

**MINUTES OF THE CHESHIRE TOWN COUNCIL REGULAR MEETING HELD ON TUESDAY, MAY 8, 2007, AT 7:30 P.M. IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410.**

Present

Matthew Hall, Chairman; Michael Ecke, Vice-Chairman; Matthew Altieri, Elizabeth Esty, David Orsini, Thomas Ruocco, David Schrumm, Diane Visconti, Timothy White.

Town Manager Michael A. Milone; Town Attorney Dwight Johnson; PW Director Joseph Michaelangelo.

Chairman Hall welcomed Boy Scout Troop #1 to the Town Council meeting, under the leadership of John DeGennaro.

**1. ROLL CALL**

The clerk called the roll and a quorum as determined to be present.

**2. PLEDGE OF ALLEGIANCE**

The group Pledged Allegiance to the Flag.

**3. PUBLIC COMMUNICATIONS**

**A. Annual Report by Regional Water Authority Board Representative David Borowy.**

Mr. Borowy submitted a formal brochure/report to the Town Council from the Regional Water Authority. He reported to the Council that the RWA serves about 400,000 people in 16 towns, and Anthony Edge of Cheshire was reappointed for a 2<sup>nd</sup> five year term to five member Authority. Last year and this year, 10% of the annual budget was set aside in a rate stabilization fund, which can be used if there are unreasonable hikes in rates. The RWA is also working with the Town of Cheshire, in a unique relationship, on road repairs and pipe replacement. During pipe replacement, RWA prepares the road back to full proper status according to code. In Cheshire, the RWA puts a layer of cover on top of the road, gives the town the funds to complete the reconstruction of the road. The north well field continues to be a working horse for water production in this area of the state.

The RWA land acquisition program will add 3,000 acres over the next few years to the current 26,000 owned. The reason for this addition of land is for protection of the source water, rather than having to do extra treatment of the water. There is also potential disposition of 900 acres of RWA land; class 1 land has water on it; class 2 land is related to the protection of the water; class 3 land is not deemed necessary by the State DOH to regulate, and this land is reviewed every 10 years, and sold to municipalities and land trusts. The maps in the brochure show more land than the 3,000 acres, but the goal is to get this land acquired.

Cheshire said there are 4 pipe replacement projects over the next fiscal year on Brentwood Drive, Towpath Lane, Budding Ridge Road and Iris Court.

Mrs. Visconti asked if any water is being treated in Cheshire at this time.

In response, Mr. Borowy said there is water being treated, but he will make sure of this fact and advise the Council.

Regarding the purchase of the extra 3,000 acres, Mr. Schrumm asked if matching funds are still available to towns which want to buy property.

These funds are still available, and Mr. Borowy said it would be advantageous if there were sharing of land purchases. There are no cutbacks in place, but an increase to \$3 million for water shed protection land acquisition.

Mr. Schrumm asked if the RWA is still considering selling off land in Prospect, CT, and where this stands, and noted this feeds into Mixville.

This has been discussed with Mr. Milone, and Mr. Borowy said RWA met with Mr. Milone to inform him of this plan, and discuss whether the land trust or town will buy the land.

With regard to the roads mentioned for piping, Mr. White asked if Goldenrod Court would be included in the list.

Mr. Michaelangelo said that the RWA is replacing mains on the 4 streets mentioned, and Goldenrod Court is not an issue.

Mr. Borowy said that if Goldenrod became an issue, it could be moved up on the priority list.

Mr. Milone said he would cover the issue of Prospect CT since it impacts Mixville, and advise the Council.

Ellen Carson, 34 Peck Lane, said she attended the WPCA meeting of April 24<sup>th</sup>, and expressed her concern about the increase in the sewer use fee to \$305 for next year. She said the fee is unreasonable and an unfair charge to one and two person households. Also, it is her understanding that the WPCA is considering replacement of the flat fee to a usage fee system. This is not just a senior citizen problem, but affects everyone. There will be an expensive project for the treatment plant, and everyone should know about the sewer problems.

(Mr. Orsini entered the meeting at 8 p.m.)

Derf Kleist, 251 Lancaster Way, commented on the per household sewer use fee increase to \$305, from \$390, which is a +5% increase. He has not heard the

number increase for the Board of Education, prison, businesses, and other users, and asked if they would also receive a 5% increase. He noted that the prison has 2630 beds, and the State paid \$471,000 through June 30, 2006, which amounts to \$190 per bed. This is lower than what the average household pays. Mr. Kleist requested that the sewer fees be based on per household usage.

#### **4. CONSENT CALENDAR**

MOTION by Mr. Ecke; seconded by Mrs. Esty.

BE IT RESOLVED, that the Town Council approves Resolution #050807-1

#### RESOLUTION #050708-1 CONSENT CALENDAR FOR MAY 8, 2007

BE IT RESOLVED, that the Town Council approves the Consent Calendar for May 8, 2007 as follows:

- A. Acceptance and appropriation of a donation of \$250.00 from the First Congregational Church to the Cheshire Fuel Bank.
- B. Acceptance and appropriation of a \$105.00 donation in memory of Alida McNamara to the Parks Gift Account for improvements to McNamara Legion Field.
- C. Acceptance and appropriation of a \$2,830.00 grant from the Connecticut Youth Services Association for the Youth and Social Services Youth In Action program for middle school students.
- D. Acceptance and appropriation of a \$100.00 donation from the Hartford County Tax Collector's Association to the Cheshire Fuel Bank.
- E. Acceptance and appropriation of a \$2,000.00 grant from the Naugatuck Savings Bank Foundation for the "One Book, One Town" Project.
- F. Acceptance and appropriation of a \$100.00 donation from the Connecticut Library Association awarded to the Cheshire Public Library in honor of their 2007 Award of Excellence in Public Library Service to the Library Gift Account for general purposes.
- G. Resolved, that Michael A. Milone, Town Manager of the Town of Cheshire, is empowered to execute and deliver in the name and on Behalf of this municipality, a contract with the Connecticut State Library for a Historic Documents Preservation Grant.

VOTE The motion passed unanimously by those present.

5. **ITEMS REMOVED FROM THE CONSENT CALENDAR**
6. **OLD BUSINESS**
7. **NEW BUSINESS**
- A. **Set public hearing for the 2007 Neighborhood Assistance Act Program.**

MOTION by Mr. Ecke; seconded by Mrs. Esty.

BE IT RESOLVED, that the Town Council approves Resolution #050807-2

RESOLUTION #050807-2

BE IT RESOLVED, that the Town Council shall hold a public hearing to consider the submissions for the 2007 Neighborhood Assistance Act Program, and

BE IT FURTHER RESOLVED, that the Town Manager shall cause a notice of said public hearing to be posted and published according to law, and

BE IT FURTHER RESOLVED, that the date, time, and place of any postponements thereof shall be determined by the Town Manager with the approval of the Chairman of the Council.

VOTE The motion passed unanimously by those present.

- B. **Discussion and action re: Award of design for the West Main Street Streetscape project to Milone & MacBroom.**

MOTION by Mrs. Visconti; seconded by Mr. Altieri.

BE IT RESOLVED, that the Town Council approves Resolution #050807-3

RESOLUTION #050807-3

BE IT RESOLVED, that the Town Council accepts the recommendation of the West Main Street Streetscape Steering Committee/Study Group that the contract for the West Main Street Streetscape Design Project be awarded to Milone and MacBroom, and

BE IT FURTHER RESOLVED, that, pursuant to Resolution #091200-10 the Town Council authorizes the Town to hire Milone and MacBroom for said project, up to \$57,500 and directs the Town Manager to execute said agreement.

Discussion

Matt Bowman, Chairman of the West Main Street Study Group, reported that on April 11<sup>th</sup>, the committee interviewed four companies, and the unanimous choice for consultant was Milone and MacBroom. They were the most qualified at the least cost for the project. The committee is in the process of mailing letters to all property owners on West Main Street to determine their interest and input into this project.

Mr. Bowman requested the Town Council apply for another \$500,000 STEAP grant for the West Main Street Streetscape Project to continue to completion.

With regard to crossing Route 70, West Main Street, Mr. Bowman said that would be part of the charge to Milone and MacBroom. They have requested that PW Director Michaelangelo look into the crossing of the culvert on West Main Street. This culvert is 50 years old; it is unknown what it is made of; and there will be a request to the DOT to move this up on the repair schedule. The committee wants the State to schedule repairs with the town's plan to rehab West Main Street.

Mr. White asked about the \$5,000 for conceptual design in the fee schedule, noting a design was done a few years ago.

A few years ago a rough design was done, and Mr. Milone is unsure if it must be changed or updated.

According to Mr. Bowman, it is understood that Milone and MacBroom will not charge for any unforeseen circumstances encountered. He will check with the firm on the \$5,000 fee.

Mr. Schrumm stated that the town is really paying \$45,000 because the other \$12,500 will come later if the project moves forward, and asked if he was reading this correctly. The money is coming from the \$500,000 STEAP grant. He asked if there was any discussion about inclusion of the State repairing the culvert or even if the State will do it.

At the bottom of West Main Street there is the culvert where the canal crosses the street. Mr. Bowman said this was done a few years ago, but the culvert is old and in poor shape. There has been discussion on the committee level about this culvert, and if the State does nothing with it, then nothing will be done in that area. There is much to be considered there, not only the beautification of West Main Street, but the safety of the street, and future crossings of the Rails to Trails. This is a State DOT problem, not a town problem. Milone and MacBroom could look into the safety issues of the culvert, and get DOT to move it up on their repair schedule.

It was noted by Mr. Bowman that the culvert is right in the center of the 1600 ft. roadway. The renovation could go up to the culvert and tracks, and there has been discussion about slowing traffic with narrowing the road, taking everything into consideration. Up to this time, the State has been non-responsive to the town. Mr. Bowman asked that Mr. Michaelangelo contact the State representatives to Cheshire, and the DOT, and get this culvert work moved up on the repair list.

Mr. Ruocco asked if Milone and MacBroom is aware of the budget, and if they will build a plan within the \$500,000 budget.

The firm will come up with a plan on all the costs, and Mr. Bowman said that could include granite curbs at a cost per foot, concrete sidewalks at a cost per foot, brick sidewalk on top of concrete at cost per foot, etc. The committee will sit and go through each section of the plans with Milone and MacBroom, discuss what the town can afford, what it wants to do, and get input from the land owners.

Mr. Ruocco asked if the Linear Trail is part of the concept of this plan.

According to Mr. Bowman, the trail is not part of the concept; it was voted down by the people a few years ago; the only thing the committee wants to do is safety related issues and needs for the future expansion of the trail northwards.

The idea of revitalizing this part of town was not popular two years ago, and Mr. Ruocco said the referendum issue was not just about the trail, but about the public safety issues of this location, and crossing the street in any way. He is not sure this public sentiment has changed, and is surprised that this is coming backup again after the debate a year and a half ago. It is the same issue.

If there is a safety issue, then Mr. Bowman said the redesign of the road is called traffic conning, and right now the road is wider than is standard; the shoulders are wider; and for pedestrian safety now, there are issues which can be addressed with what is proposed to be done.

Regarding a time frame for this project, Mr. Bowman said that Milone and MacBroom is on board, and he will report to the Council on the schedule for the project.

Mrs. Esty said that the town received \$500,000 for this project to revitalize this area, and she asked for information on the process for the land owners, which will make the area safer and traffic will slow down.

Mr. Bowman said the committee will meet with the land owners, and get their concerns, issues and input into the process, i.e. curb cuts, sidewalks, signage, size of the trees. Milone and MacBroom will report back to the Council after this meeting with the land owners.

Regarding expansion of the sidewalks in this area, Mrs. Esty asked about the eastern boundary.

The eastern boundary is Warren Street, and Mr. Bowman said that with the next grant, the boundary could go to Waverly Street, and possibly all the way up with sidewalks to Waverly Street.

Mr. Ecke stated that public safety will not be compromised by the Council, and will not be politicized. The linear trail and West Main Street were linked together as one project, but they are separate issues. With \$500,000 from the State, this project will go forward.

With regard to the request to the State for the STEAP grant, Mr. Schrumm said he recalls adding some wording which alluded to the fact that some of this money could be used for the preparing for the bike trail. He suggested that when Milone and MacBroom puts together the sidewalk crossing between Bummells' Station and Lyon & Billard, that some thought be given to what could be a future bike trail. He believes the grant application alluded to some money for the future crossing of the Linear Trail.

Mr. Bowman said that future crossing of the trail is a consideration and the committee will consider it.

A question was raised by Mr. Ruocco about the \$42,000 including any type of public safety study, or anything about ways to improve crossing this street.

The State will include this as part of their study, and Mr. Bowman said traffic must be slowed coming down the hill, and narrowing the road to 22 feet will be easier to cross. Town Planner Voelker has suggested a series of warning lights to be installed which make people aware they are approaching a crossing, and this is being considered.

Mr. Ruocco asked about whether the retail shops described on West Main Street would impact the proposed Interchange Zone development, and if the committee has discussed this.

In response, Mr. Bowman explained that the north end development is in excess of 100 acres; the West Main Street project is less than 25 acres; they could never compete on a scale with the larger development. The committee just wants to get the West Main Street area to be a safer area for people to shop. The property in this area is split into commercial and industrial. This is a work in progress, with the land owners and the Planning and Zoning Commission. The committee is doing a street scape, not the future planning and zoning of Cheshire.

With four proposals coming forward, Mr. White said the committee made a wise choice, and with more State funding, sidewalks on the north side should be a high priority. He asked that the Council be updated regularly on the conceptual design.

VOTE           The motion passed unanimously by those present.

Chairman Hall thanked Mr. Bowman for attending the meeting and updating the Council on the work of the West Main Street Study Group.

**C.     Discussion and action re: acceptance of a parcel of State Property at I-84 and Route 70, and allocation of \$1,000.00 from the Open Space account for said transfer.**

MOTION by Mrs. Visconti; seconded by Mr. Altieri.

BE IT RESOLVED, that the Town Council approves Resolution #050807-4

RESOLUTION #050807-4

WHEREAS, the State of Connecticut has offered 5.1 acres of State land abutting the In-84 Westbound Off-Ramp to Route 70,

WHEREAS, the Planning and Zoning Commission has found that the acquisition of said property by the Town of Cheshire for open space is not in conflict with the Plan of Development,

NOW, THEREFORE, BE IT RESOLVED, that the Town Council accepts said property from the State of Connecticut, and directs the Town Manager to execute on behalf of the Town deeds or other instruments as may be necessary to consummate said acceptance in the form and upon the terms and conditions as presented at this meeting, and

BE IT FURTHER RESOLVED, that the Town Council allocated \$1,000.00 from the Open Space for said transfer, and

BE IT FURTHER RESOLVED, that the deed, as executed, will be filed on the Land Records of the Town of Cheshire.

Discussion

Mr. Schrumm asked whether this is the same parcel offered by the State a few years ago.

In reply, Mr. Milone said there was a parcel which was a possible parking lot for access to the Dime Savings Bank property.

PW Director Michaelangelo clarified the location of this parcel of property, and submitted copies of the Assessor's Map for the Council to review. This land used to loop around; now it goes straight; and the excess of the loop is contiguous to the Dime property. There is no parking access into this property. The town did not want to locate a driveway to a parking lot in this location because it intermingles with the off ramp, and is not safe. The town could request grass planting in the area in order to avoid bikes using the land, and the State has leveled the land, remediated it, and it is a park like setting, if only we could get there. The \$1,000 is the cost of the transfer of the land from the State to the Town.

Mrs. Visconti said she was confused because she thought this property would be access for parking to the Dime property.

This land does not touch Route 70, but touches the Dime property. This is the excess land from the old loop entrance to I-84.

Mrs. Visconti stated the town still has a problem without access to the Dime property.

That is correct, and Mr. Michaelangelo said there may still be access to some of the side roads, but this is not a major route, and someone would have to hunt to find it, and know the back roads.

VOTE           The motion passed unanimously by those present.

**D.     Discussion and action re: approval of design for the Dodd Middle School Gymnasium Renovation Project.**

MOTION by Mr. Altieri; seconded by Mrs. Esty.

BE IT RESOLVED, that the Town Council approves Resolution #050807-5

RESOLUTION #050807-5

BE IT RESOLVED, that the Town Council, pursuant to Section 2-26 of the Cheshire Code of Ordinances, approves the design for the Dodd Middle School Gymnasium Renovation Project as recommended by the Public Building Commission, and authorizes the Public Building Commission to place this project out to bid.

Discussion

The Council was informed by Mr. Michaelangelo that the plans are completed; the project will be out to bid in a week; and this project is for replacement of the wood gym floor, bleachers, basketball stanchions, climbing ladders. The town is working with the BOE and Principal Wailonis, and the project is ready to go

forward. He also explained that there has been ongoing water problems with the gym flooring, and it has been damp for many years. A moisture test was done, and there was 98% moisture under the concrete, and this is the reason for all the problems.

The Council was informed by Mr. Michaelangelo that this project is not subject to prevailing wage requirements, because there are two separate trades involved, and the project is split between them. The budget for this project in the capital budget was \$250,000, and it is expected to come in, under budget, at about \$200,000. The funding will be reviewed with the BOE to determine how best to spend the remainder of the funds.

VOTE The motion passed unanimously by those present.

**E. Discussion and action re: Approval of appropriation from a Special Revenue Fund for the remediation of the Ten Mile River culvert Collapse.**

Chairman Hall informed the Council that the draft resolution on the Ten Mile River Culvert Collapse is before the Council for consideration. This topic will generate much discussion, and due to certain issues of liability, ongoing responses, etc. the matter will be discussed in Executive Session. There are ongoing discussions with the property owners about access to the property. A licensing agreement is currently under negotiation between Town Attorney Johnson and the property owner's attorney.

Attorney Johnson said that another reason for Executive Session would be to discuss the possible claims which the town might have.

Chairman Hall noted that due to the collapse of the culvert, there was an emergency Town Council meeting held on May 2, 2007.

MOTION by Mr. Ecke; seconded by Mrs. Visconti.

BE IT RESOLVED, that the Town Council approves Resolution #050807-6

**RESOLUTION #050807-6**

BE IT RESOLVED, that the Town Council authorizes appropriation of \$533,500 for the remediation of the culvert collapse on the Ten Mile River and construction of an emergency bypass from a Special Revenue Fund for Special Grants set up for this emergency project, and

BE IT FURTHER RESOLVED, that this action hereby amends the action authorizing expenditures for said project from the General Fund approved in Resolution #050207-2.

Discussion

Town Manager Milone summarized his memo of May 4, 2007 to the Council regarding the Ten Mile River Culvert Collapse – Clearing/Bypass Project Appropriation, in which he asked the Council for authorization to provide funds for this emergency out of the General Fund Operating Budget.

Upon further review with Finance Director Ryan and Deputy Director Jaskot, it became apparent that segregating these funds would make it easier to track expenses and revenue. He is requesting the Council to modify the appropriation \$533,500 into a Special Revenue Fund.

Mr. Schrumm stated that this special revenue fund is set up to track expenses, but noted that expenses are being incurred now. He asked where the money will come from to go into the special revenue fund.

Mr. Milone said the issue is using the town's cash; the grant is not received until spending starts; and town funds will be used for short term needs and to pay the bills. He made it clear that this will work, not as a reimbursement, but the federal government will directly pay the vendors up to 75%, and the town must deal with the balance, or 25%. This 25% is expected to come from the DEP.

Mr. Schrumm asked if the federal government will just step in because this is an emergency situation and pay for the costs. He asked if they will request reimbursement from the property owners. Also, he said the town is losing interest on its money between the time of payment and reimbursement.

It was explained by Mr. Milone that this is a grant, not a loan. Cheshire is not paying the expenses, and they are being paid by the federal government and DEP. It is unknown whether they will be pay directly or if the town will pay and be reimbursed. It is expected that the full funding estimate will not be spent.

Mr. Milone said that reimbursement is for the cost of the town's labor, time and for some or all of the fringe benefits. There will be reimbursement for the cost of the town's equipment on the site. The loss of interest will be minimal. The town could end up for services rendered, which could have been rendered for another project.

With regard to official request for reimbursement from the land owners, Attorney Johnson said they have agreed, in principle, without a signed commitment, to reimburse the town for any out of pocket costs incurred. For example, if the grants were insufficient to cover the costs, the land owner has agreed to pay those costs back to the town.

Mr. Schrumm said that the state and federal levels of government will pay for this project.

If the grant is applied for, awarded, and accepted by the town, Attorney Johnson said that will be the case.

Stating he understands the point of the resolution, Mr. Orsini questioned the amount, and that the town was going to receive the grant from the federal government, and pay expenses out of this fund. Now, he hears that the town will not receive this grant, but the federal government will directly pay the vendors.

Mr. Milone said that is correct; the federal government will pay up to 75% of the eligible expenses.

There are multiple vendors on site, with the town as a vendor, and Mr. Orsini asked about private vendors, and where they send their bills, i.e. to the federal government.

According to Mr. Milone, the Town of Cheshire is the pass through; bills will come to the town and be reviewed by Mr. Michaelangelo to insure they are consistent with the contract; and they will be bundled and sent on a regular basis to the federal government. Then, the federal government will cut the checks.

With the federal government cutting the checks, Mr. Orsini asked if payment goes right to the vendor, with the same holding true for the town's expenses. If the federal government is paying bills directly, he asked why the Council needs to fund \$533,000, and if the resolution should be funding up to 25%.

The reason the full amount is funded is because with all appropriations the maximum amount is appropriated, and Mr. Milone said this is because there is a possibility of the reimbursement not being 100%. This is consistent with the way the town has always budgeted for any of these projects. It is possible that 25% or less of this amount will be spent, but the authorization is needed for the full appropriation.

Mrs. Esty said that we are not sure that the DEP grant works in the same way, and it may come to the town and the town will pay the bills.

VOTE           The motion passed unanimously by those present.

**F.     Discussion and action re: Waiver of bid and authorization for the Town Manager and/or the Director of Public Works and engineering To negotiate for equipment and services used in the remediation Of the Ten Mile River culvert collapse.**

MOTION by Mr. Ecke; seconded by Mr. Altieri.

BE IT RESOLVED, that the Town Council approves Resolution #050807-7

RESOLUTION #050807-7

WHEREAS, the Town Council has authorized the Town Manager and the Public Works Department to conduct emergency remediation for the culvert collapse on the Ten Mile River, and

WHEREAS, it is critical that the remediation work be completed as quickly as possible to protect public safety, and

WHEREAS, the Council finds it is in the best interests of the Town that this remediation work be done without the delay that would be created by a bidding process,

NOW, THEREFORE, BE IT RESOLVED, that the Town Council, pursuant to Section 7-8 (C) (11) of the Town Charter, approves a waiver of bid for the purchase of the equipment and/or services necessary for this remediation process, and authorizes the Town Manager and the Director of Public Works to negotiate contracts with vendors of said equipment and services.

Discussion

Town Manager Milone reminded everyone that the bid limit is \$24,000 for construction, and it is hoped that we are not in a position to exceed that. The first vendor hired was for the tree clearing, and that bill was \$20,000. With a variation on what they have to do, we could be close to meeting the bid limit. The problem is that decisions have to be made quickly, and Mr. Milone is requesting this authorization. If the waiver of bid has to be utilized, he will report back to the Council as to who the vendor is, the amount of money, and the reason for utilization of the waiver.

PW Director Michaelangelo reported to the Council that the trees are a large item, and the next largest item after that is the equipment rental. There are two firms for the equipment rental due to availability. These are large pieces of equipment, running into thousands per day for rental, so it is just a function of how long they are on site. It is hoped they will not be on site too long, and will be under the \$24,000 limit.

According to Mr. Milone, what is paid to these vendors from the town could be zero or a very modest amount, far less than the \$24,000. But, in order to execute the purchase order with the vendors, it must be signed by the town, and if it exceeds \$24,000 he cannot sign the purchase order without the waiver.

By agreeing to this, Mr. Schrumm asked Attorney Johnson about reimbursed costs, and his assumption that the town will not be caught by the federal government, because it went out without bidding...and could have gotten lower costs with bidding. He asked if the town could be getting into trouble by doing

something, and then having the reimbursers come back and say the costs could have been less, and the whole amount will not be reimbursed.

Attorney Johnson has not read through all the rules and regulations, but this has been discussed internally within his law firm. This is an emergency program. The town was directed to start doing this work immediately...the next day...by all the governmental entities. Certainly, there is a risk they could come back and second guess the town, but he has to assume the risk is substantially diminished because we are operating under emergency circumstances.

Mr. Milone advised that one of the things incumbent upon the town is to keep copious pieces of information. As the town enters into these contractual relationships, Mr. Michaelangelo puts together an e-mail to the Town Manager outlining the reason for the equipment rental or services, etc. and why there is such immediacy. A good job has been done so far to explain why decisions have to be made for justification on a certain vendor and certain amount.

Based on last week's meeting and what the Town Attorney said, Mr. White's feeling is that the town is held harmless on this, through state, federal government or the property owners.

VOTE           The motion passed unanimously by those present.

**G. Discussion and action re: authorization to execute a Project Agreement with the U. S. Department of Agricultural Natural Resources Conservation Service for partial reimbursement for the Emergency remediation of the collapse of the stone arch on the Ten Mile River.**

Chairman Hall stated that this resolution pertains to the application to the USDA for partial reimbursement, which was discussed in the approval of the last two resolutions. Attached to the resolution drafts is a Project Agreement and Operation and Maintenance Agreement.

In looking at this Agreement, Item B.3 states: **“Provide certification that real property rights have been obtained for installation and one-year maintenance period for the planned measures.”**

Mr. Hall said this is the crux of the issue which bears discussion in Executive Session because land acquisition or land rights acquisition is at the heart of B.3. There are issues within this section which would be compromised by a public discussion. There is also potential for the town to have claims arising out of the work to be performed in conjunction with this Project Agreement.

Mr. Hall stated that the condition precedent to achieving this DOA reimbursement benefit is the proof that the town has acquired a right to be on the property. The

acquisition of that right to the land is subject to negotiation right now. There have been issues raised with respect to what the agreement will contain and it will be compromised by public discussion.

Attorney Johnson said there are two reasons for Executive Session. The town has the ability to enforce certain rights under State law; there are specific exceptions or permission to go into Executive Session for discussion on the enforcement of these rights. Under Section 7-146 there is the process of authority of the legislative body (Town Council) to order a private property owner to remove debris/wreckage and similar materials in order to permit the free flow of water and the avoidance of flooding. If the land owner declines, the Town Council can step into the land owner's shoes, and take the necessary emergency action, and then seek recovery from the land owner. These things are all intertwined, and Mr. Johnson, along with Mr. Hall, and his law firm partners, agree it is difficult to discuss and make decisions about the one without considering the other. He further advised that the courts ruled that when a legislative body is considering issues like this, they will give the legislative body a great deal of discretion to include in that discussion related issues that have, or may have, some impact on the ultimate decision by the legislative body.

Mr. Hall reported that since last week's emergency Council meeting, May 2<sup>nd</sup>, work has progressed on the situation.

Town Manager's Report on the Issue being discussed – Mr. Milone reviewed the chronology of this emergency situation, stating that as a result of the April 15<sup>th</sup> heavy rain storm, the culvert crossing the Ten Mile River partially collapsed. This is a 120 acre parcel. Milone and MacBroom, consultants to the property owners, made visual inspections of the property; there are concerns about the seriousness of the collapse; it compromised the flow of water flowing up the river into Southington because of the debris and part of the material that ended up in the river. This caused a significant amount of the river to be compromised so that only about 40% of the opening of the culvert was available for water to pass through.

It has been learned there is a likely continuation of the collapse, and eventually it will collapse, with major concerns that it will dam up the river, create major flooding back towards West Johnson Avenue and beyond that point. Because of the seriousness of the threat of this collapsing causing a dam effect, there was an immediate response on the part of the engineering consulting firm in bringing the town into this. There were site visits the week of April 16<sup>th</sup>. Town Engineer Michaelangelo was up there on many occasions. Milone and MacBroom sent a letter on April 24, 2007, after an extensive analysis, and made it clear this was a serious problem. They felt a number of agencies had to be mobilized to determine how best to proceed, and they wanted state and federal and local officials involved, because there was a likelihood the culvert would completely collapse, and create the dam effect and immense flooding.

On May 2<sup>nd</sup>, 21 people met as a collective body (DOA, DEP, Army Corp of Engineers, NCRS, Milone and MacBroom, town staff, and the people interested in the property). It was made clear at this meeting there was an urgency to the situation, and it was feared the culvert could collapse, dam up the river, and cause flooding. The importance of moving quickly was underscored by the agencies, and they provided support and confidence that federal and state aid would pay for 100% of the cost associated with remediation of the problem.

Town Manager Milone met with Town Attorney Johnson, and the urgency of this was understood, along with the need to move quickly. Mr. Milone contacted Chairman Hall and indicated an emergency Council meeting was in order because of the need for immediate response to the situation. All the information was assembled; it was put before the Council; and the authority was given to start the process of creating a bypass and moving as much debris from the river as was possible.

With the help of outside forces, the town has begun clearing as much debris out of the river as possible to expand the amount of flow beyond 40%, and create a bypass. With creation of the bypass, if the culvert does collapse and create the damming effect, there will be a bypass to prevent the flooding concerns.

PW Director Michaelangelo reported on the progress of the remediation and clearing of the fill that fell into the river. After the emergency Council meeting, the town still did not have formal access to the property, and this provided time to determine how to tackle the problems. The land clearing portion was beyond the abilities of the town crews, so contractors were immediately out at the site area, 3 acres, 200 feet wide by 600 feet long where the bypass will go. That area is now completely cleared of all debris, trees, stumps, etc. There is large excavation equipment out there, with more coming on May 9<sup>th</sup>, when earnest work will begin to remove the bulk of the earth that formerly formed the embankment which supported the Farmington Canal. Fill material will be loaded into the trucks and relocated 1000 feet to the west on the same property.

Regarding work on the sink hole, all trees have been removed which penetrated the culvert by large equipment and chain saws. The opening is about 6 feet wide by 12 feet long, but some debris can still be seen floating, and this must be removed. Around the perimeter, the hazardous trees will be removed, and debris coming down the river will be caught and removed. Mr. Michaelangelo said that in just 4 days, much progress has been made.

When this project is done, Mr. Altieri asked for an assessment of what it was, and how it is going to be a safer and more efficient moving flow of water.

Mr. Michaelangelo said that this stone arch culvert was destined to fail, and construction of the bypass was needed. There should be a permanent bypass. In discussions with the engineers from the agencies, once this culvert is repaired

or permanently replaced, the bypass channel does not need to be quite at the elevation it is now. The elevation chosen for the bypass channel is 129; it could be raised slightly; this is not major work, but fine tuning of the channel.

With regard to the time frame for the permanent solution to the culvert, this has not yet been discussed. The permanent solution is a larger problem, and there will be discussions on what part of the costs fall on the property owners and the town. There must be a permanent way for the Ten Mile River to flow.

Mr. Orsini said the first step was the town being notified by the private property owner that there was a collapse. He asked who notified the town, and how the town was notified.

In response, Mr. Michaelangelo said that on April 15<sup>th</sup> and 16<sup>th</sup> there was a major heavy rain storm. This situation was reported to the town by Milone and MacBroom to the Environmental Planner on April 18<sup>th</sup> in the afternoon. She notified Acting Town Manager Zullo, who notified Mr. Michaelangelo, who was out at the site April 19<sup>th</sup> and 20<sup>th</sup>. He sent e-mails to Mr. Milone, who was on vacation, and on April 24<sup>th</sup>, Attorney Johnson was briefed on the situation. Then, the meeting with the federal, state and local agencies was held, followed by the emergency Council meeting.

After Milone and MacBroom notified the town about the structure failure, there was notification to the police and fire departments and town agencies. The letter from the firm was received April 24<sup>th</sup> or 25<sup>th</sup>, with a request that the municipality get the state and federal agencies involved, and start making decisions.

At the meeting with the state and federal agencies, Mr. Schrumm asked whether they stated that the situation must be fixed and work about details later. Knowing the regulatory process, he said they have given the town carte blanche on the problem. Given the hydrology there, he said this culvert holds back water extensively. Down the road, when there is another large flood or hurricane, these agencies may say it is the town's fault, because the town is going in and doing all the work. Mr. Schrumm wanted to know, and have something from these agencies, stating their seal of approval of this project work by the town.

MOTION by Mr. Ecke; seconded by Mrs. Esty.

MOVED that the Town Council enter Executive Session at 9:45 p.m. to include Town Manager Milone, Town Attorney Johnson, and PW Director Michaelangelo.

VOTE The motion passed unanimously by those present.

MOTION by Mr. Ecke; seconded by Mrs. Esty.

MOVED that the Town Council exit Executive Session at 10:25 p.m.

VOTE           The motion passed unanimously by those present.

MOTION by Mr. Ecke; seconded by Mrs. Esty.

BE IT RESOLVED, that the Town Council approves Resolution #050807-8

RESOLUTION #050807-8

BE IT RESOLVED, that the Town Council authorizes the Town Manager to execute a Project Agreement with the U. S. Department of Agriculture Natural Resources Conservation Service for partial reimbursement for the emergency remediation of the collapse of the stone arch and the construction of an emergency bypass on the Ten Mile River, effective May 4, 2007, pursuant to the approval of the Town Attorney as to form and legal sufficiency, inclusive of amendments made by said Town Attorney to the attached DRAFT Agreement.

Discussion

Mr. Orsini commented on the Council having had discussion in executive session on the resolution, and now being asked to approve that the Town Attorney has a sense of what was discussed and incorporate that into the document and move forward. But, there is a sense of a number of items, and the final outcome of the negotiations will not be known until after a document is signed.

Attorney Johnson reads this as an authorization, not a directive to the Town Manager.

Mr. Orsini had a concern about something being signed without the Council seeing the final document, because the Town Attorney may, or may not, get everything discussed.

Attorney Johnson said that was correct.

Chairman Hall stated if it is the Town Attorney and Town Manager's mutual opinion that they have not been able to achieve, through negotiation, those items discussed in executive session, to a sufficient extent, that the majority of the Council wants to have in that agreement, he expects the Council will be called to meet on an emergency basis to approve the document.

Mr. Milone agreed with that statement, citing the urgency of getting this agreement signed to the federal government.

If there is not sufficient agreement on the items discussed, Mr. Hall said that the Town Attorney and Town Manager will get back to the Council.

Chairman Hall advised the Council that they are voting on the agreement with the USDA, which contains a condition precedent of the negotiation of a prior

agreement with respect to the access and rights to be on the property. This was most of the content of the executive session discussion. So, that agreement is precedent to the execution of the agreement subject to this resolution. This does not happen without the full negotiation and execution of that precedent agreement.

During executive session, Mr. Schrumm said it was clear that it dealt with B.3, and other things. He asked whether this will be in two separate agreements, or in one agreement.

Chairman Hall said it will be two agreements.

Mr. Schrumm asked if there would be an agreement on B.3, and a separate agreement on other issues.

That was incorrect, and Attorney Johnson said the two agreements are the agreement with the DOA, and the other agreement that will include, among other things, the right of access to the property.

Mr. Schrumm said the Council wants to see the final agreement because there are significant issues to be resolved, which must come back to the Council. If the agreement in the resolution cannot be submitted without that agreement, he suggested tabling this resolution, get everything together in a neat package, and then send it off. They are one and the same, and you can't have one without the other.

Chairman Hall said that was correct. He asked Attorney Johnson if the Council is delaying anything by not approving this resolution and tabling it until further progress is made on the negotiations with the property owner. He asked if there is a hindrance with tabling this resolution tonight.

It does not hinder him in his negotiations, and Attorney Johnson asked Mr. Milone if it puts the town in a difficult position with respect to the DOA. It is his intention, whether the resolution is adopted or not, to move as quickly as possible towards a successful negotiation of the other agreement.

Chairman Hall said that we cannot move forward without the other agreement in place, but we are in a time sensitive posture with the DOA. He sees no reason not to approve this resolution which is authorization for the Town Attorney to proceed on this document. The DOA is eager to see progress made on this agreement.

Town Manager Milone said the DOA is eager, and he is unsure if further delays jeopardize the likelihood of receiving this money, and it makes things precarious without moving quickly. If he can explain to the DOA that there is authorization,

if not agreement, it demonstrates good faith effort on the part of the town to resolve what is a very difficult situation.

Chairman Hall said that would be his inclination...not to table the resolution...but to continue discussion.

Mr. White commented on the funding for this project, and who ultimately pays for it...the federal or state government or the property owners. He believes the property owners pay for the costs of this project. He asked where in the process does all the federal and state funding come in...taxpayer dollars...and if voting in support of this motion puts us to that point where all taxpayer dollars fund this project. Or, will there be other motions and votes by the Council to bring up discussion about who ends up paying for this project.

The resolution before the Council is no more complicated on its face than what the paragraph says, and Mr. Hall said it authorizes the Town Manager, in consultation with the Town Attorney, to apply for the DOA grant for the partial reimbursement. The successful completion of this grant will be drafted with due haste, and contains a condition not yet satisfied. We are in a time sensitive posture; it behooves the Council to show the town is moving forward and show the DOA there is authorization and things have been done to apply for the grant.

Mrs. Esty suggested that there is circulation of the condition precedent agreement with the property owners to gain access, that this be done prior to the signing of it. This is to say that the Council sees it before it is signed. It seems to her that the sense of the Council is that if the Town Manager can get away by saying we are in negotiations; they have agreed to give the town access; but we are working out the fine points. And, if this is good enough for the DOA. If it is, then the Council could be in favor of going ahead, recognizing we still have that negotiation.

By approving this resolution, Mr. Orsini said he understands the point that we are allowing the Town Manager to send a message to the federal government that the Council would be acceptable to put in this application. However, the application cannot actually be put in until we have an agreement with the property owner. Putting in the application without this agreement, the town does not comply with B.3. Having said that, there needs to be an agreement negotiated with the property owner, and Mr. Orsini asked when there is an agreement with the property owner, if it would be brought back to the Council for approval.

Attorney Johnson noted he does not know the historic practice of the Council in this regard, and this is a good question. It could be an agreement brought back to the Council to approve.

Stating he was fearful to table this resolution, Chairman Hall said it would put the town in a difficult posture. He does not want to be answering to the DOA's question on why the town waited three weeks to authorize the execution of the agreement. It is a less risky position to approve this resolution than to table it waiting for the other agreement. If the Council is agreeable, there could be a meeting held to approve the Town Attorney's negotiated agreement.

It was stated by Mr. Schrumm that the town has no risk in this process; the property owner has the risk; this is not a town problem except for the public safety point. If the DOA says our time has run out, then a larger bill goes to the property owner. A few more days is needed to get this right, and that agreement must be perfect and it should be the sense of this community. This is not a time sensitive issue, and the faster this is resolved, the lower the costs for everyone. The best way to resolve it quickly is to put the risk where it belongs, from a time sensitivity standpoint, back to the property owner.

Mr. Milone said the town will be in a very difficult position without the approval of this resolution.

With regard to an emergency Council meeting for approval of the agreement, Mr. Hall said that everyone seems to be amenable to meet, on an emergency basis, with the Town Attorney to approve the agreement.

VOTE            The motion passed 7-2; Schrumm and White opposed.

## **8. TOWN MANAGERS REPORT AND COMMUNICATIONS**

### **A. Monthly Status Report.**

### **B. Monthly Departmental Report**

### **C. Other Reports**

- FY '07 Monthly Financial Report – the general fund surplus is at \$1.178 million, and it is expected to grow by another \$300,000 to \$500,000, due to higher tax collection rate than projected, and the higher revenue from investment income.
- Pool Budget – expected to come in on balance; unknown is May and June revenues; last year June revenue was \$100,000.
- WPCA Budget – expected to have \$250,000 surplus.
- State Aid – It is expected that Cheshire will receive \$870,000 more than budgeted.

- Recycling Event – May 12, 2007, 9 a.m. to 1 p.m. at Cheshire High School.
- Road Reconstruction/Repaving – PW and RWA merging resources for the road projects.
- Mr. Michaelangelo reported on the four RWA water main projects for reliability; 5,150 feet at a cost of \$225,000; RWA will forward the funds to the town for reconstruction the roads (Budding Ridge, Buttonwood, Towpath, and Iris). The Town of Cheshire is the first town entrusted with this responsibility by RWA.
- Property Revaluation - \$275,000 budgeted for revaluation; the bids came in higher than expected; the bid package will be modified and go out to re-bid; and Council will have information within 6 weeks.
- Library Union Contract – tentative settlement; must go to the labor attorney for review and to the library for ratification, and then come back to the Council.
- Community Pool – bubble removal next week; pool closed 5/18; reopen Saturday 5/26 (or earlier); there will be discussion on cleaning the inside of the bubble with the contractor, possibly doing the work in the fall.
- Consultants Report on the Pool – the report was submitted to the Council; Parks and Rec Commission will have a special meeting to review this report; and then chairman and director will meet with the Council, possibly 5/22/07.
- Elderly Tax Relief Program – there is a May 15<sup>th</sup> deadline; one last session will be held at the senior center on May 11<sup>th</sup>, 9 a.m. to noon; or seniors can come to the Town Hall 8 a.m. to 4 p.m.
- Employee Recognition – some employees have received professional distinction in recent months.

Fire Chief Casner had an article which appeared in the September edition of Fire Engineering, in which he talks about the transition to a combination department; Chief Casner spoke at the national conference for the Fire Department Instructors on safe operations on a limited access highway;

Dennis Divert, Superintendent of the Waste Water Treatment Plant and a principal from Metcalf & Eddy spoke at the Water Environment Federation National Conference on lessons learned from the design, construction and startup of a nitrogen removal plant;

Sarah Morgan, Librarian, was given a State Library Association Award for excellence in public library service.

- Upcoming meetings – Personnel Committee May 15, 2007, 7 p.m.; Ordinance Review Committee, May 16, 2007, 7:30 p.m.
- Town Hall – closed May 28<sup>th</sup>, Memorial Day.

## **TOWN ATTORNEY REPORT AND COMMUNICATIONS**

### **10. REPORTS OF COMMITTEES OF THE COUNCIL.**

#### **A. Chairman's Report**

#### **B. Committee Reports**

Personnel – Mr. Altieri reported there would be a meeting on May 15<sup>th</sup> to discuss goals and objectives; this is a joint meeting with the Town Council.

Planning – Mrs. Visconti reported the committee met last week, discussed the Boulder Knoll barn; there will be a letter and cost estimate to bring the barn back to a usable state; there will be a tour of the property by the Council.

Budget – Mr. Ecke reported the committee continues to discuss the fund balance account fund, and a meeting will be scheduled soon.

Ordinance Review – Mrs. Esty reported the committee will meet on May 16<sup>th</sup> to discuss the agenda items – request for a police commission, fee issues, and changes in the way ordinances are developed to facilitate tracking of changes over time.

#### **C. Miscellaneous**

### **11. APPROVAL OF MINUTES**

**Public Hearing of April 3, 2007; Regular Meeting of April 10, 2007; Special Meeting of April 24, 2007; Emergency Meeting of May 2, 2007.**

MOTION by Mrs. Esty; seconded by Mr. Ecke.

MOVED that the Town Council approve the minutes of: **Public Hearing of April 3, 2007; Regular Meeting of April 10, 2007; Special Meeting of April 24, 2007; Emergency Meeting of May 2, 2007**, subject to corrections, additions, deletions.

VOTE           The motion passed unanimously by those present.

### **12. MISCELLANEOUS AND APPOINTMENTS.**

**A. Liaison Reports.**

Parks and Rec – Mr. Altieri reported that the consultant’s report on the pool has been received; the authors will meet with the Parks and Rec Commission to discuss the report.

Environment – Mrs. Visconti commented on the recycling event on May 15<sup>th</sup> at the high school.

Social Services – There was a meeting last week on the underage drinking problems and changes in the statutes.

Library – Mrs. Esty commended Sarah Morgan for her achievements.

WPCA – Mrs. Esty is continuing to work on sewer usage fee changes, and they are aware of public concern on this issue.

Human Services – Mr. White noted the web site [cheshirecares.org](http://cheshirecares.org).

Energy Commission – Mr. White said that solar panel will be coming soon. The bike tours start this weekend.

Mr. Milone said he would send an e-mail to the Council on the schedule for the bike tour on Saturday.

MOTION by Mrs. Esty; seconded by Mr. Ecke.

MOVED THAT THE TOWN COUNCIL EXTEND THE CURFEW BEYOND 11:00 P.M. TO THE CONCLUSION OF BUSINESS.

VOTE The motion passed unanimously by those present.

**B. Appointments to Boards and Commissions.**

MOTION by Mr. Orsini; seconded by Mrs. Esty.

MOVED to appoint David Gavin (R) to the Energy Commission, to replace William Kunde, term of office current to 1/31/09.

VOTE The motion passed unanimously by those present.

**13. COUNCIL COMMUNICATIONS**

**A. Letters to Council.**

**a. Mountain Brook Property Owner’s Association**

This letter is a request for the Town to accept Mountain Brook Road as a Town road. This matter is referred to the Planning Committee.

The Council received a letter to the Town Attorney's law firm, Murtha, Cullina, regarding the May 7, 2007 site visit to the property where the culvert collapsed.

Mr. Orsini noted that this letter came from the attorney for Tri-Star, the owners of the property, to the Town Attorney asking questions and making comments about the Town Council meeting/field trip held on May 7<sup>th</sup>. He assumes Attorney Johnson will reply on behalf of the Town.

Attorney Johnson advised that he has read the letter, and did talk to Mr. Greenberg about the letter. He said he understood his client's concerns. However, a special meeting of the council, by law, are open to the public. Mr. Greenberg raised an interesting issue as to whether the requirements of FOI trump the rights of a private property owner to limit access to its property. This is being looked into, and the preliminary indication is that the private property owners do have the ability to restrict access to their property. In that case, it has been determined that the Council cannot visit a site en masse. Research on this will continue.

Mr. Orsini said that the Council must advise the property owner, going forward, and put them on notice with the understanding the meeting would be a duly called public meeting. And, by doing this there is the possibility of members of the public also visiting the site. Then, the property owner can give or deny permission to visit the site.

It was noted by Attorney Johnson that Mr. Greenberg informed him that after the Council members left the property, members of the public remained on the site. But, this has not been verified.

**B. Miscellaneous**

**14. EXECUTIVE SESSION**

**A. Land Acquisition**

**B. Pending Litigation**

**15. ADJOURNMENT**

MOTION by Mr. Ecke; seconded by Mr. White

MOVED, that the Town Council adjourn the regular meeting of May 8, 2007 at 11:15 p.m.

VOTE        The motion passed unanimously by those present.

Attest:

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Marilyn W. Milton, Clerk