

SPECIAL TOWN COUNCIL MEETING

544

July 9, 1987

7:30 p.m.

A special meeting of the Wallingford Town Council was held in Council Chambers, called to order at 7:37 p.m. by Chairman David A. Gessert. Answering present to the roll called by Susan M. Baron, Council Secretary, were Council Members Adams, Bergamini, Gouveia, Holmes, Killen, Papale, Rys and Gessert. Mayor William W. Dickinson, Jr. arrived at the meeting after the roll was called. Mr. Polanski was not present for the meeting.

Discussion with the residents of West View Hills.

Mr. Gessert explained that at a previous meeting, Mr. Braithwaite indicated that their Committee would like to come before the Town Council and present their situation and indicated that they had not been heard. We called a special meeting to listen to their presentation.

Mr. David Doherty, 6 Reynolds Drive introduced Mr. Dwayne Braithwaite of 26 Kingsland Avenue, Mrs. Sharon Daly of 39 Cooper Avenue, Mr. Paul Gough of 1 Kingsland Avenue, Mr. Henry Renfrew of 25 Audette Drive and Attorney James Wu of the Carmody and Torrence Law Firm in Waterbury. Mr. Robert Keating of 22 Cheryl Avenue was not present. Also present is our appraiser, Mr. Ed Heberger from Cheshire. As my part of the presentation, I will give a little history as we see it, as our point of view as to what has happened in our particular area. As you are probably aware, the PUC in December of 1985, held a meeting at which they set new sewer rates that would take effect in December of 1986 and for the next 2 years following. At this particular point, these new sewer rates would affect West View Hills quite a bit differently, than in the past. In the past, we have always kept to the \$15.00 contract. We found out about this December 1, 1986, a year later, when we got the December billing from the PUC. This is followed December 10, 1986, by a letter from Mr. Richard Nunn, the Chairman of the PUC, indicating that things are different because of the Federal Grant for the Sewer Plant. We did send some people down to talk to the Mayor about this and as a result of this, we received a letter on January 20, 1987 from Mayor Dickinson, suggesting that we have a meeting at Lyman Hall. This meeting was held on January 29, 1987, a special meeting of the PUC with the Mayor present and an outside New Haven Attorney, Mr. Norbert Church. Attorney Church talked to us at this particular meeting and told us about the Federal Regulations that called for uniform sewage use charge. He said that the 99 year agreement was beyond the Town's power to do and was potentially offensive to the public good or the good of the town. Attorney Farrell said that the town had bonded this \$16 million dollars and it would cost the average taxpayer \$700 per year for 7 years. Attorney Farrell said that the EPA said that we could not pay these through the use of taxes. It must be a self sustained system of user charges. Attorney Church further stated that the Federal Regulation supercedes any deed restrictions that we have. The residents at that particular meeting, questioned why Attorney Church had been hired 2 years prior to this particular meeting and had done all of this research with no meetings with residents involved at all. The residents asked if the town was going to make any type of proposal at this particular meeting. Chairman Nunn offered a cash settlement of \$500 or a credit of \$750. This had been recommended to them by Attorney Church, hopefully to avoid litigation. On February 3, 1987, the PUC met again. At that meeting, they postponed liens until June 1, 1987 and at that February 3rd meeting, they voted to null and void the agreements that existed with the residents in the area. On February 19, 1987, the Rights-In-Deed group held a meeting at Moses Y. Beach School, and we were authorized to form a Committee with Mr. Braithwaite as Chairman. The PUC held their next meeting on February 24, 1987 at Lyman Hall High School and at that time, they told us that interest must be charged on our bills. They made no offer to us at that particular point. The Rights-In-Deed Committee was introduced to them and we told them that we were ready to meet with them at any time. People from Audette Drive asked questions about back billing.

It seems as though, somewhere in the early 1960's, these people began to pay the full rate and they have a contract like the people in West View Hills. On that same night of February 24th, they then convened (the PUC) later with you, the Town Council, at which time the Mayor and Chairman Gessert told them to try and reach a settlement with these particular people involved. A few days later; there was an Executive Session held by the PUC on February 28, 1987 (Saturday). We seem to find difficulty with the Executive Session and we told them that we thought that this was illegal. On March 17, 1987, the PUC held another meeting. The Mayor stated the DEP letter warned about the recovery of all grant money if the deeds are pursued. This constitutes a pending claim of \$15 million dollars in his eyes. At this March 17th meeting, Chairman Nunn told us that if we did not agree with this, to file a complaint with the FOI, which we did. Mr. Braithwaite asked them if they would like to go into negotiations and Mr. Kovacs said that they need a list of owners because they had just discovered the Kondracki Lane contract and they needed a whole list. He said that they would be ready in 2 or 3 months and that would put it in May or June. On April 7, 1987, the PUC met again. They were asked by the Mayor about negotiations, and Mr. Beaumont said about 2 weeks. A letter from Mr. Denison at this time, talked about a \$92,000 write-off of uncollectable accounts receivable from the Masonic, due to an agreement signed with that particular group. On April 8, 1987, we filed a claim with the Board of Ethics, under violation of the Town Charter. On April 19, 1987 we hired Attorney James Wu. Attorney Wu, on April 23, 1987, sent a letter to Mr. Nunn, Mayor Dickinson, Mr. Gessert and the Town Attorney at the time, informing them of our desire to meet again. On April 28, 1987, the Board of Ethics ruled that they were unable to find probable cause for a complaint to be pursued. On May 5, 1987, the PUC met again. Attorney Farrell, with the advice of Attorney Church, advised that they hire an appraiser, and \$1,500 was set aside to do this. On May 8, 1987, Attorney Wu met with the PUC and their Attorneys and no progress was made. This is the one and only time, on May 8th, that we have actually, in some way, form, shape or manner, sat down with them and held any type of negotiations. On May 10, 1987, we held another meeting with our particular homeowners at Rock Hill School and were authorized to do whatever necessary, including Court Actions by our group. On May 26, 1987, the PUC met again. They voted to delay sewer liens against us until September 1st. Mr. Nunn asked Attorney Farrell if he had informed Attorney Wu that the PUC would make an offer when the appraisal is received and he said yes that he had notified Attorney Wu. On June 18, 1987, the PUC met with the Town Council in a special meeting and at that particular time, they attempted to turn the matter over to you and we now have the July 9th meeting here tonight. There was one other particular event here. On March 17, 1987, as I indicated, Mr. Nunn encouraged us to go to FOI and we did and filed a complaint on May 4th with the FOI. There was a hearing on May 19th, which we testified up in Hartford and then finally, a full Commission vote on June 24th. As you know, we did win that particular complaint on certain grounds that they had held an illegal meeting. The town spent \$1824.60 for the Attorney for that meeting and he was there on June 24th for another 4 hours which is about another \$600, so the total bill is probably about \$2500. This gives you some idea of what has happened so far. I will now turn it over to Mrs. Sharon Daly and let her fill it in a little more.

Mrs. Sharon Daly: I am just going to give a brief history of some of the times the town has looked into the legality of these agreements. All of the agreements, the West View Hills agreement, Kingsland Avenue (Williams Estate) agreement, Audette Drive (Rosewood) agreement and Kondracki Lane (Norshop) agreement were made between the developers and the Burgesses and the Warden of the Borough of Wallingford dating 1950 to 1953. I won't go into the specifics of these agreements, they will be evident as you read the agreements and you are probably already familiar with most of them through the newspaper articles. But, there have been times the town questioned and investigated the legality of the agreements, each time coming to the conclusion, in the words of a former Town Attorney " that a judge would be hard-pressed to make a favorable decision allowing the town to terminate these agreements." In August, 1952, a suit was filed in New Haven Superior Court concerning water mains, not sewer lines, to West View Hills. However, a declaratory judgment was requested by the Borough concerning the authority by which these agreements were entered into. But the Judge, the Honorable Thomas J. Molloy, denied that petition and no declaratory judgment was made. The agreements remained in force. In June, 1958, Town Attorney Matthew G. Galligan, reported to the Town Sewer Authority Chairman, Edward Dubiell, that he had checked into the agreements and indicated the sewer board was bound to its requirements and the agreements remained in force. On January, 1958, an investigation was requested of PUC Chairman Thomas J. McKenna by

John P. Gallagher to "determine if the Borough had the legal authority to enter upon a 99 year contract for services at fixed rates and if they did, petition the courts for relief from these contracts." The State of Connecticut, at this time, had required on a mandatory basis that treatment facilities be augmented hence increasing the cost of service, excluding contract-covered homeowners. We cannot find a record of whether or not the investigation was done. In August, 1960, Attorney for Sewer Authority, Robert Billings, stated, that until a test case was brought to court, the Sewer Authority would disregard the contracts. But, after complaints by homeowners, the fixed rates were re-instated. We don't know when or why because there is no record of that. In February, 1968, Town Attorney Regan noted " he thinks the town should abide by these agreements and the PUC should be told, if necessary, that this is the opinion of this office, things should be left as they are in regard to these agreements." In September, 1977, Vincent Mascia, Sr. quoted a figure of 320 homes covered by the contracts. It is interesting that that is the exact number we have arrived at including, West View Hills, Kingsland and Audette, which was already being overcharged. Very different from the approximate number of 270 homes, which the PUC is now claiming are covered in all 4 agreements. Brian J. Farrell, Town Attorney at that time, requested a list of people covered by the agreements and the charges of that time "so that we do not wind up in a situation where a loss of our declaratory judgment would open us to make back payments to people who were overcharged." We are wondering if he was referring to those homeowners on Audette Drive and Kondracki Lane, that it was known at that time that they were being overcharged. Apparently, there was never a declaratory judgment. Numerous pieces of correspondence appear to be missing or lost, perhaps never retained at all. Record keeping on this issue is found to be lacking. In asking "why?", it could be logical to assume that none of these aforementioned actions were followed up on as someone in the legal department of the town kept coming to the same conclusion, that these agreements were and are legal and binding. That brings us to correspondence between the town and the EPA, which will be discussed by Mr. Henry Renfrew.

Mr. Henry Renfrew: The prior administrations, Town Attorneys and probably since the 1960's, have been well aware of this problem and they have constantly sidestepped the issue. It appears that we have adequate documentation to support that. Every time they go to address the problem, the Audette issue for example, comes up, and here, the town is collecting money from the residents of Audette Drive since the 1960's when it has an identical contract to other people and yet they are charging them \$15.00. It seems to be that the administrations in force at the time and the Town Attorney's opinion is "let's don't raise the issue." It's very conscious and we have documents to support that issue. Regretably, that places the Council, in a position here today with this history, which is very very complex. So, It is not a matter of any of this being a surprise to anyone and unfortunately it is coming to a head for both you and for us. What I am going to talk about, is the grant.

Mr. Gessert commented to Mr. Renfrew, that when he says "it is not a surprise to anyone", the people that signed these letters, Mr. Mascia, Sr. who is dead, Mr. Farrell who has been gone for several years, Mr. John Gallagher, Mr. McKenna who is also deceased, so the West View sewer rates may have been well known to other people in past years. I think that if you ask Mr. Gouveia or myself, or Frank Adams or anybody sitting at this table, 2 years ago, if they knew that they had different rates in West View Hills, they would have said no.

Mr. Renfrew continued: Since 1979, and these people are alive today, I will read and quote from these documents. All of this is circulating around you, you have the ultimate authority and responsibility, you are the one that has to make the decision to resolve this and with the grant application, you are told that there is no problem, and that is not the way that it is. Example: 1979 regarding the Federal Grant, Robert Regan, Assistant Town Attorney, writes a letter to the EPA regarding the issue, "It has come to the attention of the PUC of the Town of Wallingford, that an agreement of this type might jeopardize the Federal Grant for the construction of the Sewer Treatment Facility, in that, the yearly charge is \$15.00 per unit, referred to the above, not to be equivalent to the proportionate share of the cost." It goes on to say "In regards to attempting to void these types of agreements, in the court system, I feel a Judge would be hard-pressed

to make a favorable decision allowing the town to terminate these 547 agreements." This is the Assistant Town Attorney, in 1979 and also the PUC got a copy, and Mayor Vumbaco got a copy. The response to that letter from the EPA, was quite clear. They were told in 1979 that by statute, the EPA can make no grant, unless the guarantee develops a system of charges, which insure that each recipient of the waste treatment pays its share. Should the Borough wish to obtain grants in our program, these impediments to the formulation of the approval user sewer charge, must be eliminated, and that was 1979. In 1984, I have a letter from the state DEP to PUC which reads:

"In recent months, we have discussed the need for Wallingford to approve an equitable user charge prior to receiving federal grant funds for the new sewage treatment plant project. There are two specific cases in Wallingford where separate agreements have been reached in years passing, concerning the sewer usage charge."

"As a delegated state agency, this office is informing you, that there will be no exceptions allowed. The deviations from the requirement has been requested in the past by other municipalities with similar situations as Wallingford, but these requests have been denied."

Mr. Renfrew continued: So, here again, in 1984, it is a clear indication that they are discussing this problem. In 1985, April, now in the course of this, from the grant perspective, the Mayor has been repeatedly quoted as saying that he would have done anything. From a citizen in the town, anything means, that they were dealing with the system and totally unconcerned about the individual rights of all of the citizens in this town. I think that you were kept in the dark too. I am also told, that this particular grant was not handled in the normal process of the town and I don't know why. I understand that it was between the Mayor, the Town Attorney or the PUC's Office and then a consulting firm. All of this is going on and developing, without your knowledge. It is a conscious and deliberate decision of not informing you, the Town Council and certainly keeping us in the dark. That is very difficult for us to handle. In April of 1985, the Mayor wrote a letter to the State DEP. In the letter, he quotes "Your office has a copy of the Town of Wallingford's current Water and Sewer Use Rate System. It is my understanding, that the current system is not in compliance with 40 CFR Part 35.2140 (uniform charge) for only two reasons: (1) large volume users and (2) there is no method of assessing surcharges for high-strength discharges." Again, the Masonic Agreement is not out at that time and our Agreement is not out at that time. I feel that you should not see us as an enemy and you should see us as very distressed citizens over this. We have done our homework, the documentation is clear, you have now been informed and this issue is going to come to a head between all of us. Looking back on it, I think the town's handling of this was totally wrong. They had the opportunity to start dealing with us and the way it is now, there are threats that we are going to cost the \$15 million dollars. If you look at it, if we filed our lawsuits and we file it within a few months, lawsuits take a year to go about and upon completion of the Plant, is when the full payment is completed and due. If our lawsuit is outstanding, at that point, what happens? It is not our fault. This started in 1984. Another part of it is, if we win. If we win, the Federal Government may take a position to go back and collect all of the money. I think the Town, should have had the responsibility to come and address and deal with us in a responsible manner. I think that the fact that you were not informed is very wrong. I think we have been at odds, and we really shouldn't be. We are good citizens but, I think the treatment, the sudden billing, threatening us with liens and we have been unable to sit down and deal with the problem. My final comment is on the Audette issue. With the town collecting money and it appears that individuals in the town, knowingly and willfully collected money, from 44 people on Audette, knowing that we had a contract, and treated us different. That upsets me very much. The form of Government is very important to all of us. It has to be open and fair. That is an indication that it hasn't been. In January, I personally gave a letter of request to look into the Audette issue and get some answers. It is still unresolved. It is an indication of major problems that have occurred in the past. I hope that we can all work together, we can hopefully resolve this, because it is going to come to a head for all of us. I thank you very much for your time.

Mr. Paul Gough: We have done our homework, and it has not been 548
easy because of inactions in the town. We have had a terrible
time collecting records, records that should be freely available
to us under state law. There are 2 basic Statutes that deal with
public records. When these things first started out, some people
went down to PUC and asked to see some things, they were told
"sorry, it is in the computer". The state law specifically states
that records and computers are public records that have to be
produced. Everytime we asked for something in the beginning, we
were stone-walled. Apparently, from what we can see, the only
town records that exist, are a couple of hundred of pages sitting
in the Town Attorney's Office. There are no other records in the Sewe
Division, or that is what they are telling us. The documentation of
everything that has gone on is very sparce, until we get into the
grant problem. We started asking for certain things, and certain
policies kept coming up. One policy was to re-record tapes of their
meetings after 6 months. I thought these types of records should
be saved so, I wrote a letter to the Public Records Administrator,
asking, in April, asking him to inform the town of the various laws.
The law states that the records of the town, are the property of
the state, they are not the towns records and the state decides
what happens to them. The state requires that they not be disposed
of without official authorization. Yet, we have parts of corresponden
and we can't find the other parts. They have been disposed of at
some point, and I doubt that there was proper authorization for those
disposals. I wrote to the Public Records Administrator and asked
for all of the records pertaining to this. I pointed out specifically
that the PUC states that it re-uses its tapes of meetings, after 1
year and I did not know what the retention time was for the other
records. At one of their meetings, Mr. Nunn referred to a letter
from the Public Records Administrator, that told them that they only
had to hold on to these records for 6 months, that is, tapes, audio
meetings, generally 6 months after minutes are approved, is listed
in the schedule of General Administration Records. The Public Records
Administrator's rules also state, that records that have anything
to do with the matter that is still open, cannot be destroyed. The
only reason that records can be destroyed is (1) it must relate to
a matter that is closed, (2) it must have been retained for the length
of time specified in the currently approved retention schedule
(what Mr. Nunn referred to), (3) its disposal must be approved
in writting by the Administrative head of the Municipality (Mayor)
and by the Public Records Administrator. We would like to point
out that the town's record keeping might need to be overhauled.
On FOI, we have only been to the FOI Commission once. We have asked
for records and the state law states that records are supposed to
be available in the Office of the agency, during business hours
and they shall be available promptly. When we asked for the records
of the Town Attorney's Office, we had to wait a while and then we
were informed that we had to make an appointment to see them.
We were also told that the Town Attorney had to be there while the
records were being looked at. The PUC held this executive session
and they lost their arguments. They argued that this meeting was
held to discuss pending claims and litigation. The FOI considers
pending litigation to be something filed in court and there is
nothing pending, even at this moment, under that definition. At
that time, we had not even hired an Attorney. There were also holding
a meeting in Executive Session and they had 7 people there who
were not Commissioners. They had the Mayor, the Assistant Town
Attorney, the Assistant Town Attorney's son, Ray Smith and 3 Town
Council Members. At the hearing, Mr. Beaumont was asked if these
people were there to give testimony and he stated that he believed
so. The law also states that they should only be there for such
time as to give testimony or opinion. The PUC was ordered, forthwith,
to provide the complaintant, Sharon Daly, with copies of all existing
records which reflect what was discussed at the February 28th Executive
Session. The PUC is indicating that they don't have any records
of this meeting to release so, the FOI went further and said, if
no such records exist, the respondent, within 1 week of the final
decision in this matter, shall provide a complaintant with an
affidavit so stating. The final decision on that matter was on
June 24th. More than one week has passed and Mrs. Daly has not
received such an affidavit. If no records exist, the PUC was
within 2 weeks of the final decision, which was up yesterday, the
PUC was to provide the complaintant with a memorandum reflecting to
the fullest extent possible, the discussions and occurrences at
such Executive Session and nothing has been received from the PUC.
It appears that they are in violation of the FOI Commission.
They could have it appealed, which is what they might be doing now,
and you should be aware of such appeals and they are expensive. We

will be pursuing this to make sure the law is complied with and I think that the Town Council should be aware that there may be a very large expense having to do with this appeal. Through this, we have gotten minutes of the PUC placed in the Library, and they join the Board of Education, the Town Council, Planning and Zoning and several other bodies that make their records available to the public. In reading their minutes, we find that they are not always accurate and complete. The town should consider looking into how its records are kept and make sure that they are very complete. The FOI holds a seminar once a year for town employees and I suggest the town send a bunch of them, next time they hold a seminar. 549

Mr. Dwayne Braithwaite: As you know, these 4 contracts are on file in our town land records. For the most part, they are recorded on each and every deed and they have been honored by the town for some 30+ years, depending on which contract you are dealing with. As for their being voided, the December billing was the first method by which they were voided and the Mayor has repeatedly stated that this is true. The first letter that I received was 10 days after I received my bill. A part of the letter read:

"The Commission feels that it is appropriate that this subsidy program be concluded so as not to jeopardize our receiving the \$15 million which is necessary to carry out the completion of the new Sewer Treatment Plant."

Mr. Braithwaite continued: On February 3, 1987, they held a meeting and Mr. Nunn stated "the bills have been issued and we feel that they are issued correctly and they were issued legally and they are in full compliance with the Federal requirement that the town have a uniform charge system." He also stated that the town states that it is a federal mandate that the town charge a uniform rate. Mr. Nunn states, that in order to become eligible for the Federal Grant, the town must operate under a uniform sewer system. Mr. Beaumont states later, that this was a condition of financing. I have a problem because, I don't think that it is both. First of all, it was a term of financing. The town had to have a uniform system of charges before they were eligible for this grant. It was not a federal mandate that our contracts be eliminated, there is no law that we know of where towns are not allowed to enter into agreements with personnel. The current state statutes are very clear that the town has a right to give its PUC's the right to enter into contracts for a number of years. He goes further to say that they do not recognize that the agreements have been entered into. Mr. Nunn stated for the record "the Commission does not recognize the agreements have been entered into." One paragraph later, Mr. Kovacs makes a motion to void them, and he reads into the record, in fact, that night I was given a photostat copy of a handwritten legal pad of where Attorney Church had given him this statement. Mr. Beaumont seconded it and there was a discussion on the motion. Attorney Church stated that "only in limited circumstances might a municipality be able to declare something null and void. Circumstances where there is an agreement that lasts for 99 years, an agreement such as that, is more likely to be voidable." The tax portion of Ashlar Village is forever and it was an agreement (contract), it was not a legal action. Attorney Church states "if the court upheld the agreements, it means that the town will not get the federal funding." A unanimous vote was declared to void the contracts. Mr. Nunn, on February 17th, sent us another letter and he stated "as you have probably read in the newspapers, the Commission had its February 3rd meeting and voted to have prior agreements void." At the PUC meeting of February 24th, at Lyman Hall High School, he reviews the action taken on February 3rd, and again he talks about the voiding of the contracts. They accepted the minutes, which made them official and at that time, Mr. Gough asked if the minutes of the last meeting state the date on which the contracts are considered null and void. Mr. Nunn read the motion from the meeting and Mr. Gough stated that there was no date mentioned. Mr. Nunn states that the effective date was February 3rd. We took issue with that because we asked, how can you void or charge us in December for action you did not take until February? Mr. Nunn stated that he felt this action was legal and Mr. Gough stated that you cannot go backwards and it went on. Attorney Church stated that the Commission has the ability to levy water rates and sewer charges. It was also stated that the rates were passed last summer and we looked into some of that information. At that meeting, there was a question asked about our agreement and it was not in the record and we found

that it was not answered on the advice of the Attorney. Even at 550
this point and time, when the issue was brought up, it was suppressed
and it is not in the records. I would also like to mention that
Mr. Burns of Cooper Avenue, stated that at the January 29th meeting,
there was a request for several documents. One was the Attorney's
fees. Attorney Farrell states that no bills have been rendered by
Attorney Church. After several attempts to get this letter, I finally
got the billing and this was the same night that they met with you
and the same question came up. I later got a copy of the invoice that
shows that that invoice was paid on February 11th. The presentation
was given to the Mayor, Attorney Farrell received the letter, all
3 Commissioners signed for the letter and Raymond Smith paid it, all
before that date. Why, both at that meeting and this meeting did
no one realize that there had been a billing? The billing was in
the neighborhood of \$5200.00. This brings me to the Town Charter.
In the Town Charter, there is a section, Chapter I section II, describe
the rights and obligations of the town "if any contract has been
entered into by said town, prior to the effective date of this Charter,
which contains provisions that the same may be enforced by any
Commission, which is abolished by the provision of the Charter. Such
Contracts shall be in no manner be impaired but shall continue in
full force, in the effect that power is conferred and the duties
imposed with reference to the same, upon any such Commission, shall
accept as otherwise provided in the Charter, therefore be exercised
and discharged by the Mayor of said town" So, we felt that any
agreements that were entered into by the Borough, which were prior
to the effective date of this Charter, the town was bound to live up
to them. The next section is Section 11. Obligations of Public
Utilities Divisions - "This Charter shall not in any way impair any
obligation relating to the Electric and Water Departments or the Sewer
Authority of the Town of Wallingford, as constituted prior to the
effective date of this charter; and shall not change or alter the
obligations of any existing contract, bonds or other obligations, all
of which, insofar as they apply to the electric and Water Departments of
the Sewer Authority, shall be binding on the Board of Public Utilities
Commissioners of the Town of Wallingford, and all such obligations
are assumed by the Town of Wallingford under the direction of its
Board of Public Utilities Commissioners as herein provided." Unless
I am mistaken, this is pretty clear to me. It is my contention, that
the PUC, under the Town Charter, did not have the right to void these
agreements, since they were made prior to the adoption date of this
Charter, they were made back in the 1950's. I tried to find out what
to do about this and I read further in the Charter under Chapter XVII,
that we had a Board of Ethics. Section 1. -B-2-a. states that
"Upon the written complaint of any person, signed under penalty of
false statement, or upon its own complaint, the board shall investigate
any alleged violation of this charter and/or any such Code of Ethics."
There seems to have been a problem with and/or, so I looked it up.
Websters defines and/or as a function word to indicate that 2 words
or expressions are to be taken together or individually. So, the
Ethics Board should hear violations to the charter, which do not
involve ethics complaints. We filed a complaint and gave certified
copies of every one of the agreements, from the town land records,
certified records of minutes (where they have stated that they were
voided) and all that got me was a response back that said that there
is no probable cause to pursue a complaint. Ethics board Chairwoman
Janis Webster said the board would not consider the complaint because
too many facts in the case were disputed. "This is premature to be
at the Board of Ethics because it hasn't been determined what exactly
the residents had as agreements and if they were voided," Webster said.

Mr. Braithwaite continued: I believe that these questions were
answered. I do not see how anyone can look at this evidence and
not come to the conclusion that the PUC overstepped its authority,
by voiding the contracts in an effort to get Federal Grant monies.
The questions that I would put to the Council would be "Did the
PUC have the authority to void the contract, under the provisions
of the charter, and if not, what should be done about it?" The
charter should not be taken lightly. Each elected official of this
town, is sworn to uphold it. I would like to thank you for your
time in this matter and appeal to your sense of what is right, and to
take positive steps to resolve this situation.

Attorney James Wu: I have been retained by Rights-In-Deed to
represent it, in its claims against the town and the PUC of Wallingfor
As some of the other speakers mentioned, we always wanted to resolve
this matter out of court and we did have a meeting with Attorney Farrell
and Mr. Nunn, some time ago and we did discuss obtaining appraisals
of the damages that may be suffered by the residents (335 households).

we have hired an appraiser and we have analyzed the contracts and we have drafted the lawsuits. We are in a position now, to go forward. I was not at the meeting where Attorney Church was with the PUC and analyzed the law that said the agreements were null and void but, I ^{SSI} did get a copy of his letter, and we looked at all of the cases that he referred to in his letter. The single most important case that he used to justify his conclusion, didn't support his conclusion. The case that he cited stated that the Federal Regulations supercede the contract and therefore the Federal EPA Regulations Control, doesn't state that. The other cases he talked about, said these agreements were null and void and he said that they were beyond the power of the Borough and the town to make. The cases he cited were different and it is my opinion that the Borough did have the power to make these agreements. They are not agreements for a limited period of time, 99 years, of which 37 years have already run on the first agreement, which is the West View Hills agreement in 1950. For 37 years, the borough and the town has abided by the agreement and I do not see any legitimate way the town, at this time, can breach the agreements. We analyzed his letter, he had other points of law he felt the town could not delegate away certain powers and our conclusion is the opposite of his. Based upon our research, we feel that these agreements are both valid and binding upon the successors and interest, which means the town is a successor in interest to the borough and all of the people that own houses in those streets, that were covered by the 4 agreements, authorized me to draft a lawsuit, and I have. You will, in a reasonable period of time, be receiving copies. We are bringing 2 lawsuits. The first one is going to be a class-action suit, and it is going to seek a declaratory judgment, that the agreements are valid. The PUC declared them null and void, back in February. It does not have the power to do so. Only the court can declare these agreements null and void. The second part of that lawsuit is that we will be seeking specific performance of the agreements. You will note that they refer to covenants running with the land, to interest in real property and you can seek what lawyers call, specific performance, and that is the agreement that has to be performed. Thirdly, we are seeking an injunction, both a temporary injunction and a permanent injunction, against the town and the PUC. Specifically, we are seeking to prevent the Town of Wallingford and the PUC, from charging, assessing or collecting more than \$15.00 per year, from the named Plaintiff and all members of the plaintiff class. We are also seeking money damages. In a second lawsuit, that involves the members of Audette Drive and Kondracki Lane, we are seeking reimbursement for the monies that they have over-paid for approximately 20 years, interests, costs and attorney fees, on the grounds that the town and/or its officials and/or its attorneys and/or its members of the PUC. As a courtesy to Attorney Farrell, I will send him a copy of the complaints, so he may review them. They are not being served now, they will be served within a reasonable amount of time, because the group wants to negotiate and I understand that the town does not even have its appraisal yet, which July 21st is the date the town said they would obtain their appraisal. However, it also appears to the vast majority of members of Rights-In-Deed, that the town has taken its time in this process and I believe that the membership really wishes to receive, and in my opinion, regardless of whether there is a settlement, we must file these lawsuits. With 335 families involved, a class-action is the only legal vehicle to bind the people in this otherwise, you would have 335 separate lawsuits. These class-action suits will be filed very shortly. Thank you for your time.

Mr. Braithwaite pointed out that when Mr. Renfrew was talking about the Audette agreements, a question that crossed my mind was, at the last PUC meeting, I asked specific questions about the Audette agreements, that they are going to be hard-pressed in finding out exactly who they have over-charged in that area. They only keep their records for a very short period of time. In terms of the \$15.00, you say, "why did they over-pay?" Their rates at that time were not that inconsistent. We found a newspaper article back in 1958, where they started to charge the regular rate.

Mrs. Daly pointed out that back in 1958, there were only 2 agreements that were recognized then.

Mr. Braithwaite added that a payment of \$15.00 to \$120.00 was substantial. I just want to make it clear, that it was an oversight on their part.

Mr. Renfrew explained that on Audette Drive alone,, 39 of the 44 homes have joined us in support of the lawsuit. We are very serious

and dedicated in that area. Mr. Renfrew asked Mr. Gessert if he was aware, that the night that he was demanding to know how much the Attorney was paid, if he realized that at that time, they had already made the payment? Mr. Renfrew added that they were concealing this from the Council. Mr. Gessert remarked that there is no doubt about that. 550

Mr. Braithwaite added that in the PUC minutes of February 24th, it was requested by Mr. John Burns, prior to coming here, it states that Attorney Farrell states that no bills have been rendered by Attorney Church. The same was conveyed to you at your Council Meeting. Not only was it presented, it was presented to the Attorney's Office and I have a letter from Attorney Farrell that states that he sent it, received one invoice and sent it on to the PUC, and when I got the invoice, it shows that no less than 5 people that were sitting there in front of you, knew that that bill had been paid and had signed and approved it.

Mr. Renfrew added that this was all done without the knowledge of the Council and asked how the Council can negotiate with them when this is considered null and void? There is nothing to negotiate. They did not have the authority to do this and if you look at the charter, I think you will agree with us.

Mr. Braithwaite stated that he would like to submit to the Council, that this town should have grant agreements, that you adopt and vote. In the town's Sewer Ordinance, there is a position in the back, where the Town Council is supposed to adopt the Sewer Ordinance. The regulations state that if you do not have meter service, you are to be charged \$122.00, and this is what we submitted to DEP. Yet, they can void our contracts but they will give two people a special agreement (which is what they did), and cut their rates virtually in half and that sets a precedent that they are not abiding by the rules. I sympathize with these people, but if you are going to make the regulation, and you are going to void 350 households, then you are going to have to void those individual people with individual problems. That action that PUC took the other night, could jeopardize the contract. As far as DEP is concerned, they are not in compliance and if that is true, that family has just cost us \$15 million dollars. Mr. Braithwaite added that he does not agree with the town's billing system and he believes it should be updated. An example was when Mr. Braithwaite went to the town to get some information regarding his billing, and was told he could not have the information because they could not retrieve it from their computer.

Mr. Gough pointed out that the town is threatening to put liens on their properties (PUC). We all believe that these contracts are valid.

Mr. Killen asked Mr. Gessert what he thought they should do from here and asked how long they were going to have to wait for an opinion from the Town Attorney. Mr. Gessert said that he would submit a letter to the Town Attorney requesting the information. Mr. Killen added that Attorney Church's findings were not agreeable.

Mrs. Bergamini stated that we can waltz around these meetings night after night, but the only way this thing is going to come to a head is if you come to us and say we want X number of dollars for each family. You have two things to worry about, how much money they want before they will give up their deed agreements, and whether they can get all of the almost 335 homeowners involved to agree with the settlement. I would like to add that I am not speaking for the Town Council, I am speaking for myself.

Mr. Gouveia commented that he does not believe that 6 or 7 people should decide what is good for their government and the representatives of the people should not be kept in the dark. I am appalled that the Council was never consulted on this before now. (APPLAUSE)

Mrs. Bergamini pointed that some of the Council Members who have been on the Council for 10 years, have never been made aware of this situation.

Mr. Braithwaite added that he thinks the record shows that there was a gamble to which the Council was not a party. The gamble was to get \$15 million dollars from the Federal State Government at the expense of 335 residents. When relief was not forthcoming, they

then decided to take a calculated risk and bill us and see what happens, and this time, it did not pay off.

553

Mr. Renfrew commented that his Committee thanks all of the people that are present tonight and also, when these meetings occur, we have never solicited door to door, we are not into circuses, game playing, we are trying to be very serious and responsible citizens.

Mr. Gessert commented that he would like to thank everyone who attended and express his appreciation, not only to the people at the front table for their rational and well thought out explanations and also for those in attendance for giving them the opportunity without turning this into a cheerleading exhibition.

Mr. Braithwaite added that the Committee would also like to thank the Council for giving them the opportunity to be heard.

Mr. Gessert added that he can assure the Committee that there are not many people on the Council that are happy with this situation. "It looks like previous administrations saw this as a hot potato especially during election years and it was just put under the table.

Mrs. Papale pointed out that she has been on the Council for 10 years and has never heard of this problem and pointed out that she has a copy of a letter from Vincent A. Mascia dated September 22, 1977 to Attorney Brian Farrell, which states "We should proceed to institute court action to determine the legality of the agreement. If you wish to discuss the matter, please let me know."

Mr. Gough stated that he felt that they are afraid of losing because they would have to pay back a lot of money.

Mrs. Papale added that if it wasn't for the \$15 million dollars, she does not believe that this ever would have come up.

Mr. Braithwaite agreed with Mrs. Papale and added that it is in the minutes of one of the PUC meetings, where Mr. Nunn stated that himself.

Mr. Killen stated that in view of what the Council has heard tonight, he would suggest that the Council take another look at Ashlar Village.

Mr. Braithwaite brought up the issue of a pipe which was installed under the Quinnipiac Bridge for the Masonic Home and he believes that it is at capacity and the Ashlar Village is pushing it over capacity. He suggested that the Council look into this also. He added that in their agreement, there stated that there may be a need for a future pumping station of which the Masonic people were supposed to pay some percentage. Mr. Gessert pointed out that the original problem with the pipe was the weight on the bridge.

Mr. Gouveia pointed out that even though this has been going on for some time and they have letters dating aback to 1977, the Grant was not applied for until 1984.

Mr. Doherty commented that Mr. Denison and Mr. Smith were very cooperative, allowing me to look at files, computer run-offs on West View Hills, and sat down for 3/4 of an hour and looked at their maps. I think that if we can work with these people and try to work this out by the end of the month and by then we will have our appraisal, maybe we could fill your particular request on an amount. We will be more thsn happy to sit down with them and negotiate.

The Committee Members again thanked the Council Members for allowing them to view their side of this problem and the Council thanked the Committee Members for their input.

A motion to adjourn was duly made, seconded and carried and the meeting adjourned at 9:20 p.m.

Meeting recorded and transcribed by:
Susan M. Baron

Approved David A. Gessert
David A. Gessert, Chairman

7-21-87
Date

Rosemary A. Gessert
7-21-87