

**Board of Finance
Special Meeting Minutes
Tuesday, November 24, 2015**

- 1. Call to Order:** Vice Chairman Fred Chmura called the meeting to order at 7:05pm.
- 2. Verify that all Members have been Sworn-In-Roll Call:** Michael Dougherty, David Hosmer, Roy Bradrick, David Richardson, Glen Lessig, Ronald Cabana, David Fortin, Fred Chmura and Jeff Kelleher were all present. All members confirmed that they had been sworn-in.
- 3. Seat Alternates if Necessary:** Not needed for this meeting.
- 4. Elect Chairman and Vice Chairman:** Michael Dougherty, seconded by David Fortin motioned to elect David Hosmer Chairman. **Motion passed unanimously.**

David Hosmer, seconded by Ronald Cabana motioned to elect Michael Dougherty for the Vice-Chairman position.

Glen Lessig made a motion to nominate Fred Chmura to the position of Vice-Chairman. Being no second, motion failed.

David Hosmer called for a vote on the motion to elect Michael Dougherty for the position of Vice-Chairman. **Motion passed unanimously.**

5. Approve Minutes from September 8, 2015 Regular Meeting: David Hosmer pointed out that under item 5 the discussion about restoration work being done at the Quasset School it should read as follows: Mr. Walker explained that the windows, the casings and the **shutters** at the school should be replaced...", not shudders.

Mr. Hosmer also pointed out on page 5, in paragraph 6, it should read " There was discussion on whether or not the Board of Finance minutes were being distributed to the Board of Education and the **Board of Selectmen**", not the Board of Finance.

Michael Dougherty, seconded by Glen Lessig moved to approve the minutes of the September 8, 2015 Meeting Minutes as amended. **Motion passed unanimously.**

6. Old Business – Discuss Report From the Town Attorney Regarding Employee Stipend: Below is a copy of the correspondence that has been received from the Town Attorney to the Board of Finance:

PRELIMINARY DRAFT SUBJECT TO REVISION November 9, 2015

Michael E. Dougherty
Chairman
Board of Finance
415 Route 169
Woodstock, CT 06281

Re: Town Health Insurance: Stipend Program

Dear Mr. Dougherty:

You have asked for our advice concerning the stipend the Town pays to employees who voluntarily choose to decline insurance coverage under the Town's healthcare plan. During this year's budgeting process the Board of Finance learned that full-time employees assigned to Town Hall, including four elected officials, are being offered incentives in the form of monetary "stipends" for declining insurance coverage under the health insurance plan offered by the town. The stipend program is a longstanding provision within the Town Hall employees' collective bargaining agreement.

As described, the stipend program is not intended to provide a funding source for employees to purchase their own private healthcare plans. I have been told that the purpose of the stipend program is to avoid the unnecessary cost of health insurance coverage for those employees who are already covered under their spouse's health insurance plan.

This year, seven (7) of fifteen (15) Town Hall employees who are eligible for health insurance coverage have declined this coverage and accepted the stipend. According to Town records provided to me by the First Selectman's office, the amount of the stipend is \$1,163 per month or \$13,956 per year. This amount is based on the premium cost of family coverage under the Town's healthcare plan through Aetna. The Board of Finance believes the value of the stipend is in excess of the cost of comparable insurance coverage for an employee. According to information provided by Town staff the Town's cost, comparable insurance coverage for a family is \$22,920 per year. address the legal aspects of the program.

For the stipend program, "Town Hall" employees are those (a) covered by the AFSCME collective bargaining agreement ("CBA") and (b) employees working in Town Hall in non-bargaining, full-time positions. The latter category includes paid non-bargaining elected positions. It does not include Highway Department employees covered under a separate labor agreement with the Teamsters Union, or employees of the Board of Education. It is a longstanding practice for the Town to offer non-bargaining unit employees in Town Hall the same benefits as those employees covered by the AFSCME contract.

Of the fifteen Town Hall employees eligible for healthcare benefits, six (6) are union members covered under the CBA collective bargaining agreement with AFSCME ("the CBA"). Three of bargaining unit employees have chosen to decline insurance coverage and therefore are receiving a stipend under section 15.2 of the CBA.

The specific stipend language of the CBA, in effect since 2013, is as follows:

Section 15.2

Employees who elect not to participate in the medical insurance provided by the Town shall receive a monthly stipend. This stipend is calculated using 50% of the total monthly healthcare premium for an employee who carries the health insurance and will also include a monthly portion of the annual HSA deposit for a family plan. Employee must provide proof of medical insurance coverage to take this option.*

Employees who qualify for this option, but who have already received deposits to their Health Savings Account (HSA) in the current fiscal year, will receive a prorated stipend amount during **that same fiscal year.*

As outlined below, in order to be compliant with the ACA, ERISA and IRS Regulations, the details of any voluntary stipends in lieu of health care must meet certain requirements.

You have asked a number of specific questions regarding this matter. The questions and responses are as follows:

1. *Is the current incentive program to encourage "Town Hall" employees to decline insurance coverage a violation of any regulations under ACA, ERISA, or any other federal, state department of labor, or EEOC regulations?*

Response: According to the Town's insurance consultant, stipends in lieu of health insurance coverage are a common provision within municipal collective bargaining agreements. The stipend is a voluntary benefit available to certain bargaining unit Town employees according to the terms of the CBA and, by longstanding practice, to non-bargaining unit employees. To be eligible for the stipend, employees must provide proof of medical coverage through a spouse or family member. As such, for the bargaining unit employees it was bargained for under the Municipal Employees Relations Act ("MERA") as part of the wages, benefits and conditions of employment. The voluntary stipend benefit is in lieu of the health care benefit, which, under CBA, is offered to all AFSCME bargaining unit employees.

So long as certain conditions of the stipend program are consistent with the recommendations outlined below, the stipend program is not likely to be found to be a violation of the Affordable Care Act ("ACA"). The ACA requires, among other things, that employers with more than 50 employees offer healthcare benefits to their employees to avoid penalties (the "Employer Mandate"). The Town of Woodstock falls below the threshold number of employees for the Employer Mandate. Woodstock, however, meets the spirit of the ACA Employer Mandate because it offers a health care plan to its covered employees. Even if the Town, as an employer, was subject to the ACA penalty provision, the stipend program does not appear to violate the Employer Mandate provision of the ACA because the voluntary stipend is in lieu of the healthcare benefit offered by the Town and is not intended to (a) provide a source of funding for employees to purchase health care coverage individually or (b) encourage "high risk" individuals to decline coverage.

2. *Is the language in the union (AFSCME) contract, as noted above, in violation of any regulations under ACA, ERISA, or any other federal or state department of labor regulations? If so, what steps should be taken to correct the situation? The contract does have a "savings clause" should any part of the contract be deemed invalid.*

Response: Section 15.2 of the CBA relates to the wages, hours and other conditions of employment. As such, it is a mandatory subject of collective bargaining under MERA. It provides a common bargained-for-benefit to employees who elect not to take the Town insurance coverage. The effect of the ACA Employer Mandate is discussed above. The Employee Retirement Security Act of 1974 ("ERISA") establishes minimum standards for pension plans and healthcare plans that are not self-funded. The Town's healthcare plan is currently purchased through Aetna Healthcare. As a traditional policy of health insurance Aetna Healthcare policy is subject to those sections of ERISA that pertain. According to the Town's healthcare consultant, the policy and the stipend program are fully compliant with ERISA. I recommend obtaining a written opinion to that effect from the consultant. In certain circumstances, stipends in lieu of healthcare coverage may be violative of certain provisions of ERISA, ACA and IRS Regulations if the stipend is intended to provide funding for an individual health care policy.

3. *Does the town have any legal obligation to provide a non-union "Town Hall" employee compensation for having declined insurance coverage?*

Response: Benefits derived from negotiated collective bargaining agreements are not legally required to be extended to employees in non-bargaining positions. But by longstanding custom and practice, however, the Town has extended the same benefits to non-bargaining unit employees as those defined in the AFSCME CBA.

4. *Since the incentive/stipend is considered FICA taxable and so impacts future Social Security benefits, are there any legal Social Security issues/implications that the town needs to be aware of?*

Response: No. I have been informed that the stipend is “after tax” compensation. As such, the stipend payments are considered ordinary income to the employee for the purpose of federal income tax and FICA. Under the Town’s pension contracts, the stipend is not included in the definition of “salary” for purposes of pension benefit calculations.

5. *Since the stipend being paid is in excess of that stated in the labor agreement, are there other legal issues related to this overpayment that could present liabilities or other causes for concern for the town? For reference: the labor agreement calls for a stipend equal to one half the cost of the premium for “an employee” plus a monthly allocation of the HSA for a family plan; we are paying one half the costs for an employee plus spouse or family plus the monthly allocation for the HSA for a family plan which is considerably greater.*

Response: The determination of the amount of the stipend being paid under the language of Section 15.2 of the CBA should be reviewed by the Town Finance Department. I have been informed that the value of the stipend has historically been determined by the cost of the premium for family coverage.

6. *Could the town be legally liable for issues regarding fairness or equal pay as a result of these incentives or the way in which they have been administered?*

Response: The stipend is a benefit negotiated within the Collective Bargaining Agreement and is available to AFSCME bargaining unit employees and, by longstanding practice discussed above, to non-bargaining unit employees. If another of the Town bargaining unit desires to include a stipend program in their labor contract, it is a necessary subject of the collective bargaining process.

Recommendations

Employer health care benefits are a rapidly evolving field, subject to a variety of federal law and regulations related to the ACA, the IRS and ERISA and the interpretation of those laws by federal administrative agencies, including the U.S. Department of Labor and the IRS. The following recommendations are derived from a review of available federal guidance documents and are intended to insure that the Town’s stipend program complies with recent changes in health care law.

- a. The stipend option should not be provided to enable an employee to purchase an individual policy.

Under the ACA, the stipend cannot be a health reimbursement arrangement (HRA) or constitute a promise to reimburse medical expenses. According to a November 6, 2014 guidance document issued by the U.S. Department of Labor, if the stipend plan provides cash reimbursement for the purchase of an individual market policy, it constitutes “group health plan coverage” subject to certain provisions of the ACA and ERISA.

- b. The stipend option must be offered to all eligible employees, without regard to their insurance risk.

The stipend program cannot be used to create incentives to remove “high risk” individuals from the Town’s health care coverage. Offering stipends to persons who present high claims risk violates the anti-discrimination provisions of several federal statutes.

- c. The stipend option should require proof of coverage through a spouse or family member.

To enable the Town to document that the above two recommendations are being enforced, the Town should continue to require proof of health care coverage for the employee through a health care plan offered by his or her spouse's employer.

I trust this responds to your inquiry.

Very truly yours,

Robert M. DeCrescenzo, Esq.
Town Attorney

RMDe/psm

David Richardson as well as other members of the Board of Finance were disappointed that it had taken six months to receive a reply from the Town Attorney, and they felt that his answers raised more questions than answers.

David Richardson pointed out that under section 2 of the attorney's opinion letter the Town Attorney suggests getting a written opinion from the Towns Health Care consultant, as to whether the AFSCME contract is in violation of any regulations under ACA, ERISA, or other federal or state Department of Labor regulations. He would also like to get a written opinion on this issue from the Board of Education's Health Insurance consultant.

David Richardson feels that the Board of Selectmen and the Board of Education should meet to see if the Town's health insurance could be combined with the Board of Education's Health Insurance. He recently read in the Norwich Bulletin that the Town of Brooklyn has recently done so. It was the consensus of the Board of Finance that this option should be explored in Woodstock. Acting Superintendent Viktor Toth stated that he believed that there was a meeting scheduled sometime in December to discuss this issue, and he also feels that the school unions would not be opposed to this.

David Richardson would also like to get a firm dollar figure on how much the health insurance costs for an individual. He feels that stipend should be corrected to be ½ of the cost of an employee. He also pointed out that the people receiving the stipend do not have the weekly health insurance deduction taken out of their paychecks.

David Richardson also has concerns with item #6 in the attorney's response. He feels that he answered the question for union employees, but not the non-union employees. He feels that the attorney did not address the fairness issue of the Elected Officials and the Department Heads receiving the benefits that the union contract provides to union members.

Glen Lessig asked if a member of the Board of Finance had sat in on the Town Hall Employees union negotiations. The answer was no. However, David Richardson pointed out that the First Selectman negotiated on behalf of the Town, and felt that that was a conflict of interest for him to do so, since he received the same benefits that the union employees were bargaining for. It was pointed out by David Hosmer and Fred Chmura that the First Selectman is the authorized to conduct Town business, and that it would be awkward not to have the First Selectman in the negotiations. Jeff Kelleher thought perhaps that in the next negotiations that the First Selectman could designate another member of the Board of Selectmen to do the bargaining to avoid the appearance of a conflict.

Fred Chmura would also like to make sure that people getting the stipend have proved that they have insurance as the attorney recommends in #5, and that it should be reviewed by the Finance Office. Treasurer Donna Stefanik said that the health insurance is handled through the Selectmen's Office, and currently not through the Finance Department.

David Richardson stated that the stipend is being funded at the family plan rate. He suggested that the Board of Finance tell the Board of Selectmen to not fund the stipend for the non-union employees during the next fiscal year. He feels that the stipend should be \$2000.00.

David Fortin, seconded by Fred Chmura, made a motion to request a quote for an individual cost of the health insurance coverage under the Town plan.

Treasurer Donna Stefanik felt that this may be a hard figure to come by since the dollar amount was based on the age of the person. David Richardson disagreed and felt that this should be an easy number to come by. Michael Dougherty stated that if the answer was not easily available that perhaps the insurance consultant could come and speak to the Board of Finance.

Chairman Hosmer asked for a vote on the question. **Motion passed unanimously.**

Glen Lessig, seconded by Fred Chmura made a motion to request from the Town health insurance consultant a written opinion if the if the Town healthcare and stipend is in compliance with ERISA and get an opinion from the Board of Education consultant.

David Fortin asked if Ms. Stefanik should contact the health insurance consultant or the Board of Finance. Ms. Stefanik said that if somebody on the Board of Finance wrote a letter, she would be happy to cut and paste the letter onto Town letterhead, and present it to the Board of Selectmen. She felt that since the Board of Selectmen's office handles the health insurance that that office should contact the health insurance consultant. David Hosmer agreed to write a letter, with a deadline for an answer.

Chairman David Hosmer called for a vote on the question. **Motion passed unanimously.**

It was the consensus of the Board of Finance that once a written opinion has been received from both health care consultants that those opinions are forwarded to the Town Attorney, with a request for a final opinion.

Glen Lessig, seconded by Ronal Cabana made a motion to send a copy of the Town Attorney's draft opinion letter to the Board of Selectmen for their review. **Motion passed unanimously.**

7. New Business – Approve BOF calendar for 2016 – 2017 Budget Process: Glen Lessig and Michael Dougherty made a motion to accept the 2016 – 2017 Board of Finance calendar as presented. **Motion passed unanimously.**

8. Review Non-Lapsing Updates: Ms. Stefanik pointed reminded the Board of Finance that at their September 10, 2013 meeting they passed the following resolution: "The Board of Finance requested that the Board of Education come to them before expending funds from the Non-Lapsing Account in the future as the account was created to be used for Capital Plan and emergency expenditures not recurring expenditures." Ms. Stefanik pointed out that the Board of Education has not done this, and the auditor picked up on this during last year's audit. Ms. Stefanik was informed that if this policy continues not to be followed the auditors will write a management letter in regards to this policy not being enforced.

Michael Dougherty explained to Acting Superintendent that the Board of Finance would like the Board of Education in the future to present to Board of Finance what Board of Education like to accomplish with some of the funds in the Non-Lapsing account. The matter is than tabled to the next regular meeting where it is than discussed and voted on. It was decided that if it was an emergency, the Board of Education could take out the money from another line item, than bring it before the Board of Finance.

Michael Dougherty, seconded by Glen Lessig moved to amend the original motion of September 10, 2013 to read as follows: The Board of Finance **requires** that the Board of Education come to them before expending funds from the Non-Lapsing Account in the future in the as the account was created to be used for Capital Plan and emergency expenditures not recurring expenditures". **Motion passed unanimously.**

Glen Lessig, seconded by David Fortin, motioned to approve expenditures in the Non-Lapsing Account dated November 1, 2015, as presented. **Motion passed unanimously.**

9. Review BOE Budget Projections: David Richardson asked Viktor Toth for a dollar amount for each Special Education child so that the Board of Finance could get a better understanding what Special Education costs.

Viktor Toth, Acting Superintendent explained that the State of Connecticut has informed the Board of Education that Special Education cost reimbursements may be cut by 15%. This means that the Board of Education will not be reimbursed approximately \$45,000.00. He also explained the cost for Special Education for Woodstock Academy is taken out of the Academy budget, and if not the K-8 budget. Mr. Toth reminded the Board of Finance that the Special Education numbers are volatile due to students moving in and outplacement services that may be made.

David Fortin asked why there is no payment in the quarterly reports for tuition and special education. Mr. Toth explained that without a bill there can be no encumbrances or payments made.

10. Review BOE Request for addition 19,000.00 towards Purchase of School Generator: Viktor Toth explained that to install a generator at Woodstock Middle School would cost \$130,000.00 to install. The Board of Education has applied to the State of Connecticut for a security grant for the generator. The State of Connecticut will fund \$78,923.00 leaving the Board of Education to contribute \$51,077.00. The Board of Education would like to request the Board of Finance to allocate \$19,000.00 towards the generator with the balance of the funding coming from the Non-Lapsing account. He further explained that not only would this generator help prevent school from being dismissed during a power outage it would help prevent equipment damage, spoilage of food and it would allow security equipment to function. This generator would also allow WMS to be used as a shelter during a natural disaster.

David Richardson feels that a generator of this size is not needed for the school. He feels that people would not drive or be able to get to WMS in case of an emergency. He also feels that the generator may not prevent equipment damage. He stated that a smaller generator would be a better option. He feels that this is too expensive. He suggested that a log be created to keep track of the times the power was lost at WMS and if a generator would have been useful.

David Hosmer stated that he felt that WMS would be used as a shelter during a natural disaster. He and Michael Dougherty informed the members that not all of the fire departments have showers or kitchen facilities to accommodate people, and that the Town Highway Department would be plowing the roads to make sure that people were able to access WMS.

David Fortin asked if this was an insurance policy against Eversource. Viktor Toth said that it was.

Glen Lessig, seconded by Fred Chmura made a motion to approve the \$19,000.00 toward the local match required by the State.

David Hosmer suggested that the vendor bill be submitted to the Finance Office, this money be taken out of the contingency fund up to \$19,000.00.

Fred Chmura asks Mr. Toth if the \$130,000.00 will cover the cost of everything needed to hook up the generator. Mr. Toth said that it would.

David Fortin was concerned that if WMS is designated as an emergency shelter that the school will than fall under additional State requirements.

Jeff Kelleher asked if there would be a power switch on the generator that would turn off the power during a brown out. Mr. Toth assured him that there was.

Chairman Hosmer called for a vote on the question. **Voting in favor of the motion:** Michael Dougherty, Ronald Cabana, Fred Chmura, David Hosmer, Glen Lessig. **Nay votes:** David Fortin.

Motion passed.

Fred Chmura, seconded by Glen Lessig motioned to take \$32,077.00 from the Board of Education's Non-Lapsing account to cover the rest of the matching part of the grant. **Motion passed unanimously.**

11. Discuss Letter to be sent to BOE and BOS regarding 2016-2017 Budget Process:

David Hosmer wanted a letter to be sent to both boards asking them to prepare a zero increase budget for the fiscal year 2016-2017.

Michael Dougherty, seconded by Ronald Cabana made a motion to send a letter to the Board of Selectmen and to the Board of Education to keep their budgets held at the current levels and to come to a Tri-Board meeting at the end of the January or the beginning of February.

There was much discussion among the members as to whether a letter stating that budgets should be kept level was worth sending. Glen Lessig and Jeff Kelleher argued that both boards understand that there are budget constraints, and that they do not need a reminder. They also felt that the boards should present a budget with what they need knowing that the budget will be cut. They feel that the people should know what the true needs are for both boards.

David Hosmer felt that this would give both boards false hopes, and would be a waste of time. David Fortin stated that the State of Connecticut is in a deficit, and will cut what is being given to the Towns, and that the boards should be mindful of that. David Richardson felt that the boards should come in with a zero increase budget, with a priority list of other items that could perhaps be funded if there are additional funds.

Chairman Hosmer felt that the Board of Selectmen and the Board of Education need to be reminded to govern themselves accordingly. Fred Chmura felt that that point could be made at the Tri-Board meeting, and does need to be part of the letter.

Mike Dougherty, seconded by Glen Lessig amended the above motion to invite the Board of Education and the Board of Selectmen to a joint meeting, with the date to be determined, once a preliminary Grand List number has been set. **Motion passed unanimously.**

12. Review All Quarterlies: Treasurer Donna Stefanik explained to the Board of Finance that revenues in Planning & Zoning fees, building permits and conveyance tax revenues are up, and almost at budget. Building permits have increased due to permits for solar panels, and conveyance tax revenue is up due to more homes being sold. Some of the revenue has been put into cds.

13. Citizens Participation: Ernest St. Jean stated that it would be nice if people would come to the regular Board of Finance meetings.

Ronald Cabana asked Viktor Toth if there was a formal agreement between Woodstock Academy and the Woodstock Public Schools. Mr. Toth explained that it is been 12 years since Woodstock Academy and the Woodstock Public Schools had a formal agreement. The other sending towns do. A written agreement is a formality that both would like to have.

14. Correspondence and Announcements: David Hosmer has requested that going forward that the meetings not be as verbose. He feels that items are being hashed over for too long.

It was agreed to honor former members Mark Shamber and George McCoy for their service to the Board of Finance with a gift. Glen Lessig will research this, and David Hosmer suggested that all the members pitch in for this.

15. Adjournment: David Fortin, seconded by David Hosmer moved to adjourn the meeting at 9:27pm.
Motion passed unanimously.

Respectfully submitted,
Christine G. French
Clerk