

## **Minutes: Town Meeting**

### **August 25, 2005**

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The Town meeting of August 25, 2005 was called to order at 5:03 p.m. by First Selectman Richard Sears in the Land Use Office. The first order of business was the election of a Moderator. William Fairbairn was nominated and elected.

MR. FAIRBAIRN: Ill ask Janet to read the Call

MRS. WILDMAN: Warning: Town of Washington Town Meeting. The voters and electors of the Town of Washington are hereby warned that a Town Meeting will be held on Thursday, August 25, 2005 at 5:00 p.m. (immediately following the regularly scheduled Board of Selectmens meeting) at Bryan Memorial Town Hall, Washington, Connecticut, to consider and act upon the following agenda.

1. To consider and act upon a proposed Ordinance Regarding the Taking of Private Property by Eminent Domain.
2. To consider and act upon a proposed Amendment to the Ordinance to Establish an Open Space and Land Acquisition Fund.

A copy of the proposed Ordinance and Amendment is available in the Office of the Town Clerk.

Dated at Washington, Connecticut this 1st day of August 2005. Richard C. Sears, Nicholas N. Solley, Harry H. Wyant, Board of Selectmen.

MR. FAIRBAIRN: If anyone wishes to speak, please state your name and address for the record. Who will present the first motion? Hank?

MR. HENRY MARTIN: I will read the motion. It is hereby ordained by the qualified voters of the Town of Washington, acting at a lawfully called Town Meeting:

1. That neither the Town of Washington nor any of its elected or appointed agencies or officials, nor anyone acting in the name of the Town of Washington, shall be authorized to propose, approve or appropriate funds for the use of the power of

eminent domain to take private property unless the property to be taken meets one of the following criteria:

a. The property is to be owned by the Town of Washington or an agency of the Town of Washington, and is to be used or set aside for one or more public facilities, such as, but not limited to streets, bridges, parkways, sidewalks, rights of way, or other public ways, parks, playgrounds, schools, or public sewer, water or waste disposal or transfer facilities; or

b. The property is to be owned by the Town of Washington and set aside for permanent open space or drainage or erosion control facilities; or

c. The property poses a danger to public health or safety as a result of physical deterioration, pollution or contamination, and is to be taken by the Town of Washington for the purpose of remediating such conditions or minimizing danger to the public.

2. If any portion of this Ordinance is determined to be unlawful or to be in conflict with any governing state or federal law, the remaining provisions of this Ordinance shall remain in effect.

3. This Ordinance shall take effect fifteen (15) days after publication in accordance with Connecticut General Statutes 7-157.

MR. FAIRBAIRN: Is there a second?

VALERIE FRIEDMAN: Second.

MR. FAIRBAIRN: Do you want to make some comments?

MR. MARTIN: This proposed ordinance responds to the Federal Supreme Court decision last June which affected New London. I don't know how many of you are familiar with that, where the Supreme Court basically ruled that in the absence of State or local laws to the contrary, it would be allowed to have local government take property from private property from property owners by eminent domain and have that private property transferred to another private property owner. This is a new non-traditional use. In the past eminent domain has always been used for the reasons I set forth as I read this proposal for use such as roads, bridges, parkways, schools, sewer systems that kind of stuff. What happened this past June there is a clearly new category where they can take your home and give it to Marriott Hotel if they can come up with the rationale that they would have a higher tax revenue for the town or city. So basically, this is to prevent what we consider inappropriate use of eminent domain.

This is basically saying that your local town government is voluntarily restraining itself from these inappropriate uses of eminent domain. We should all feel pretty good about this that the town is willing to do that and respect for private property ownership rights. That is what this is about. The Supreme Court decision basically invited towns like us to do this. They basically said they are in favor of what New London did to do what it did was the basis of respect of local rights and they noted that in the City of New London and the State of Connecticut there is an absence of laws which would mitigate this and they basically invited local boards to enact regulations which the Supreme Court would respect. So that is what we are doing and paving the way which the Supreme Court has encouraged us to do so. Any questions?

MRS. GEORGIA MIDDLEBROOK: Georgia Middlebrook, Nettleton Hollow Road. Could the federal government come in and override this?

MR. MARTIN: Yes. Yes. It restrains the Town of Washington within its borders. But it is better than nothing. No question the federal and state governments trump our powers. Not only will the town not appropriate funds to do those things. In the City of New London it was a collaborative effort the state put money into it and the city put money into it. Our town will not put money into it where a land will be taken or a home would be taken from one property owner to another. Any other questions?

BON LOMBARDI: Bon Lombardi, Old Litchfield Road. The question I have regarding the eminent domain, can a proceeding be brought by the town without having a vote by the people at town meeting?

MR. FAIRBAIRN: We have a different form of government than New London. Here we have town meeting form of government. No representative form of government. The reality is that we would have a town meeting where we can decide that we don't want it.

MR. LOMBARDI: If the Board of Selectmen wanted to condemn a property ---

MR. MARTIN: You would have to overturn this Ordinance. That would be difficult to do.

MR. LOMBARDI: If something was done in accordance with the law, could there be a condemnation proceeding without town meeting?

MR. FAIRBAIRN: No. That is the beauty of our form of government. You would have to have a town meeting.

MR. MARTIN: Traditional use of eminent domain.

MR. FAIRBAIRN: The beauty of our government is that everyone has a vote. We don't have where one person represents 50 people. Whatever is done must be approved by a representative body.

JOHN HART: Rabbit Hill Road. Can we put that in the ordinance?

MR. MARTIN: I don't think we need it. It is already implied.

MR. FAIRBAIRN: Not what we are we all get to vote as to whether to exercise eminent domain or appropriate funds. We are a legislative body.

MR. SEARS: People have the power in this town.

MR. FAIRBAIRN: The Board of Selectmen and Board of Finance don't have the power. The power is the people. No matter what they do it has to be approved by us.

KEN CORNET: Nettleton Hollow Road. Can we add that the town cannot give away town property without a vote?

MR. FAIRBAIRN: Already in existence. Cannot do it without voting. Also the Planning Commission would be involved.

VALERIE ANDERSEN: Blackville Road. I speak in agreement with this. I support this ordinance. I think it is an excellent example of how we should use our regulations and zoning board regulations. I have one question. I know it was vetted properly, but could you explain how it was vetted?

MR. MARTIN: The vetting process started with a meeting with the Zoning Commission where we unanimously expressed our concern over the Supreme Court decision and decided to take the next step to determine what we should do about it. We contacted our land use attorney, Michael Ziska, who advised us that the best approach to conform to this was through the enactment of an ordinance as opposed to a revised zoning regulations. That would not provide sufficient scope of authority. I then brought the matter before the Board of Selectmen who were supportive of this concept and empowered me to ask Attorney Ziska to develop this language and he has a great knowledge of the state statutes and also doing research. About thirteen other states in this country have basically put together this proposal with his knowledge, the state statutes and what other states have done and he came up with this appropriate language for us. That's the vetting process.

VALERIE FRIEDMAN: West Morris Road. What is the status of the State? I know there was something..

MR. MARTIN: The State of Connecticut all they have done so far has been on a voluntary basis request that municipalities restrict themselves from eminent domain while they get their act together and figure out what to do. So no binding request and that is it so far. What happens in the future I don't know. The one thing I would say is that the State is not they don't feel about it the way we do. They participated in funding of the New London matter and so there are mixed emotions at a state level. And, therefore, I think it is wise for us to go ahead and do it on our own at this point in time.

MR. FAIRBAIN: Any further questions at this time?

MARK LYON: Wilbur Road. This is an excellent idea. I just have one question. Question is 1 b mentions setting aside for permanent open space. What type that is sort of inclusionary. That is something you are including

MR. MARTIN: Including by example. Taking private property for private ownership versus public and all ---might be conceivably possible. By example. The key issue is the property owned by the Town of Washington as opposed to private entity.

PATTY DORAN: River Road If land is put into a land trust, can the federal or state come in and take the land?

MR. MARTIN: I think it is probably fair game. Absolutely. It can be taken. The land trust is another property owner and if they wanted to, they would be empowered to do it.

PATTY DORAN: Even if it is conservation land?

MR. MARTIN: Eminent domain is scary business. I can't imagine our government even getting involved in this but it is good to put it on the books.

MR. FAIRBAIRN: Anybody else? Yes.

STEVEN PAGGIOLI: Tinker Hill Road I'm all for the ordinance. Is it customary for the town meetings to be held on a Thursday afternoon at five o'clock?

MR. FAIRBAIRN: There are more at this than there are at night.

MR. SEARS: I would like to answer that. No. And we have been asked that by other of our citizens. We are in the interim of a selectmen's meeting. We will reconvene our meeting and finish our business. I know this is difficult and I have heard this from others.

NOTE: Several people talking at once could not make out any one person. Whatever was said was followed by laughter.

MR. FAIRBAIRN: Anything further?

DORIS MATHEWS: Inaudible. (Asked to repeat but still inaudible)

MR. FAIRBAIRN: Are you amending it? Are you amending this motion or just making a suggestion?

MR. MARTIN: My suggestion would be to refer to the attorneys who worked on this and put everything together to unify all the legalities and appropriateness and that sort of thing. I would be reluctant to take it apart.

MR. FAIRBAIRN: Any further comments on this? Yes, John?

MR. JOHN ALLEN: I move the question.

CARLOS CANAL: Second

MR. FAIRBAIRN: We vote on the motion to move the question. If you want to continue debate you vote no and if you want to end discussion you vote yes. All in favor of moving the question vote aye. Carried. Now we will vote on the motion as made by Mr. Martin. All in favor? Opposed. MOTION CARRIED

MR. FAIRBAIRN: We will now move to the second matter. Mr. Sears.

MR. SEARS: I would like to make a motion to amend the Ordinance to Establish an Open Space and Land Acquisition Fund to add a new Section 5. That upon recommendation of the Chair of the Conservation Commission, the Board of Selectmen shall have authority to spend up to \$6,000. 00 for expenses incurred in investigation as to the suitability of land for acquisition by the Town of Washington. Such expenses shall include payment for the services of real estate appraisers, soil scientists, environmental planners and the like.

MR. FAIRBAIRN: Is there a second to that amendment?

VALERIE FRIEDMAN: Second.

MR. SEARS: This wonderful ordinance was passed quite a while ago to create an open space acquisition fund. This was the machinery to get money out of the town budget fund. We found out that we, in talking with the owners of the Potter Farm, came to see how the ordinance works. The ordinance, as originally set up, protects the

public by a long involved process of consideration before a town can purchase land for any purpose. And it goes back and forth between the Board of Selectmen, the Planning Commission, the Conservation Commission and Board of Finance several steps going back and forth and finally for your vote of the town the people . Its a great protective ordinance; however, when dealing with real estate transaction and need to move more quickly than that process, oftentimes ..and privacy, and the value might escalate, it gives the Board of Selectmen and the Conservation Commission a little bit of leverage to decide whether or not to move forward on a suggested parcel. People are working on talking with the Potter Brothers about the farm. There is no particular decision about whether the town will end up buying this or by keeping the boys on the farm or someone else. We have to have real estate appraisers and engineers up front to do advance work to even get to the decision. We set the \$6,000 limit because that is what we can do without competitive bidding. Over \$6,000 would have to be put out to bid. This would give the Selectmen authority to spend on any given project to determine whether or not it should come before you and buy a parcel by the town. So we come to you to expedite with a little bit of money in conjunction with the Conservation Commission share you will be in the discussion as it moves forward.

MR. FAIRBAIRN: Any questions or comments on this? Mrs. Andersen.

VALERIE ANDERSEN: Blackville Road. I dont have a lot of problem with this, but I am uncomfortable with the construction .inaudiblethoughtful ordinance to begin with separate funds. And also it is a five oclock meeting. But, in particular, why wasnt this vetted before beginning with the money. Is the \$6,000 for the Potters? Obviously, in general, .(much more was said which was inaudible)

MR. FAIRBAIRN: Do you want to respond?

MR. SEARS: It is per parcel for expenses in investigating acquisition by the Town.

MR. FAIRBAIRN: Anybody else with questions or comments they would like to add?

MARK LYON: Wilbur Road. Is this funded out of the open space acquisition fund?

MR. FAIRBAIRN: I believe so.

MR. LYON: In conjunction with the Board of Selectmen who would decide when a parcel might be acquired? How often can you spend \$6,000 is the question.

MR. MARTIN: During the course of a year three potential opportunities to buy property xyz, this would authorize up to \$6,000 for each one.

MR. FAIRBAIRN: Anybody else?

JACK FIELD: Upper Church Hill Question of Hank. Does that mean one time per parcel or two or three on the same parcel? It doesnt say. It isnt clear.

MR. SEARS: It is not to go over the \$6,000 limit per parcel.

(Other voices contributing but not audible)

DAN SHERR: Cook Street. We have allocated I am on the Conservation Commission and Open Space. Funds have been put aside each year about \$25,000. Never really intended to create an acquisition fund this size to make a purchase. The intent was, first of all, to declare on the part of the town our commitment to open space. Secondly, to enable a review and investigation in which the town would have a vested interest. The only issue I want to make clear in response to Jack and Hanks comments, it isnt per parcel so much as it is per opportunity for us with a particular parcel. I only bring it up because if we have an opportunity to buy the Potter Farm we would go through a review, make a determination this is not appropriate for us to decide. And a decade later the same opportunity presents itself and we would have to spend an additional \$6,000 ten years later to do the review. This is needed only to provide the town with enough information to make a statement to the community that this is or is not to be involved in. So thats the spirit of this.

KEN CORNET: Nettleton Hollow. If you have \$25,000 a year to invest and \$6,000 to investigate the property, where will you have the money to buy the property in the first place?

MR. FAIRBAIRN: That is not germane to the discussion. That is another philosophical thing.

FRANCES DeSIMONE: Sunset Lane What does it mean by suitability. Suitability for what?

MR. SEARS: Purchase of open space. Defined and put before the people.

CARLOS CANAL: Sabbaday Lane Yes. This amendment was generated by the need of the Farm Land Task Force to look into farm losses confronting the town. As you know, we have the Potter farm site up for sale and I understand the Seymour farm just sold for \$14 million---

MR. FAIRBAIRN: \$12 million. 320 acres and only 15 can be used.



MR. CANAL: \$12 million.

(several people talking at once no idea who is saying what)

MR. CANAL: The question is raised and the amounts are large and no way can the town be the only purchaser involved in the Potter farm. The Whitehead farm has 120 acres and may come on the market. What we found is the problem of the costs to be incurred, walk the land with someone who is knowledgeable and in this case using Mark Picton who is knowledgeable. Take the Potter farm as an example, we have come up with six varieties of plans that relate to subdivision recognizing that at the end of the day if we are going to purchase 130 acres of a farm this type we are going to have to get the money, were going to have to reserve some of the property for parcels to be sold with restrictions and whatever to raise money and the key, obviously, the more money you raise from donors, the less to preserve and protect as much of the land as possible. There are other costs. limited appraisal, maps, copying costs, all sorts of little things are required for upfront money. You cant begin to understand the problem in front of you. We went to the town and asked, Can you help us with this? We want to get going. This goes from one commission to another commission and then through a vote by the town. This gives us the ability to and by the end of the day put together a creative package and that most of the funds with be from private sources for open space acquisition. But by and large (no ides what he is saying)..Town residents who pony up big to get the job done.

KATHY GOLLOW: Kinney Hill Road Would the town ultimately own the property or would it be owned by the land trusts like Steep Rock or Weantinogue. Basically, the town is spending \$6,000 but the town may not end up owning the property. In other words, is the town paying for other organizations to become the owners?

CARLOS CANAL: The intent with many of the regulations, federal and state level, is that it would be the land trust at the end of the day. The town could own the land if the town could put up \$5 million.

MR. FAIRBAIRN: Town decision. If the town were going to make a financial contribution. .Meeker Swamp..Steep Rock..

MR. MARTIN: I want to clear up the \$6,000. We just found out at our zoning meeting Monday night that the Seymour property consists of four lots. I assume what we are talking about here would not be necessarily four parcels, but one farm.

MR. SEARS: Potential acquisition.

MR.MARTIN: If that was the one we were doing. \$6,000 to evaluate that overall four parcels, is that correct?

MR. LOMBARDI: It speaks for itself. It says parcels. Parcels for opportunity. It says Parcel 4, \$24,000. If we are going to make---

MR. SEARS: I would amend it to read after the \$6,000 figure insert for potential acquisition. Let me read it. That upon recommendation of the Chair of the Conservation Commission, the Board of Selectmen shall have authority to spend up to \$6,000.00 per potential acquisition by the Town of Washington. Such expenses shall include payment for the services of real estate appraisers, soil scientists, environmental planners and the like.

MR. MARTIN: This is an amendment to the proposed motion.

MR. FAIRBAIRN: All those in favor of this amendment say aye. Opposed?  
CARRIED

(Note: Did not hear a second although there might have been one)

JACK FIELD: There is \$25,000 a year going into it. That is not exactly right. There was \$25,000 last year and \$50,000 this year and a plan for \$150,000 That fund could be used for whatever purpose. It was set aside so that money would be available for whatever purpose for land acquisition.

MR. FAIRBAIRN: Any other questions or comments. Anyone else like to speak?

MRS. WILDMAN: I would. May I speak?

MR. FAIRBAIRN: Absolutely.

MRS. WILDMAN: Old Litchfield Road When this land is acquired and a lot is left in open space, who pays to take care of it so it doesnt grow up into brush? It doesnt take long before barberry, briars, poison ivy, bittersweet, multiflora roses, who is going to take care of this?

MRS. MANNING: Thats why we need farmers.

MRS. WILDMAN: Well, I grew up on a farm so I know what can happen. Our land at home is covered with brush.

MR. CANAL: It depends on the owner. If it is Steep Rock, if the owner is Steep Rock, Steep Rock has the responsibility of taking care of the land. It is the owners responsibility to take care of the property.

MRS. VAN HORN: West Shore Road The purpose of buying the property is to prevent sub-dividing. I would prefer the barberries.

MR. FAIRBAIRN: Any further questions. We will vote on the motion as amended. All in favor say aye. Opposed. MOTION CARRIED.

MOTION TO ADJOURN AT 5:32 p.m.

I, JANET M. WILDMAN, do hereby certify that the foregoing pages are a true and accurate transcript of the proceedings of the Town Meeting of the Town of Washington held on August 25, 2005 at 5:00 p.m. to the best of my ability.

DATED AT Washington, Connecticut this 31st day of August, 2005.