

TOWN COUNCIL
TOWN OF SOUTH WINDSOR

Minutes

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August 26, 2015

TOWN COUNCIL – Special Meeting
Council Chambers – South Windsor Town Hall

1. Call Meeting to Order

Mayor Anwar called the Special Meeting to order at 7:30 p.m.

2. Roll Call

Members Present: Mayor M. Saud Anwar
Deputy Mayor Edward Havens
Councilor Thomas Delnicki
Councilor Carolyn Mirek
Councilor Andrew Paterna
Councilor Liz Pendleton
Councilor Janice Snyder
Councilor Stephen Wagner

Others Presents: Matthew B. Galligan, Town Manager
Keith Yagaloff, Town Attorney

3. Public Participation

Mr. Bart Pacekonis, 39 Blue Ridge Drive came before the Council and stated that he has heard that the developer does not want to move forward with the Connecticut Studios project and feels it is time for the Town of South Windsor to move forward with another project on this property. The Town has learned from the Connecticut Studios project and that experience can be used in the future. A technology park has been proposed for this property which would be a benefit the Town. Mr. Pacekonis said he is looking forward to learning more about this proposal.

Ms. Sheila Appleton, 161 Woodland Drive came forward and stated that the Connecticut Studios project has been in the works for years. There has been no movement and the Town has nothing to show for this. Ms. Appleton urged the Council to make changes to the current plan and allow for mixed use development on this site. Allowing mixed use development, (fuel cell and technology park) would bring several positives to the community. The Town would have access to power from the fuel cell during emergencies, there would be additional public

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ITEM:

3. Public Participation (Continued)

shelter space for the residents during emergencies, additional tax revenue could be generated from new businesses, there would be revenue from the sale of electricity generated from the power cell and will bring high tech and high paying jobs into the community.

Ms. Sandy Jeski, 75 Murielle Drive came forward to voice her support for this new technology park project. The economic development is very important to the Town. Ms. Jeski urged the Council to approve the proposal and allow the Town Manager to go forward to enter into the necessary agreements.

Ms. Susan Kneip from East Hartford and a former Mayor of East Hartford came before the Town Council. Ms. Kneip stated that she has followed the issue of the movie studio extensively and is trying to determine how much local, state and federal monies have been put into this project. Ms. Kneip said she is concerned about what happened to the \$14,000,000 in film state tax credits. In January 2015 the Connecticut Studios, Phase I consisted of construction of the fuel cell and it appears that the consultant who is affiliated with Connecticut Studios is involved with the fuel cells. Ms. Kneip questioned if that is accurate. Ms. Kneip also questioned who owns the land on which Ritter has filed his law suit trying to make claim to the land. The individual who was speaking on behalf of Connecticut Studios had emphasized that the project had been vetted by the State, Ms. Kneip questioned who on the State level vetted this project and are there minutes supporting that statement.

Ms. Madeline Appleton, 161 Woodland Drive came forward and stated that she attended a week long session where she learned about politics and government at the local level. In this session, she learned that the residents of a Town elect people within in their community to represent the citizens of South Windsor. It is shameful if any of the elected officials of South Windsor choose to play politics with the well being of our Town which is why Ms. Appleton stated she feels the elected officials of South Windsor should do what they think they were elected to do which is to bring in revenue and business to our community.

Councilor Pendleton read a letter from Daria Plummer, 235 Orchard Hill Drive into the record. The letter supports the business and technology park on the site of the Connecticut Studios project. This appears to be a wonderful opportunity to use the site and to bring businesses into the community.

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ITEM:

3. Public Participation (Continued)

Councilor Mirek read a letter from Mike Sullivan into the record, as shown in attached **Exhibit A**.

4. Communications

None

Councilor Wagner made a motion to suspend the rules in order to go to Item 6. A. Councilor Paterna seconded the motion; and it was approved, unanimously.

6. Special Business

A. Discussion Item: Status of Connecticut Studios Project

Mr. Galligan informed the Council and the public that for years the Town has been trying to develop the I-291 Gateway Corridor, without success. Mr. Galligan explained that under the Connecticut Studios project everything was centered on the studios. It was a concern of the Council and the developer that if the credits went away, the Town would have four or five empty buildings. So it has been decided that if someone comes into the Town and wants to build a studio on a certain amount of acreage and they have their own money and experience, then a project of that kind would move forward. The Council had requested items to be done which would protect the Town's interest. The Town Attorney did what he needed to do and the other item was to come up with a Payment Agreement for the fuel cell which is before the Town tonight, as shown in attached **Exhibit B**. The fuel cell will generate \$514,000 per year to the Town to pay for public improvements to move the I-291 Corridor forward for economic development purposes. If the Payment Agreement is approved, the next step would be to put together a Development Agreement. This development calls for \$3,500,000 of public improvements and \$2,750,000 for a microgrid which the Town will build under public improvements and will own. It has been negotiated with the developer that some of the credits will come to the Town which will allow the Redevelopment Agency to have a budget.

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ITEM:

6. A. (Continued)

Mr. Andrew Toth who is the developer of the property came forward and explained that the revised development plan would consist of a mixed use business technology park. This type of development is trying to attract a skilled and educated labor force in various industries.

Mr. Peter DeMallie of Design Professionals, Inc. came before the Council and gave an overview of Phase I and Phase II for the development of this area. Mr. DeMallie stated that a mass transit service would be needed to support this type of development.

Mr. Keith Cumnick of Colliers International and Mr. Bob Urso of Murray Real Estate both came before the Council and informed them they both would be working on this project. They both stated they are looking forward to moving forward with this project.

Mr. Frank Wolak of Fuel Cell Energy stated that while the fuel cell may be the catalyst of the development, in many ways it is the simplest part of the entire project. The fuel cell is a manufactured product made in Connecticut. It will take approximately one year from the manufacturing order to be installed.

Mr. Galligan then informed the Council that as part of this project, a transformer pad will be installed near Pleasant Valley School in order to make that facility a shelter in the time of an emergency. The CREC school has been contacted to see if they would like to be part of the program also. Other critical facilities are also being considered.

Answering questions from the Council, Mr. Galligan explained that the Redevelopment Agency came up with the idea of having a reverter clause on the project in which the Town Council adopted and there have been a number of extensions. The reverter on the deed is a strong reverter and would need to be tested in a court of law. The property is in the name of Connecticut Studios which has been taken by dck. The Town is presently trying to work with the developer to create a plan. Town Attorney Keith Yagaloff explained that there are several parcels of land that are part of this project and each is encumbered by the deed and each of the deeds have different language for

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ITEM:

6. A. (Continued)

reverters. The Town has taken steps to ensure that its rights are protected as to each of those parcels. There is a Fuel Cell Payment Agreement before the Council tonight and this agreement will ensure that the project is going in the right direction. A Development Agreement will be written with input from all interested parties. The fuel cell has to be in operation within a certain deadline, otherwise the fuel cell can not be accomplished under the Power Purchase Agreement. The developer is under pressure to get this project done in a certain time frame. Mr. Toff added that the major time constraint has to do with the funding of the Federal Tax Credit that is needed in order to expedite the economics of the fuel cell. The fuel cell needs to come on line in order to get 30% credit of the project. The most important criteria to meet is the Federal Guidelines by December 2016. If the date is not met, there is a potential of the percentage to change which would put a financial strain on the budget. Mr. Dan Marsh explained that it would be a sunset of the legislation so the risk is it may not be a reduction, it could be a complete elimination of the Federal Renewable Energy Tax Credit. The way the fuel cell syndication would work is that based on the cost to build the fuel cell and the related attachments, you achieve a certain budget and multiple that by 30% and then you sell those credits at a present value to an investor. All that equity comes from a third party source in normal transactions. So the equity comes into the project and the developer needs to put their balance sheet at risk to ensure performance of the fuel cell and that it continues to operate. The developer may be putting equity into the real estate side of the project; we are going to uncover that when we get into negotiations of the Development Agreement. The developer has tremendous financial risk in this transaction.

Councilor Pendleton stated that she is very excited about the benefits the Town will receive from this project.

Mr. DeMallie explained that there is an excess of 1,400 parking spaces on the plan which reflects the zoning requirements. There will be a significant amount of employees for this development. There is an entrance off of Chapel Road and a subsequent entrance on Ellington Road when development of retail is complete.

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ITEM:

6. A. (Continued)

Council members discussed the railroad crossing. Mr. Galligan explained that the railroad crossing is not a commuter rail and DOT said they would not do anything with the railroad crossing unless there is a high generation of traffic that would affect Route 5. Another way to allow the railroad crossing would be to give up another crossing in South Windsor.

Town Attorney Yagaloff explained how the agreement would work and told the Council that there is no cost to the taxpayers for any of the expenses. The fuel cell will produce money for the developer through a Power Purchase Agreement. If only the fuel cell were done, then the Town would not receive any funds because the fuel cell is tax exempt. The agreement that the Council received tonight states that the developer will pay \$514,000 per year for 20 years. Town Attorney Yagaloff explained further that all of the infrastructure and microgrid for this project will be paid for with the \$514,000. This project will generate \$35,000,000 of taxes over 20 years. The plan in this agreement is to guarantee \$10,000,000 to the Town if only the fuel cell is done. The plan is to leverage this money for the Town to generate \$35,000,000 of tax revenue. No infrastructure work will be done until the developer meets certain milestones. If Phase II of this development does not happen, then the land will go back to the Town. In order to have low interest tax exempt bonds, this project has to meet certain criteria. It is not the Town's money that is paying for the infrastructure; it is the fuel cell money that the developer is giving up that is paying for the entire infrastructure. The infrastructure is not going to start unless they meet the milestone in paragraph 4. The developer is going to give the Town \$514,000 when this is operational. The Town is not going to take any of that money and do any infrastructure work until they have met those milestones. The Town will leverage the \$514,000 for one year for what amounts to 1,800,000 a year of taxes, \$35,000,000 over 20 years. If the developer does not develop beyond the cul-de-sac, the land goes back to the Town. Their incentive to keep the land on the south side of the cul-de-sac in this agreement is to do Phase II. If the developer does not do Phase II, they lose that land. When the microgrid is built, it is paid for by the \$514,000, the State is going to reimburse \$2,750,000 of microgrid credits. Out of that \$2,750,000, the Town will receive \$1,350,000. Doing the development through a 501C3 will help to protect

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6. A. (Continued)

the Town because then the Town is not liable. The bonds will be paid for with the \$514,000. A referendum will not be necessary for the payment of the infrastructure because the Town is not paying for it. The infrastructure is being paid for by the fuel cell revenue which is coming from the developer.

Council members discussed the scenarios if the fuel cell failed and there were no funds coming into the Town to pay the bonds. The Council also discussed the language put into the agreement regarding extending emergency power which was left very broad in order for the Town to have flexibility in the future.

Answering further questions, Town Attorney Yagaloff explained that the Town will pay \$400,000 towards a permanent easement on the developer's real property which is a part of the \$3,500,000 that is being paid out of the \$514,000. The payments are coming from the fuel cell, not from tax dollars. The Town may get into further agreements to fund additional public infrastructure in the area south of the cul-de-sac, but that will be detailed in the Development Agreement. The Redevelopment Agency and the Economic Development Commission will not be a part of the Payment Agreement discussions. When the Development Agreement is drafted, both agencies will be involved. After both agencies make decisions on the Development Plan, it will then come back to the Council for review. Mr. Galligan added that this project will also need to go to the Planning & Zoning Commission and possibly other Commissions.

Town Attorney Yagaloff explained further to the Council that this project was brought to this Special Meeting in August rather than the Regular Meeting in September because the developer has a very tight timeframe and they need to accelerate this project. If the process they have to go through is not complete by December, they could lose the tax credits. Since the developer wanted to move this project along, during negotiations, the Town has been able to structure items that will be a benefit to the Town. Mr. Galligan added that the 13 days difference in holding a meeting would not make or break this project, but this project has a lot of State agencies to go through and every day is critical as it is moved along to get the project done.

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ITEM:

6. A. (Continued)

Councilor Wagner stated he feels this is a very appealing project and hopes it can go forward.

Mr. A.C. Davis who did the original microgrid design for the Connecticut Studios campus came before the Town Council and explained what a microgrid is and the benefits of it.

Town Attorney Yagaloff told the Council that the transformer pad that is proposed would include a transformer which is like a charging station for an electrical car, but on a much larger scale for emergency services.

Mr. Galligan stated that he feels this project is the best use for this property in this market. This project will add a mile or two of roadway to the Town inventory which should not impact the Town's budget. This project does not make the Town give up its good faith and credit and will not go against the Town's bonding. If the fuel cell fails because of the developer and Eversource, the Town will not have any responsibility. There will be insurance policies in place to protect this from failure. The only incentive for dck is the public improvements. The Town will be receiving rebate money which has never been done with any other project.

Town Attorney Yagaloff reviewed the steps necessary to have the public infrastructure and construction of the fuel cell being done. Attorney Yagaloff reviewed paragraph 4 in the payment agreement. Attorney Yagaloff assured Council that no Council member had access to any information during the negotiations of the Payment Agreement.

Deputy Mayor Havens stated that he would be supporting this project and feels this is a good project.

Councilor Paterna said he feels this new plan will attract business, jobs and tax revenue with no tax dollars being used to finance it and he would support this proposal.

Mayor Anwar requested that this proposal be put onto the Town's website.

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6. A. (Continued)

Town Attorney Yagaloff told the Council that if this project does not go forward, there would be extensive litigation over the property that will take three or four years to resolve. During that period of time, the Town would not be able to do any development on the property.

Mr. Galligan explained to the Council that the Town presently only has a few empty buildings in Town that could be used for manufacturing operations, but some of them have a problem with the building heights. Mr. Galligan explained that with this new plan, after some companies come in, there may be other companies that need to be near them and could use the buildings that are presently empty.

Mr. Galligan explained further to the Council that there are commitments put in place before the public infrastructure will begin. The fuel cell will be ahead of the schedule for the public improvements. The annual figure on Phase I is \$1,800,000. Town Attorney Yagaloff added that the overall amount for Phase I is \$46,000,000 with the costs of the buildings.

Councilor Riley requested that a flow chart be drafted for this project. Mr. Galligan stated he could do a chart for the construction and for the financing.

Town Attorney Yagaloff stated that the bonds will be paid out of the \$514,000 that the Town will be receiving from the fuel cell.

Councilor Riley said he has a problem supporting the formation of a 501C3 because when this entity goes to float bonds there has not been any input from the community or approval of the issuance of bonds, and although the Town will not be legally obligated to make sure the debt is paid, the Town is morally obligated. Town Attorney Yagaloff explained that the Development Agreement will have a lot of detail in it which will cover the concerns stated. Also, in the Payment Agreement, there is a section which addresses the risks.

Council members discussed the payment associated with the bonds.

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ITEM:

6. A. (Continued)

Councilor Riley stated that he likes the project, but would like more information. Councilor Riley said he feels there is an ability to enhance the structure of this arrangement by getting a guarantee from a third party source that will be able to guarantee that if power is not generated and the cash flow is not paid to the Town to cover the debt, that there is another entity to go to that is not the developer. Town Attorney Yagaloff suggested having this discussion during Executive Session.

Answering a question from the Council, Mr. Galligan explained that after dck did their due diligence on the Connecticut Studios project, they came back to the Town and said they would like to look at the project differently. A month after that statement, they wanted to change the Power Purchase Agreement. It was always felt from by the Town that a Payment Agreement should be done to protect the Town on the fuel cell. Then approximately four or five weeks ago the plan before the Council was drafted and has been being negotiated since. The Town has agreed to help with the financing of this project as an incentive to the developer. This will be the first time the Town has done anything like this because this is the first project in the municipal development zone. This area has been a very hard area to attract business to but now the Town will have some very strong infrastructure and a 24/7 operation which will be attractive to certain businesses that are looking in this area.

Mr. Marsh stated that it is projected that the fuel cell will generate approximately \$1,000,000 per year for the developer. This assumption was calculated by the Town, not the developer.

5. Executive Session

At 10:54p. m. Councilor Wagner made a motion to go into Executive Session to discuss documents containing financial information provided in confidence and exempt from disclosure pursuant to C.G.S. §1-200 (6) and §1-210(b)(5)(B) regarding The Connecticut Studios project. Councilor Pendleton seconded the motion; and it was approved, unanimously.

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ITEM:

5. (Continued)

The following individuals were invited into Executive Session: Mayor Anwar, Deputy Mayor Edward Havens, Councilor Delnicki, Councilor Mirek, Councilor Paterna, Councilor Pendleton, Councilor Snyder, Councilor Riley, Councilor Wagner, Town Manager Matthew B. Galligan, Town Attorney Keith Yagaloff, and Dan Marsh from the National Development Council.

At 11:27 p.m. Councilor Wagner made a motion to adjourn the Executive Session. Councilor Pendleton seconded the motion; and it was approved, unanimously.

6. Special Business (Continued)

B. Resolution Concerning Fuel Cell Payment Agreement

WHEREAS, the Town of South Windsor has been negotiating with CTS Energy, Connecticut Studios, and DCK regarding the development of land located along Ellington Road in the I-291 Corridor; and

WHEREAS, the negotiations involve a mixed use development that is intended to bring a significant amount of tax revenue to the Town of South Windsor; and

WHEREAS, the negotiations involved the construction of a 4.98 megawatt fuel cell electric generation facility, such fuel cell not being taxable by the Town; and

WHEREAS, the development previously was intended to involve the construction of a movie studio facility, a portion of the taxes from which would pay for the public infrastructure for the project; and

WHEREAS, the current owner and developer of the project has determined that the movie studio project does not appear to be financially viable, at least in its full scope and scale; and

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ITEM:

6. B. (Continued)

WHEREAS, the fuel cell will provide certain benefits to the Town and the developer (including the generation of stable and uninterrupted electricity for the Town's emergency use and for the project's tenants), revenue from the sale of electricity, and an opportunity to build a microgrid to which cost is reimbursable through a State grant; and

WHEREAS, the current owner and developer has proposed a mixed use development containing: (a) up to five buildings totaling up to 225,000 gross square feet for commercial uses; (b) one or two large scale buildings totaling up to 150,000 gross square feet for industrial uses; (c) one full service restaurant; and (d) up to 50,000 gross square feet of retail space and additional or alternative facilities and improvements; and

WHEREAS, the Town has negotiated an agreement with the owner and developer, whereby the owner and developer will pay the Town \$514,000 per year which sum shall be used to pay for certain infrastructure improvements

NOW, THEREFORE, BE IT RESOLVED that the Town of South Windsor hereby authorizes the Town Manager to sign a fuel cell payment agreement between the Town and the owner and developer which provides for the following:

The fuel cell provides stable and uninterrupted electricity to the development through a microgrid.

1. The Town will form a single purpose 501C3 entity which will issue tax exempt revenue bonds to fund: \$2,750,000 for the microgrid, \$3,500,000 public infrastructure improvements related to the Development, and up to \$2,000,000 for emergency service improvements.
2. The Developer will build a 4.98 megawatt fuel cell electric generation facility to generate revenue from the sale of electricity as set forth in the Power Purchase Agreement between CTS Energy and Eversource Energy.
3. The Town will apply for a microgrid design and installation grant of \$2,750,000 from the Microgrid Pilot Program facilitated by Connecticut Department of Energy and Environmental Protection ("DEEP").

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ITEM:

6. B. (Continued)

4. Public infrastructure improvements shall be up to \$3,500,000 which shall run from the entrance on Chapel Road to the roundabout/cul-de-sac as depicted on various site proposals.
5. Emergency services improvements shall be up to \$2,000,000 and may include onsite public sheltering, an onsite transformer pad that would provide the Town with access to emergency power from the fuel cell, extending power lines from the microgrid to the Town facilities for emergency sheltering.
6. The Town agrees to support amendments to the PPA and assist in obtaining support from the State, including the Connecticut Department of Economic Development, Eversource, and regulatory approval from the Public Utilities Regulatory Authority.
7. When the fuel cell becomes operational, CTS Energy will pay the Town \$514,000 annually for a total of twenty (20) years.
8. The \$514,000 payment obligation shall be binding upon CTS Energy and its assigns, and shall remain binding upon the lawful owner of the fuel cell, and this obligation shall not be dischargeable in bankruptcy.
9. The \$514,000 payment obligation shall be due and owing the Town regardless of whether the Developer has undertaken the development.

Was made by Councilor Wagner
Seconded by Councilor Pendleton

Councilor Wagner made a motion to extend the meeting to 11:45 p.m. Deputy Mayor Havens seconded the motion; and it was approved, unanimously.

Councilor Delnicki made a motion to postpone consideration of this motion until the September 8, 2015 meeting. Councilor Riley seconded the motion; and it failed on a roll call vote of 4 to 5 with Councilor Delnicki, Councilor Mirek, Councilor Riley and Councilor Snyder voting in favor of the motion and Mayor Anwar, Deputy Mayor Havens, Councilor Paterna, Councilor Pendleton and Councilor Wagner voting in opposition of the motion.

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6. B. (Continued)

Councilor Wagner made a motion to call the question. Councilor Pendleton seconded the motion; and it passed on a roll call vote of 6 to 3 with Mayor Anwar, Deputy Mayor Havens, Councilor Mirek, Councilor Paterna, Councilor Pendleton and Councilor Wagner voting in favor of the motion; and Councilor Delnicki, Councilor Riley and Councilor Snyder voting in opposition of the motion.

Mayor Anwar called for a vote on the motion; it passed on a roll call vote of 5 to 3 with Mayor Anwar, Deputy Mayor Havens, Councilor Paterna, Councilor Pendleton, and Councilor Wagner voting in favor of the motion; and Councilor Delnicki, Councilor Mirek, Councilor Riley and Councilor Snyder voting in opposition of the motion.

Respectfully submitted,

Deborah W. Reid, Clerk of the Council