

Common Council Actions

COMMON COUNCIL

ACTION

May 01, 2001

A Special Meeting of the Common Council of the City of Norwalk was held on Tuesday, May 1, 2001 in the Common Council Chambers, City Hall, 125 East Avenue, Norwalk, Connecticut. Mayor Frank J. Esposito called the meeting to order at 6:43 p.m. and led the assembly in reciting the Pledge of Allegiance.

City Clerk Mary B. Roman read the Call of the Meeting into the record:

"SPECIAL MEETING NOTICE

NOTICE IS HEREBY GIVEN THAT A SPECIAL MEETING OF THE COMMON COUNCIL THE CITY OF NORWALK, IS HEREBY CALLED AND WILL BE HELD ON TUESDAY, MAY 1ST, 2001 AT 6:30 P.M. DST IN THE COMMON COUNCIL CHAMBERS AT NORWALK CITY HALL, 125 EAST AVENUE, NORWALK, FOR THE FOLLOWING PURPOSES TO WIT:

I. ROLL CALL

II. ACCEPTANCE OF THE CALL OF THE MEETING

III. ACTION ON THE PRIVATE SALE OF TAX LIENS ON THE SO-CALLED DINARDO PROPERTIES COMPRISING THE FORMER NORWALK COMMUNITY COLLEGE SITE ON WILSON AVENUE.

Signed: Frank J. Esposito, Mayor

Attest: Mary N. Papadakos, Assistant City Clerk"

I. ROLL CALL

PRESENT:	Guillermo Arteaga	Joseph Mann
	Richard Bonenfant	Peter Nolin
	Edward Bowers	Judith Rivas
	Andrew Conroy	John Tobin

Bruce Kimmel

Peter Torrano

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ABSENT: Charles Flynn, Jr. Richard McQuaid
Harold McCready Friedrich Wilms

At Roll Call, eleven (11) members were present and four (4) absent.

II. ACCEPTANCE OF THE CALL OF THE MEETING

**** MR. ARTEAGA MOVED TO ACCEPT THE CALL OF THE SPECIAL MEETING.**

**** MOTION PASSED UNANIMOUSLY BY A SHOW OF HANDS.**

III. ACTION ON THE PRIVATE SALE OF TAX LIENS ON THE SO-CALLED DINARDO PROPERTIES COMPRISING THE FORMER NORWALK COMMUNITY COLLEGE SITE ON WILSON AVENUE.

Corporation Counsel Donald Reid outlined the email he sent to the Council Members on April 24, 2001, which proposed the purchase by private sale the existing tax lien on the former Norwalk Community old Norwalk Technical College. He stated that 1037 New Haven Avenue LLC owned the property. He introduced the parties present, which included: members of the Gault family; Attorney James Randall, Attorney Ellory Plotkin for 1037 New Haven Avenue LLC; representatives of 1037; Jack Miller, Finance Director; and James Banks of the Norwalk Redevelopment Agency.

**** MS. RIVAS MOVED TO ALLOW FOR PUBLIC PARTICIPATION.**

**** MOTION PASSED UNANIMOUSLY BY A SHOW OF HANDS.**

Attorney Plotkin, representing 1037 New Haven Avenue, LLC, addressed the Council. He stated that his clients had filed a Chapter 11 bankruptcy petition, which brought the rights of the City on the taxes into the bankruptcy court. He went on to state that the bankruptcy plan would provide for payment in full to the City of the past due taxes. He said that if the court approved the plan on Tuesday then his clients would begin paying the interest to the City immediately. Attorney Plotkin stated that his clients were committed to investing funds to make sure that the interest payments were made as well as the regular tax payments as they became due. He asked the Council not to sell off the lien at this time, as his clients believed that they could rent the property for double. He commented that the entity that wanted to purchase the lien also wanted to purchase the property and store many oil tanks on site. He noted that he did not feel the property would increase in value from storing oil tanks.

Mr. Nolin asked how long Attorney Plotkin's clients owned the property. Attorney Plotkin said since before the Community College vacated the site.

Mr. Nolin asked what had prohibited the owners from developing the property prior to this time. Attorney Plotkin explained that the recession of 1990/1991 prevented his clients from attracting quality tenants and that the property managers at the time, Robert DiNardo, Inc., did the best they could to pay the bills. It was during this time that the taxes stopped being paid. After some family difficulties, one 20% owner of the property decided to put his resources into the property but, by this time, the foreclosure proceedings were imminent. The Chapter 11 action began so the owners could regroup and obtain financing.

Mr. Nolin clarified that of the entities in the bankruptcy action, only one owned 20%. Attorney Plotkin said that was correct. Under the bankruptcy plan, that one will own 80% as three other entities have agreed to convey in exchange for assumption of mortgage, a mortgage lien on the property, and the dedication of an estate interest respectively. He explained further that only one owner has not agreed but there are state court remedies they will pursue and Attorney Plotkin was confident his client would prevail. At that time, his clients would own the property in full. He stated that the plan filed with the Court provides for this.

Mr. Nolin questioned that while the Plan is to pay the City in full for the back taxes, it did not provide for his clients to pay the statutory rate of interest. Attorney Plotkin explained that through an agreement reached with the Corporation Counsel, his clients would pay 8% interest on the amount that was in place when the Plan was file. He believed that amount was around \$2.2 million.

Mr. Nolin asked Attorney Plotkin why it was not in everyone's best interest for the City to approve the sale tonight and then his clients and Gault could work out the details privately. Attorney Plotkin stated that their view was that Gault not only wanted to buy the land but to challenge his clients' plan as well. After many meetings in Bankruptcy Court with the City's attorney, he believes that the plan provides the elements the City was looking for by promoting an 18-month deadline for the payment of all the taxes with the interest. His clients were looking for a longer payout and they will have to start construction immediately to attract lenders and tenant once the Plan is confirmed.

Mr. Nolin asked whether a feasibility hearing has been held with the Bankruptcy Court. Attorney Plotkin responded that the ultimate determination of feasibility would occur when the Plan is confirmed.

Mr. Nolin asked whether there was any commitment to add capital into this entity. Attorney Plotkin stated that Mr. Sal DiNardo, through other entities and the estate of Peter DiNardo, which has substantial funds, has committed funding to pay the shortfalls to the city, any shortfalls related to operating expenses and construction costs.

Mr. Nolin asked if there was a plan for the property. Attorney Plotkin introduced Mr. Leonard DiNardo, who addressed this issue.

Mr. DiNardo explained the plan to renovate the site. This would include \$750,00.00 to \$1 million for renovation of the rear building. The former NCC building would be demolished. The entire would be brought to road level. A new building would be built where Federal Express is currently, and that rear building would be kept, which had three floors for manufacturing. Mr. DiNardo assured the Council that he, his brothers, and their father are committed to the project and more than capable.

Mr. Nolin asked what uses they were planning for the property. Mr. DiNardo said commercial and light industrial. This would increase the property value, and help the City and his own business.

Mr. Torrano clarified that because of partner debt and other interests, there was a substantial lack of capital. Attorney Plotkin said that was correct and stated again that the Estate of Peter DiNardo has committed substantial funds to the project.

Mr. Torrano asked that why his clients don't pay the taxes since they have that money. He was troubled that the taxes have not been paid for 10 years, regardless of the earlier recession and subsequent strong real estate market.

Mr. DiNardo commented that if the Bankruptcy Court approved the Plan, which is scheduled for next Tuesday, May 8th that would prove the Plan was valid. They have proven themselves in the past.

Mr. Torrano stated that despite the family differences, the City was close to filing foreclosure and one partner filed bankruptcy at the 11th hour throwing the City into chaos.

The money that is owed to the City if owed to the taxpayers, which have been carrying the burden for the past 10 years. If the Council approved this, they would essentially be financing it with taxpayers' money with no guarantees that they would pay what they owed to the City.

Attorney Plotkin responded that his clients would be under a court order to repay the City. Further, they have agreed to report to the City on a monthly basis so that the can track the progress. Regarding why his clients do not use the money to repay the taxes, it is not their inclination to pay the taxes of the other delinquent partners. Their goal now is for this new business venture to make money to cover its expenses. They have been successful in the past with such projects. And, under this plan, there will not be oil tanks dotting the property. The value will remain the same, roughly \$3 million, and may increase in value, which means more tax dollars to the taxpayers of Norwalk.

Mr. Torrano asked Corporation Counsel Reid whether the City could foreclose on the property if, after 18 months, the owners could not come up with the money, or could the owners file for bankruptcy again. Attorney Reid explained stated that any one of the entities could sell their shares to an LLC or LP and the latter could then file for bankruptcy.

Mr. Nolin stated that owners could wait 1-½ years and then say that they could not meet the terms of their plan. They could petition the Court to modify the Plan and they would be back in front of the Council.

Mr. Torrano was concerned that even though there is a court order for the owners to repay the City, there is still a way for them to side track it.

Attorney Plotkin stated that the owners, 1037 New Haven Ave LLC, intend to follow the Plan and he restated that they have negotiated to obtain 80% of the property.

Mr. Wrenn asked if there was any possibility that if they had 80% of the business would they declare bankruptcy or sell to another entity to file for bankruptcy. Attorney Plotkin stated that his clients are willing to invest the money and are committed to the project. He agreed to stipulate or enter into any binding agreement that there is no such intention whatsoever to declare bankruptcy or sell to another entity to file for bankruptcy.

Mr. Wrenn asked if it would be possible to do that and the attorney stated that anything was possible. Mr. Wrenn then asked if there was any way to give the City protection of the \$1.3 million dollars. Attorney Plotkin stated that the plan provided for the City to be paid by the 18 month of the confirmation of the plan. The only guarantees are that they are going to invest the money, build the buildings, attract the tenants, and to double the value of the property for themselves and the City taxes.

Next, Attorney James Randall, representing Gault, Inc., addressed the Council. He was unsure why Attorney Plotkin was opposing the sale of the liens and speculated that perhaps that Attorney did not believe the plan was realistic. The plan would be approved

if the court felt it was realistic. He and his clients did not feel it was realistic. They did not believe that the owners would meet the terms of the plan and perhaps Attorney Plotkin felt that a private entity would not be as lenient as the City of Norwalk. Attorney Randall stated that his client did not intend to store oil tanks on the site. He stated that was absurd and not something his clients are presently committed to. Gault, Inc. is well known and respected in Westport. He said they intended on cleaning up the property, changing it from the eyesore it has become. They were not buying this lien to make money; it was a marginal economic deal for his client. He noted that this had been a well thought out decision. And, his client has the capital to get in there and clean up a very difficult property. Many of the buildings are in trouble. There are possible environmental issues among many other issues. But for the fact that his client desperately needs property for expansion and growth, they would not be buying these liens. His client needs the property for expansion and growth as they needed space for maintenance, equipment, and storage and wholesale building supplies. All of these are allowed under current Zoning regulations. He noted that if and when a decision was made to put an oil tank on site they would have to go before Zoning and acquire a special permit with full protection to the City, the neighbors, etc. His clients intend to be a very good citizen of Norwalk.

Mr. Nolin asked Attorney Randall if they had bankruptcy counsel lined up to represent the Gaults and whether they planned to object to the plan. Attorney Randall replied that they did have counsel; it is Day, Berry & Howard. They intend to object because they do not believe the plan is realistic. He stated that it harkened back to the premise that if they had the capital then they should write the City a check. He noted that his client was here because the owner of the property had not paid their taxes in 10 years.

Mr. Nolin inquired about the Gault's proposal for the property, if they were to acquire it. Attorney Randall explained that his clients have a large number of vehicles that they need space for. They need space for garage maintenance. They intend to raise all of the structures and operate/run the viable properties. It would be well-run, clean, safe and not an eyesore anymore.

Ms. Rivas commented that they would need to get approvals for whatever structures they proposed for the site, should they acquire it. Attorney Randall agreed.

Mr. Bonenfant asked Corporation Counsel Reid whether the Council's action would be nullified if they approved the sale of the tax liens and then the Court approved the bankruptcy plan. Attorney Reid explained that it would not and that under the plan, the City would receive \$1,350,000.00 now. Within 18 months, if the DiNardo entities are successful, the City would receive an additional \$696,000.00. This is basically all money the City is owed, except for \$104,000.00. Finance Director Jack Miller confirmed that the City would virtually be whole. Mr. Reid continued that the City would stop the pleading of all the expenses that have been incurred (the bankruptcy Counsel, the foreclosure action) and would remove the largest single delinquent taxpayer from the list.

Mr. Tobin asked if the City had its own bankruptcy counsel. Attorney Reid said it was Attorney Stephen Conover.

Mr. Tobin asked Mr. Miller to explain the terms of the financing and confirmed that Mr. Miller was a party to the negotiations. Mr. Miller stated that the City is looking to be paid its' back taxes as early as possible and both scenarios are virtually the same. The City would be paid \$1.3 million up front. This money could be invested. If the DiNardo's plan were successful, they would be required to pay the remaining amount, \$796,000.00, less \$100,000.00 for their expenses, within 18 months. If the plan is not successful, it is the same scenario. The City receives \$1.3 and if they succeed in acquiring the property, we receive the difference with one difference. The City agreed to reduce the remaining amount, \$796,000.00 by 8% per year, to protect the Gaults in the event that the owners filed for reorganization or another bankruptcy.

Mr. Tobin asked whether this would be done under the current Gault corporation or would another corporation be set-up. Attorney Randall stated that currently it would be done by Gault, Inc. but that at some future date they may form an LLC or some other entity. The principles of that newer entity, however, would be the same as the principles of Gault, Inc.

Mr. Miller continued, stating that the sale of the tax liens was a good arrangement since the City would have the money up front.

Mr. Bowers questioned Corporation Counsel Reid as to what would happen in the event that the owner, either 1037 or Gault, did not pay their future taxes. Attorney Reid stated that the plan of reorganization requires 1037 to pay the taxes as they come due in the future. If they do not, they would be in violation of the plan of reorganization and there would be a motion to dismiss the plan.

Mr. Nolin commented that if the Gaults succeeded in challenging the plan, there would be no plan for payment of the current taxes. Attorney Reid commented that if the plan was not confirmed and no confirmable plan could be submitted, the bankruptcy petition would be converted back to its original form under Chapter 7. In that event, the City would get relief from the automatic stay in bankruptcy and the foreclosure would continue. He commented that if the liens were sold to Gault then Gault would have to continue the foreclosure. If the liens were not sold, the City would have to continue with the foreclosure.

**** MR. KIMMEL MOVED TO APPROVE THE SALE OF THE TAX LIEN TO GAULT, INC.**

Mr. Conroy asked Corporation Counsel or the Finance Director to clarify the terms of the sale for the record. He pointed out that the Finance Committee of the Council had stressed for the past year that they wanted to clean up some of the large tax balances. There had been plenty of opportunities, given the robust economy for the past few years, for the owner to pay up his taxes in the past but they left the City hanging. He said that in this instance they needed to move forward with the lien sale, which would not harm the owner and was strongly beneficial to the City.

Attorney Reid explained that under the proposal by Gault Inc., the City would be paid \$1,350,000.00 immediately towards the purchase price of the tax liens. The balance of \$796,000.00 would be paid in one of two ways. If the 1037 New Haven Avenue LLC successfully gets the plan confirmed and successfully performs the plan, the City would receive that money at the end of the 18 month period when 1037 pays it to the Court. Against that amount, Gault would be entitled to a cut of \$100,000.00 for costs and expenses actually incurred in dealing with bankruptcy proceedings and dealing with objections to the plan of reorganization. Or, if the Court confirms the plan but not performed accordingly, the \$796,000.00 installment due us will be reduced 8% per year or $\frac{3}{4}\%$ per month until the Gaults actually received the money from the bankruptcy court.

**** MR. NOLIN MOVED THAT THE COUNCIL GO INTO EXECUTIVE SESSION TO DISCUSS THE PENDING LITIGATION.**

**** MR. KIMMEL WITHDREW HIS MOTION TO APPROVE THE SALE FROM THE FLOOR.**

**** MOTION TO GO INTO EXECUTIVE SESSION PASSED UNANIMOUSLY BY SHOW OF HANDS.**

The Council went into Executive Session at 7:15 p.m. and reconvened at 7:25 p.m.

**** MR. KIMMEL MOVED TO APPROVE THE SALE OF THE TAX LIEN TO GAULT, INC.**

Mr. Bowers stated that he came to the meeting tonight with an open mind and it was very troubling to him that an entity has not paid their taxes to the City in over 10 years nor has a newer entity, who owns 20% of it, made any effort to pay the taxes. He said that based on past history and what he heard tonight, he would support the motion to relieve the burden of the citizens of Norwalk of the outstanding taxes.

**** MOTION PASSED UNANIMOUSLY BY A ROLL CALL VOTE.**

There being no further business before the Council,

**** MR. TOBIN MOVED TO ADJOURN.**

**** MOTION PASSED UNANIMOUSLY BY VOICE VOTE.**

The meeting adjourned at 7:35 p.m.

ATTEST: _____

Mary B. Roman, City Clerk