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MEMBERS OF THE PUBLIC: IN LIGHT OF COVID-19, AND PURSUANT TO EXECUTIVE ORDERS 7B and 9H, THE TOWN IS CONDUCTING THIS MEETING VIA WEBEX AND TAKING LIVE PUBLIC COMMENT VIA WEBEX DURING THE MEETING.

- ✓ Back-up documents relating to the agenda items can be found at www.fairfieldct.org/bof.

Special Board of Finance Meeting Final Minutes

Monday, December 21, 2020

6:00 pm

A Special Board of Finance meeting was held virtually on Monday, December 21, 2020 at 6:00 pm in Fairfield, Connecticut.

MEMBERS PRESENT: Edward Bateson, Jim Brown-Chair, Lori Charlton, Christopher DeWitt-Vice Chair, Mary LeClerc-Secretary, John Mitola, Jack Testani, James Walsh

ALSO PRESENT: Town Attorney Jim Baldwin, Bond Counsel John Stafstrom, FairTV

MEMBERS ABSENT: Sheila Marmion

1. Call to Order – Chairman Brown called the meeting to order at 6:04 pm.
2. Pledge of Allegiance – Mr. Brown led the Pledge of Allegiance.
3. To hear, consider and act upon a request from the Town Attorney and Bond Counsel to approve an amendment to the bond resolution associated with the Board’s December 16, 2020 approval for a Special Appropriation in the amount of \$5,123,928 for the costs of purchasing land and existing buildings on the property known as 309 Barberry Road. (See attached bond resolution) (*requires RTM Approval*); (*pending BOS approval on 12-21-20*)

He said Bond Counsel recommended an amendment be made.

Mr. DeWitt made a motion to approve Item 3. Mr. Mitola seconded the motion.

Mr. Brown started the discussion by saying wording in the bond resolution was added after the BOF voted on this item last week. He said the wording added is, “and to utilize for future town projects.” He said Bond Counsel recommended this wording be added to the bond resolution.

Town Attorney Baldwin said the bond resolution that was voted on last week didn’t fully capture the purpose of the sale as noticed by Mr. Walsh. He said he brought this to the attention of Bond Counsel. Town Attorney Baldwin said it was lost in translation that there was more to the purchase than just the Walter Fitzgerald High School.

He said Bond Counsel thought this additional language was prudent to capture the concept that the other parts of the property were not going to be used by the BOE, but by the Town for future projects. Town Attorney Baldwin said the RTM, pursuant to this resolution, is designating the property by operation of this resolution. Mr. Walsh asked what part of the parcel the BOE will control. Town Attorney Baldwin said that is to be determined; clearly, the Walter Fitzgerald High School is building #1 for the BOE and immediate surroundings. He said this is a hybrid situation and as to where the lines are drawn will be determined by the Administration and BOE for immediate purpose of alternative high school's use; the balance of the property needs to be determined. Mr. Walsh asked if the BOE uses the building, who will control the rest of the property. Town Attorney Baldwin said beyond the use of the building for the school, uses for the rest of the site haven't been fully vetted and determined. Mr. Walsh asked if Bond Counsel was on the call, but Mr. Stafstrom was not on the call. Town Attorney Baldwin said he will attempt to contact him to join the call. Mr. Walsh asked if the resolution could state that the good building is for use by the BOE and everything else is for future Town use until determined.

Mr. Bateson said he agrees with Mr. Walsh. He said the cost of purchasing land and existing buildings for the alternative high school could sound like it would all be for the BOE. Mr. Bateson said the RTM could determine the land is for the Town and the BOE can use the building for the school. He said while he supports the school at this site, for this amount, he want the taxpayers to get the land. He said a specific idea of what is being done with this site needs to be hammered out.

Mr. DeWitt said the word BOE isn't used in the Bond Resolution. He said the Bond Resolution states buying the 11.74 acres to occupy the alternative high school and to utilize for other Town projects. As he reads it, only the Town can use it and the Town designates the use to the BOE.

Town Attorney Baldwin agreed with Mr. DeWitt and said it is intentionally left open. He said the deal is coming together quickly and the immediate purpose is to use the building for the alternative high school. He said the Town will agree with the BOE as to what oversight there would be of the parking lot or it could be limited to just the building.

Mr. DeWitt said he doesn't want it to be used as open space. He said he can support how the resolution now reads with the added language.

Mr. Mitola agreed with Mr. DeWitt and said the Town will own the entire parcel including the building. He said at a later date the RTM can designate other uses on the property.

BOE member Jeff Peterson said he appreciates what Mr. Walsh is saying, but the BOE has never contemplated using any more than it needs - the building and the parking lot and maybe an outdoor recreation area. He said the BOE respects it will use what it needs and the Town will use the rest.

Mr. Walsh said he wants to rest the issue because there have been times when the BOE has put parameters on projects. He said he wants the building itself to be used by the BOE and the rest of the property to be used by the Town.

Ms. LeClerc suggested a sense of the body motion to direct the RTM on what types of things will be done with this purchase. Mr. Baldwin said questions on uses will not be answered tonight; maybe in January.

Mr. Testani said if the BOF were to make a motion asking the RTM to specify exactly what the Town's role would be moving forward that would help alleviate some of these concerns as Ms. LeClerc had suggested with getting a sense of the body.

Mr. Mitola said the RTM could vote tonight with the understanding that the BOE is using the building and any further use will be determined at a later time. He said the RTM will need to reissue a vote on that; but for purposes tonight, the BOE is limited to the building.

Mr. Brown acknowledged that Bond Counsel John Stafstrom called into the meeting. He asked Mr. Walsh to address his concerns to Mr. Stafstrom. Mr. Walsh said in regard to the revisions to the bond authorization that Attorney Stafstrom helped amend, it still keeps the words "the Walter Fitzgerald High School campus and to utilize for future town projects." He asked if language could be put in to state Walter Fitzgerald High School to utilize the non-abandoned building. Mr. Walsh said if the BOE is given additional portions of the property, it controls it. He asked if the BOF can define the Bond Resolution to just state the BOE can use the building and the Town will control everything beyond that.

Attorney Stafstrom replied, "I don't think the resolution turns the entire property over to the BOE. I think how this evolved is that the first resolution didn't reflect that the Town was going to use it for other purposes. But I think the intent of the amended resolution is to say that there is a portion for the BOE and a portion that's not. I honestly think the BOS is probably going to make that determination. My understanding from the Town Attorney and he can speak up, is at some point there will be a division of the property and there will be a property line. The BOE will have a part and the Town will have a part. I don't know that the line of demarcation has been determined yet. I think what this resolution does is clarify that it's not all going to the BOE. This will then go to the RTM and they will ratify the fact that this is not all for the BOE. At some point, the Selectmen will make a determination as to the property line, shall we say. So I think you're reserving your right for the other portion to be used for whatever Town purposes the bodies determine in the future."

Mr. Walsh asked if that was a First Selectman, BOS or an RTM decision.

Attorney Stafstrom said, "I think it's sort of open ended at this point, to tell you the truth, because I don't think people know what the other property is going to be used for. I think that my understanding is that folks think it makes sense to buy that valuable property for future town use. I think to draw the demarcation now between the various uses might be difficult when it's not clear what that is."

Mr. Walsh said he wants to make sure the demarcation is not so broad. "We're talking about a campus for them and not just a building. We're talking about a campus. Those are your words."

Attorney Stafstrom said, “Well, I think that the original resolution, and I know that somebody on the Board of Finance raised this last week which is why we are going through this amendment process, I think the original resolution basically said we’re taking the land to operate it as the school’s campus. The language we have now limits that so that at the appropriate time, the demarcation will be made to say no, that’s not what we’re doing. The Board of Education will use the building and five acres and the Town is reserving the other six acres. I think this resolution does that.”

Mr. Walsh said it is very broad for him and it’s voting on a lot of money for something that’s very broad. He said, “We are being asked to vote on it and others will decide how this is all parsed out later on in a way that I might not think is best for the taxpayers.”

Attorney Stafstrom replied, “My experience with your various boards is that I would be very surprised if at some point that the other use for that doesn’t come back before the Board of Finance.”

Mr. Brown asked Mr. Walsh if he could go back to him if something else comes to his mind or if he had another question. Mr. Brown acknowledged Mr. Mitola had a comment.

Mr. Mitola said he thinks it’s the RTM that ultimately determines the use of the property. He said when the BOE, Town and RTM determine what the BOE needs to operate the alternative high school, then the RTM at a future date votes on that. He said he understands there is concern, but it can be alleviated at a later date when the RTM votes when it’s all figured out.

Town Attorney Baldwin said, “That’s correct Mr. Mitola and let’s not forget that the purpose and the use of the entire parcel is technically being designated albeit open ended in terms of the other part of the property the use of which is still to be determined. But, for the purposes of satisfying the Town Code and designating use it’s been satisfied. And I say that because otherwise it would be designated for open space and that is something that clearly we don’t want it to default to, just open space. So that box is checked, so to speak. But you are absolutely correct that later on, the use of that property will be more clearly determined by the Town bodies including the RTM.”

Attorney Stafstrom said, “I would agree with that analysis. What we tried to clarify in this amendment is that this entire parcel is not just being used for the campus and at the same time, whatever is not being used for the campus is not just defaulting to open space.”

Mr. Walsh said, “Mr. Brown, can I ask through you to ask our clerk to take very detailed minutes of what both town attorneys have basically said, our bond counsel and town attorney, so that there are detailed records in regards to what their legal opinion was, so that if we look back on this it’s extremely clear of what we thought we were doing. That the RTM and the town bodies would have their say in regards to what happens later on.”

Mr. Brown replied, “Yes, I will reiterate that to Ms. Carpenter and Ms. O’Brien, who’s taking minutes tonight, that the opinions from the Town Attorney and Mr. Stafstrom are basically word for word in our minutes. Are there any further comments or questions in regards to the bonding resolution and amendment?”

Mr. Walsh said, “Based on those legal opinions and based on the fact that the RTM will be able to weigh in on what the future use is, I guess I’m fine with it as long as they get to weigh in on it. So based on the legal opinions, I was going to abstain, but I will vote in favor of it as long as the RTM has full say on what happens. They are expected to have that.”

Mr. Brown asked, “Mr. Baldwin, you’re in agreement with Mr. Walsh in regards to the RTM?”

Attorney Baldwin replied, “Yes, I think I’ve tried to articulate that point that he just made on numerous occasions. I apologize if I wasn’t that clear about it.”

Mr. Brown said he just wanted to get further clarification before the vote.

Mr. Walsh said, “I want to be clear, I don’t think he was being unclear. I might have been misunderstanding it at the end. It might have been my lack of clarity.”

The motion carried unanimously.

Mr. Brown said the resolution passed and proceeds to the RTM.

4. Adjourn

Mr. Walsh made a motion to adjourn the meeting at 6:52 pm. Mr. Mitola seconded the motion which carried unanimously.

Respectfully submitted,

Pru O’Brien
Recording Secretary