a note from the Town that the project was underway. His next notification was in August 2011 regarding Tighe & Bond, then notification that work was going to commence and then he got a bill for \$25,000.00. Somewhere during his event something should have occurred, and not like what occurred a couple weeks ago, where nobody was able to get any information. This is the kind of information we wanted at that time because whether your assessment is \$20,000 or \$8,000 we all have to make peace with it. He has to come up with \$2,000 per year for an expense he didn't have before. Response from the First Selectman: What's going to be done going forward is to make sure something like this does not happen again. If there are any future sewer projects in Town they need to be much smaller so they are more manageable and more easily ascertainable as to the true costs. He commented on smaller projects that are done in other towns. He agreed there needs to be better communication and that communication about the assessments should have happened before shovels were put in the ground. He reiterated the bond authorization process and history relating to the beginning of this project.
- Robert Barnett, 19 Garnet Road. Mark IV bid \$1.00 a foot when everyone else bid \$36.00 to \$46.00 a foot that should have set up some kind of red flag. Are there any criminal investigations going on about that? Response from John Marsilio: This was absolutely an unbalanced bid. For instance on contract 3 the cost to remove a yard of rock on a unit price basis was a penny. On contract 4 the cost to remove a yard of rock was \$100.00. Contractors do that occasionally and they call it front loading a contract. They'll put pennies in for paving and they'll put a lot of money in for the pipe so they get their money early on in a project. It is frowned upon by purchasing people everywhere and nobody likes it because every time there's an extra you're dealing with those manipulated unit prices and paying an exorbitant amount of money. These are nuances that came into consideration in a lot of decision making that occurred in trying to complete this project and how we went about doing it. It is reflected in tasks like paving that the town has removed from the contract. You are absolutely right. In many jurisdictions the purchasing authorities would reject outright the contract that was so obviously imbalanced. This is the contract we inherited, these are the terms and conditions we have to work with and we made the best of it and hopefully we'll be done with this in 45 days.

Follow up from First Selectman Herbst: It is an absolutely unbalanced bid and should have been rejected. If any one of us sitting here was here at the time it would have been rejected. The Connecticut Department of Transportation has standards for when to accept or to reject bids. It is this type of unbalanced bidding that is perceived as the low bidder then the town is hit with large change orders. In contract 3 for example there were two and a half million dollars worth of change orders and a three and a half million dollar no bid contract extension. In 2009 we looked over the town's purchasing practices. He highlighted recommendations and findings from the forensic audit including penning items, dollar items, purchasing policy and standards and the implantation of a comprehensive purchasing policy. He also commented on Mark IV's history with the Town. In response to the question regarding a criminal investigation he noted he is not at liberty or in the position to comment on that.

- The Town of Milford told Mark IV they could never work there again or put in a bid for anything. Was that before or after the Town of Trumbull's contract started? Response: During.
- Ray Franzi, 18 Kingsbury Drive. Is there potential for restitution for the Town at all? Response from First Selectman Herbst: I can't comment on the criminal component all I can comment on is the civil component. There is no litigation currently right now in contract 4. We had to go to mediation to enforce certain terms of the contract to make sure they were honoring the bid prices. There is litigation in contract 3 the Jog Hill Project which is before your project. Our engineering experts identified roughly 600 latent defects in that project and we filed suit against the contractor claiming \$9,000,000 worth of damages. The outcome depends on whether or not a court of law determines that our claims have merit and rules accordingly, or whether the

parties are able to reach a settlement to come to some kind of agreement that restitution in the form of repairs need to be made. If we had not filed suit in contract 3 the statutes of limitations would have run out and we would have had no recourse. Therefore, when it comes time to make the repairs we have to pay for it so that's why we filed suit because we believe the contractor is responsible for a quality product and we want the contractor in the form of restitution to make repairs. He briefly described problems and defects related to sewer construction found during the recent paving of Stonehouse Road as an example of what happens when you don't exercise your rights and try to recover.

- So it's a civil aspect relating to the execution of installing sewers and the criminal investigation is more set around corruption. Response: I can't comment on the second one and I can't tell you the status. Whatever happens there we're going to let those people do their jobs.
- Are we pursuing financial restitution on the criminal side: There hasn't been a determination yet as to whether anything criminal occurred. So, we can't determine whether or not there is a restitution component at this time.
- Is there a specific rule that municipalities have to accept the lowest bid? Response from John Marsilio: It was a legal contract and if you're the low bidder and you have a complete bid, meaning you submitted your bond and insurance and you met all requirements of the bid, unless there is a compelling reason not to award to the lowest bidder you are bound by that. Or if you decided not to give it to the low bidder and went to another bidder you better have a really solid reason not to.
- Didn't we have a good reason? No, because at the time this was awarded the manifestation of the defects were not apparent. Most of the 600 latent defects that we have identified were garnered through a re-examination of the pipeline. We put cameras through 85,000 feet of contract 3 pipe installation and until we did that we could not determine where the leaks were or where the dented pipes were. That was all approved work and it was all paid. All that was a small part of what he found when we did our subsequent investigation.
- Response from First Selectman Herbst: At the time when contracts 3 and 4 were bid the defects were not readily ascertainable. To answer the previous questions the town did not have an adopted purchasing policy in place that it could refer to. If you are going to disqualify a bid you refer to the town's purchasing policy because the policy is consistent. At the time those projects were bid we didn't have a purchasing policy in place, now we do.

Resident's Comment: We learn lessons everyday – never too old to learn.

First Selectman Herbst asked if there were any more questions and offered to speak individually with anyone who wants to speak with him. He introduced Elaine Wang his chief of staff and was taking information from anyone who has direct inquiries and we will contact you. He thanked everyone for coming and if there are any questions, comments or concerns please contact his office at 452-5005 or the WPCA at 452-5048.

Submitted by,

Joyce Augustinskyc
Clerk