

DERBY BOARD OF ALDERMEN REGULAR MEETING

DERBY CITY HALL – NOVEMBER 20, 2008 - 7:00 P.M.

REVISED - MINUTES

President of the Board of Aldermen Kenneth, J. Hughes called the regular meeting to order at 7:05 p.m. All rose and pledged allegiance to the flag.

Roll Call

Present: Kenneth J. Hughes, Joseph M. Bomba, Ronald Sill, James Allaire, James J. Benanto,

Absent: Anthony Szewczyk, David M. Lenart, Scott M. Boulton, Beverly Moran

Also Present: Philip Robertson, Chief Administrative Officer
Keith A. McLiverty, City Treasurer
David L. Kopjanski, Building Official/Zoning Enforcement Officer
Philip A. Hawks, Fire Marshal
Ron Culmo, Director, Public Works Department
Deputy Chief Gerald Narowski, Derby Police Department
Joseph Moore, Facilities Inspector, City of Derby
Leo Moscato, Jr., Director, Derby Municipal Parking Authority
Paul Varsanik, Board of Apportionment & Taxation Member
Laura Wabno, Town & City Clerk
Joseph T. Coppola, Corporation Counsel

ADDITIONS/DELETIONS/CORRECTION TO AGENDA

Mr. Hughes said he would like to delete the following deletions from the agenda:

- Item #18 – Thompson vs. City of Derby – Et. Al. Discussion & Possible Action
- Item #19 – Discussion & Possible Action: Investigation of employment issues and public policy issues regarding the operation of the Derby Transfer Station

Mr. Hughes said he would like to add the following items to the agenda:

- Board of Education report – add bonfire – Derby High School Varsity Cheerleaders at the Picnic Grove on 11/26/08
- Public Works Report – bid waiver for the picnic grove piers
- Police Report – Proposed West Fourth Street Ordinance – Discussion & Possible Action

A MOTION was made by Mr. Bomba with a second by Mr. Benanto to adopt the agenda as amended. **Motion carried.**

PUBLIC PORTION

Barbara DeGennaro, 51 Paugasset Road, Derby, CT – I wanted to comment and ask if maybe Corporation Counsel could put together an opinion based on last month's vote to designate zero Supernumeraries under the Charter as it was voted on here. A

couple of the sections of the Charter specifically say that you need five affirmative votes from the board to pass legislation for the City. Another section talks about a majority of the Board of Aldermen voting in favor of any action that you take. I don't know that there was a majority of the vote taken for that motion that was made. And further it's my understanding that you're making a change to a Charter provision. What you voted on last month is inconsistent with other provisions in the Charter, for the City, the laws for the City. I thought we need go to a referendum or have a Charter change over the specific action that was taken with regard to the Supernumeraries. So I'm requesting if Corporation Counsel can look into whether the vote – the motion as it was made was sufficient to take the action that the Board of Aldermen took last month with regard to Supernumeraries.

Mr. Hughes – Does the board have issue with Corporation Counsel looking into the matter as discussed. Mr. Coppola?

Atty. Coppola – Nope. I will do it.

Marc J. Garofalo, 95 Academy Hill Road, Derby, CT – Good evening members of the board. I was a little confused – the agenda that you had on line had only nineteen items and you mentioned item nineteen, which was another item. So are there any other items that were on there. Is that the updated one?

Mr. Hughes – This is the updated one on the table. It's on the board too outside.

Mr. Garofalo – So is that the only other addition that last item?

Mr. Hughes – Other than what I mentioned under item #4 – for additions, deletions and corrections to the agenda.

Mr. Garofalo – All right so then I would like to speak to item #9 c. and that would also I guess fall into I guess item #20 as well I guess on this new agenda regarding the Public Works report and this issue with the Landfill. I just want to bring to the board's attention you have – I believe you have a very serious issue with respect to your action on this matter awarding the contract to an outside vendor. I would refer you to the section of the Charter that refers to bidding and (inaudible) many of you may or may not be aware that by awarding – to my knowledge you did not go out to bid for these services nor did you ask for a waiver of the bid pursuant to the Charter. So that means that this was awarded as a no bid contract and that is certainly outside the limits of the Charter and certainly outside the limits of the general accepted principles. So I would ask you – strongly ask you to re-look at that – the other issues aside and all of that I will not get into but the issue of the fact that it was not – if you want to go to an outside firm you should either go out to bid or you should have a bid waiver on that. So I think you ought to look into that because you're putting the City in pretty serious issues on that. So I'm asking you to look into that and rework that so that you're in line with the Charter and State Statutes. Also, item 9h. I would like to comment on the issue that you did vote on last month. The City Charter is very clear and your Corporation Counsel is going to look at it – I think you really need to look at that as well so that again you're in compliance with the Charter with respect to that because I think it's pretty clear that it probably is not based on the provisions of the Charter. With respect to item #16 you have an Executive Session item here for Facilities Inspectors' and so forth and it doesn't say why you're going into Executive Session so I would just like to ask why it is that you're going into Executive Session on that matter. Item #16 – the first issue.

Atty. Coppola – Its personnel and employment issues – just like it says compensation and performance.

Mr. Garofalo – Well respectfully it doesn't say – all it says is duties, compensation and performance. It should be – you know the duties are not really subject to Executive Session nor is the compensation. The performance issue is an Executive Session issue the other issues are not nor would the vehicle allowance for that matter. So I just point that for you consideration as well. And to the matter of item #15 it's not clear to me what the issue is. What it is that the possible action is going to be on that? If you could clarify that with respect to the Summerfield CCRC Zone Change Application – Planning & Zoning Application fee waiver/transfer to new application. What is the proposed action? Because it looks like its multiple issues so before I comment I would just like to get some guidance as to what it is exactly that you're discussing.

Atty. Coppola – Whether there's going to be a fee waiver or transfer of the fee to a new application. It's just like it reads.

Mr. Garofalo – Well it says Zone Change Application so I don't know if you're going to discuss the Zone Change Application or is it strictly the fee waiver?

Atty. Coppola – Fee waiver.

Mr. Garofalo – Okay – then I would like to speak to the fee waiver issue. This issue is very clearly an important issue for the City and I believe that you're going down a dangerous path by waiving the fee on these kinds of projects. The fee is supposed to offset costs of the planning review that the City has. They put in an application and they withdrew it apparently and now they're putting in another application. But there was a time – City time and resources that were spent on this to review the application and I think that you set a dangerous precedent when you take up issues like that when there's really no precedent or reason to do that. I also find as it relates to the Summerfield issue distressing that you passed some kind of issue in your June meeting of PILOT and there's no information on file other than a press release on this. There's no information that is on file that the Town Clerk has. This is a big issue and it seems as though based on minutes of several meetings that there's been a lot of discussion about this but it doesn't seem that that discussion has been held in public and this is a very significant zone change that they're applying for and it has far reaching impact on the City both in that zone in East Derby with the Hitchcock and Hines and the other properties there and it also impacts the Fountain Lake property and the Block property, which are the last two major pieces of land undeveloped that the City has. So I would ask you to proceed carefully with this and not set a bad precedent for the City. Thank you.

Steve Iacuone, 188 Mt. Pleasant Street, Derby, CT – I've got a question concerning the vote about the Supernumeraries. The board acted on something that is actually headed for arbitration for our contract. My question being that if the Charter has the Supernumeraries in it and the Supernumerary body is governed by a Contract with the City and the fact that it is going to arbitration it wouldn't have been pertinent for the Board to table it until a decision came out of arbitration what the Supernumerary number should be but rather than to act against what's in the Charter in several sections concerning that the Supernumeraries are physically there.

Mr. Hughes – Mr. Coppola could you address that in your ruling.
Atty. Coppola – I will.

Mr. Garofalo – I just want to wish everyone a Happy Thanksgiving

Mr. Hughes asked three times if anyone else would like to address the board.

Hearing no one else from the public wishing to address the board...

A MOTION was made by Mr. Benanto with a second by Mr. Allaire to close Public Portion. **Motion carried.**

APPROVE MINUTES OF THE OCTOBER 23, 2008 REGULAR MEETING

A MOTION was made by Mr. Bomba with a second by Mr. Benanto to approve the minutes of the October 23, 2008 regular meeting as presented. **Motion carried.**

CORRESPONDENCE

There was no correspondence to review.

COMMITTEE REPORTS – Community Relations

Due to the Election there were no committee reports.

DEPARTMENT REPORTS

o BOARD OF EDUCATION REPORT

There was no one present from the Board of Education due to their regular meeting also being held at this time.

Mr. Hughes said he received a request from Ms. DeGennaro to hold the bonfire on November 26, 2008 at the picnic grove. He said he checked with the Fire Marshal and there is a burn permit on file. Mr. Hughes has also been in contact with Kelly Curtis, Charlie Sampson and the Police Department regarding this request. He reminded the Board members that this was voted on favorably last year.

A MOTION was made by Mr. Bomba with a second by Mr. Allaire to approve the request from the Derby High School Varsity Cheerleaders to hold a bonfire on November 26, 2008 at the picnic grove. **Motion carried.**

o CULTURAL COMMISSION REPORT

No one was present.

o PUBLIC WORKS DEPARTMENT REPORT – (Ron Culmo, Director)

Mr. Culmo asked if anyone had any questions on his report. There were no questions raised.

Mr. Culmo informed the Board he is looking to replace the roof at the picnic grove on upon inspection of the roof it was determined that the structure is collapsing and approximately ten piers need replacing with cement pillars. He has received three prices and would like to have the work performed as soon as possible before the entire

structure collapses and he is before the board this evening seeking a bid waiver for the project.

The bids received are:

1. R. Jaffer - \$7,000.00
2. Ronald Prajer Mason Company - \$7,000.00
3. Mark Masonry Father & Son - \$6,400.00

Mr. Hughes asked who he would recommend do the work. Mr. Culmo said he would recommend Mark Masonry Father & Son for \$6,400.00. Mr. Hughes said he would imagine another reason to do the work as soon as possible must be the weather. Mr. Culmo said it is and noted that the footings need to be 42". Mr. Hughes informed the board that the Capital Planning Commission reviewed this item this evening and recommended that Mr. Culmo bring it before the Board of Aldermen and the Board of Apportionment & Taxation for the bid waiver.

A MOTION was made by Mr. Benanto with to approve the Bid Waiver for Mark Masonry Father & Son in the amount of \$6,400.00 for work at the picnic grove pavilion. **The vote did not receive a second and therefore does not carry.**

Report placed on file.

- o **BUILDING DEPARTMENT REPORT – (David L. Kopjanski, Building Official/Zoning Enforcement Officer)**

Mr. Hughes noted the increase in fee collection this month. Mr. Kopjanski stated that there were a number of permits issued and some large permits issued pertaining to the Lowe's project and the Griffin Hospital Emergency Room project. Mr. Bomba asked Mr. Kopjanski if he recalls the last time he inspected the pavilion at the picnic grove. Mr. Kopjanski said he was up there about three weeks ago with Mr. Culmo and the prior to that last year. Mr. Bomba questioned the damage at the pavilion. Mr. Kopjanski said he believes a lot of it probably happened this past summer. He said it appears that individuals are gaining access to the roof and noted that there is graffiti spray painted on the roof. There were no further questions raised. Report placed on file.

- o **FACILITIES INSPECTORS' REPORT – (Andrew Cota, Joseph Moore)**

Mr. Moore is present this evening and asked if anyone had any questions on the report. He stated that the inspections are running smoothly and they have seen a lot of cooperation amongst property owners. Mr. Sill commented on a particular house on Hawthorne Avenue that was very dilapidated and is now painted and fixed up. Mr. Moore said they have also seen an increase in compliance with absentee landlords. Report placed on file.

- o **FIRE MARSHAL REPORT – (Philip A. Hawks, Fire Marshal)**

Mr. Hughes asked Mr. Hawks if it would make any sense to place anything on the books to address the issue of outdoor burning. He said he has received a couple of complaints in the last month about patio burning and fireplaces. Mr. Hawks said it falls under the DEP Environmental. He said the State Statute allows for an open burn as long as the individual is not burning non-processed wood and is not creating a fire hazard. He believes people are probably complaining about a smoke nuisance and he suggested that DEP would probably be the best ones to handle it. If we were to adopt an Ordinance we would then more than likely need to purchase equipment to monitor

smoke, etc... Mr. Hawks said with the price of oil a lot more people are purchasing the wood pellet stoves and we will probably see a lot more smoke being generated. There were no further questions raised. Report placed on file.

- **FIRE DEPARTMENT REPORT**

There was no one present from the Fire Department.

- **POLICE DEPARTMENT – (Deputy Chief Narowski)**

Deputy Chief Narowski highlighted a few items on the report. He stated that Kim DeMayo was recently hired by the West Haven Police Department and will report for work on December 5, 2008, which will decrease Derby's staffing by one and Derby will be hiring to fill her position. Deputy Chief Narowski told the board that Lt. Frosceno is continuing to work on collecting outstanding fees from contractors who have hired Derby officers to conduct traffic control. Approximately \$20,000 in delinquent fees has been collected. He said persistent offenders are being referred to Corporation Counsel for collection. The department is working in conjunction with the Mayor's Office to establish a parking ticket appeal program and noted that someone outside of the police department needs to deal with the parking ticket appeals. The roof project at the Police Department has been successfully completed. The Building Inspector has signed off on the job and the Capital Planning Commission has authorized the second payment to the contractor. There is still a retainage being held back. Deputy Chief Narowski informed the board that the State Animal Control Department has re-inspected the dog pound after multiple violations were found during the initial inspection. The dog pound has passed the re-inspection. The Police Commissioners swore in two new Probationary Recruit Officers on November 3. The recruits will be going to the Police Academy on December 15 where they will attend 22 weeks of academy training and then 12 weeks of field training before they are cleared for unsupervised patrol. The two recruits currently in the Police Academy will graduate in early December. These four recruits do not add to our patrol force; they have been hired to fill vacancies. Report placed on file.

- ❖ **West Fourth Street Ordinance**

Deputy Chief Narowski said they are proposing an Ordinance for the West Fourth Street area for resident parking. The area is currently posted as resident parking within specified hours, which is similar to the Griffin Hospital resident parking program. He said the problem is when they went to re-institute the program and check the signage they discovered that the area has been posted for several years and there is no Ordinance backing that area so they are currently not enforcing that resident parking zone. Deputy Chief Narowski said the Ordinance that they are proposing is modeled after the Griffin Hospital plan that has been in place since 1983, which will limit residential parking in the West Fourth Street and a portion of the Anson Street area. He said it will entail West Fourth Street to Olivia Street and the Anson Street between the areas of West Fourth Street and Fifth Street.

Mr. Hughes said he would like to post this for the next meeting for a public hearing to see if anyone has any comments to the proposed change. There were no questions raised regarding the proposed Ordinance.

A MOTION was made by Mr. Bomba with a second by Mr. Allaire to post a Public Hearing to be held during the next Board of Aldermen meeting to address the proposed West Fourth Street Ordinance. **Motion carried.**

o **PARKING AUTHORITY REPORT – (Leo Moscato, Jr., Director)**

Mr. Moscato said everyone should have received the monthly meter revenue report. There were no questions raised. Report placed on file.

VEHICLES & TRAFFIC – ORDINANCE – DISCUSSION & POSSIBLE ACTION

Mr. Moscato said the City of Derby Ordinance 186-11.1 dated September 25, 2008, printed October 2, 2008, and now in effect October 17, 2008. The Derby Municipal Parking Authority requests an exclusive modification to said Ordinance to collect \$100.00 minimum to immobilize. He said he would like to enter into the record a "heavy hitters report" for the last five years that shows \$46,000.00 in outstanding fines owed to the Parking Authority.

Mr. Hughes asked what is considered a heavy hitter. Mr. Moscato said anything over \$100.00 is considered a heavy hitter to them and noted that some fines go up to \$4,000.00. He explained that the authority is looking at a huge renovation project for the municipal parking garage and noted that it is not subsidized by the taxpayers. He said he has spoken with Mr. Kilpatrick who is the Parking Authority Chairman for the City of New Haven and other Parking Authorities and most of them have a \$100.00 threshold. He said there are two main reasons for the threshold – the first is you don't want the fines to get to high and the second is the ability to pay. Mr. Hughes asked what would happen if someone reaches the \$100.00 mark. Mr. Moscato said the handheld unit used by the enforcement officer will indicate that it is a scafflow. The officer will then contact the office for verification – if the fine stands after it is verified by Complus the ticketing agency the authority uses then a boot will be placed on the vehicle or towed. A sticker will be placed on the car's window with instructions on how to remedy the situation. He said they have done \$270,000 worth of renovations to the garage and they are looking at another \$2 million in renovations and it is not fair to have these outstanding violators. Mr. Moscato noted that most of the violators are individuals who are going to Court. Mr. Bomba asked what the average cost for a parking ticket is. Mr. Moscato explained that it is a \$10.00 ticket for meter violation, \$25.00 for 25' from a corner or hydrant and \$150.00 for handicap violation.

Mr. Hughes said he would recommend holding a public hearing on the amendment to the Ordinance at the next Board of Aldermen meeting.

Deputy Chief Narowski said he would just caution the board from making anything exclusive to any one agency. He said if the Police Department does it he has no opposition to booting at \$100.00 instead of \$250.00; however it should be the same amount for everybody.

A MOTION was made by Mr. Bomba with a second by Mr. Allaire to authorize Corporation Counsel to draw up the amended Ordinance and to hold a public hearing on it at the next Board of Aldermen meeting.

REFUND OF EXCESS TAXES REQUESTED THROUGH 11/13/08

A MOTION was made by Mr. Sill with a second by Mr. Benanto to approve the Refund of Excess Taxes paid through 11/13/08 in the amount of \$950.92 as per the request from Cinda Buchter, Tax Collector. **Motion carried.**

NEW DERBY MIDDLE SCHOOL INVOICES – DISCUSSION & ACTION (Keith A. McLiverty, Chair)

Mr. McLiverty presented the following invoices with a brief explanation to the board for their approval:

- FIP Construction, Inc. – Invoice #08001.08 - \$838,439.00
- Test-Con – Invoice #5157 - \$2,377.00
- Bianco Giolitto Weston Architects - Invoice #12 - \$14,876.00
- GNCB – Invoice #16986 - \$2,397.33

A MOTION was made by Mr. Bomba with a second by Mr. Sill to approve payment of all the Derby Middle School Invoices as presented this evening. **Motion carried.**

Mr. McLiverty informed the board that the school is progressing nicely and encouraged the members to visit the site. The gymnasium has been poured and back filled and the retaining wall is half way completed.

REAPPOINTMENT OF PAULINE MONACO TO THE DERBY HOUSING AUTHORITY TERM 11/30/08 TO 11/30/13 – DISCUSSION & ACTION

A MOTION was made by Mr. Sill with a second by Mr. Bomba to approve the reappointment of Pauline Monaco to the Derby Housing Authority for the term 11/30/08 to 11/30/13. **Motion carried.**

REAPPOINTMENT OF JAMES BENANTO TO THE PARKS & RECREATION COMMISSION – THREE YEAR TERM. DISCUSSION & ACTION

A MOTION was made by Mr. Bomba with a second by Mr. Allaire to approve the reappointment of James Benanto to the Parks & Recreation Commission for a three year term. **Motion carried.**

MEMORANDUM OF AGREEMENT – DEPARTMENT OF EMERGENCY MANAGEMENT & HOMELAND SECURITY. DISCUSSION & POSSIBLE ACTION

Deputy Chief Narowski told the board members that this is basically a resolution, which authorizes the Mayor to sign for the City of Derby for funding for law enforcement noting that the document has been signed annually since at least 2002. The funds for this grant would be used for regional shoot house, which would allow 300° shooting for all the 14 towns in the region. The shoot house would be located in Milford.

A MOTION was made by Mr. Bomba with a second by Mr. Sill to authorize the Mayor to execute the Memorandum of Agreement between the Department of Emergency Management & Homeland Security and the City of Derby. **Motion carried.**

SUMMERFIELD CCRC – ZONE CHANGE APPLICATION – PLANNING & ZONING APPLICATION – FEE WAIVER/TRANSFER TO NEW APPLICATION. DISCUSSION & POSSIBLE ACTION

Atty. Coppola said back in September 2008 Summerfield CCRC/Wesleyan Homes filed an application for a text change, which involved the I/C (Industrial/Campus) Zone. The application was accepted by the Planning & Zoning Commission at their September meeting and at that point the City Engineer, Mike Joyce, and Atty. Coppola made a recommendation to Dominick Thomas, the Attorney for Wesleyan Homes to withdraw the application because some of the language was probably not conducive to that zone. Atty. Coppola told the board members that although Atty. Thomas was hesitant, he agreed to withdraw the application. Atty. Thomas then

promptly filed a new application on behalf of his clients with language that is more conducive to that zone. That new application will be taken up at next month's Planning & Zoning Commission meeting. Atty. Coppola explained that a payment of \$750.00 was made for the original application. Another application has been filed with an additional payment of \$750.00. The only board that can either waive or refund the application fee is this board. Atty. Coppola said that Atty. Thomas asked him to place this on the agenda this evening for the board's consideration to either refund the initial \$750.00 and/or allowing them to transfer the \$750.00 to this new application. Atty. Coppola said he believes the right process would be to refund the money.

Mr. Hughes noted that not much time was spent on the original application. Atty. Coppola said that he spent five minutes and he handled the review with the City Engineer in one phone call. Mr. Kopjanski said he reviewed it but that is part of his normal function.

Mr. Hughes asked the board members if there were any questions. None were raised.

A MOTION was made by Mr. Bomba with a second by Mr. Allaire to approve the fee waiver transfer for the new application of Summerfield CCRC. **Motion carried.**

EXECUTIVE SESSION – FACILITY INSPECTORS' DUTIES, COMPENSATION & PERFORMANCE - \$1,200.00 PER INSPECTOR – BUDGETED VEHICLE ALLOWANCE; DISCUSSION OF BEYOND DISTRIBUTORS, LLC LITIGATION – HOWD & LUDORF ATTORNEYS

A MOTION was made by Mr. Bomba with a second by Mr. Sill to go into Executive Session at 7:47 p.m. inviting Atty. Coppola, Philip Robertson, David L. Kopjanski, Joseph Moore, Deputy Chief Narowski, and the attorney from Howd & Ludorf to discuss Facility Inspectors' duties, compensation & performance; and litigation. **Motion carried.**

The meeting returned to regular session at 9:12 p.m.

FACILITIES INSPECTORS – DISCUSSION & POSSIBLE ACTION

A MOTION was made by Mr. Hughes with a second by Mr. Sill to approve the Facility Inspectors' vehicle allowance of \$1,200.00 per inspector. **Motion carried.**

FINDINGS PURSUANT TO SUBMITTED TRANSFER STATION REPORTS

Mr. Hughes said that due to the lateness of the last Board of Aldermen meeting, which ended approximately 11:45 p.m., the board didn't really get a chance to really clarify their decisions. He then read the following into the record:

At last month's meeting we voted in favor of the appointment of Annex Associates for one year to run the operations of the Transfer Station. We need to clarify the findings provided by Annex and Action Consulting as to a number of violations at the Transfer Station. These violations are set forth in the reports, which are on file. It is the opinion of this board that it is in the best interests to not subject our employees to any hazards or subject them to any enforcement actions due to violations. We have agreed to allow Annex to operate the Transfer Station in accordance with DEP regulations and allow the City twelve months to bring the Transfer Station into compliance including an application for a general permit. Annex will operate at no charge to the City. Since the contract for supplies, materials and services are less than \$1,000.00 we comply to Chapter 8 of the Ordinances of the City of Derby.

ADJOURNMENT

A MOTION was made by Mr. Sill with a second by Mr. Bomba to adjourn the meeting at 9:16 p.m. **Motion carried.**

Respectfully submitted,

Patricia Finn
Recording Secretary

THESE MINUTES ARE SUBJECT TO THE APPROVAL OF THE BOARD OF ALDERMEN AT THEIR NEXT REGULARLY SCHEDULED MEETING.