

**MINUTES OF THE
H V C E O
MEETING OF MARCH 15, 2002
AT BROOKFIELD, CT TOWN HALL**

MEMBERS AND ALTERNATES

Bethel.....First Selectman Judy Novachek, Alternate Selectman Robert Legnard
Bridgewater.....Absent
Brookfield.....Absent
Danbury.....Mayor Mark Boughton
New Fairfield.....First Selectman Peggy Katkocin
New Milford.....Mayor Robert Gambino
Newtown.....First Selectman Herbert Rosenthal, Chair
Redding.....First Selectman Natalie Ketcham
Ridgefield.....First Selectman Rudy Marconi, Alternate Selectman Peter Yanity
Sherman.....First Selectman Arthur von Plachecki

OTHERS IN ATTENDANCE

Lynn Waller of Danbury, Cheryl Reedy of the New Fairfield Citizen News, Ann Marie Somma of the Danbury News Times, Fred Benedict of Southbury, Jim Finley of the CT Conference of Municipalities, Bethel Parks and Recreation staff person, Dennis DePinto of Brookfield Parks and Recreation, New Fairfield Recreation Director Janet Grant, New Fairfield Parks and Recreation Attorney Raymond Lubus, and New Milford Parks and Recreation Director Daniel Calhoun.

Also, Newtown Parks and Recreation Director Barbara Kasbarian, Redding Parks and Recreation Director Rob Blick, Ridgefield Parks and Recreation Director Paul Roche, Sherman Parks and Recreation Commission Chairman Frances Frattini, Brookfield Town Attorney Edward McCreery, Town Attorney to Newtown and Ridgefield David Grogins, Sherman Town Attorney Randy DiBella, James Bellano of HVEDP, Camille Acquanita, Andrew Carrier and Jonathan Chew of the HVCEO staff.

CALL TO ORDER AND PUBLIC COMMENT

The meeting was called to order by Chair Herbert Rosenthal at 12:35 P.M. Citizen input was offered by Fred Benedikt and Lynn Waller.

**MANAGEMENT OF ACCESS TO RECREATIONAL
FACILITIES AFTER LEYDON V. GREENWICH**

Management of access to recreation facilities after the Leydon v. Greenwich ruling was discussed at length. The highlights of this discussion are summarized in the following points:

- The court case did not address the issue of the appropriateness of a higher fee structure for out of town residents, so this remains feasible. But the subtext of the case implies that these fees must remain rational. The fees should not be an “economic hardship.”
- The municipality cannot set a higher fee for non-residents than for residents just because the family seeking admittance is non-resident. The municipality must show that costs borne thru local taxes by locals are just being applied to the newly admitted out of towners.
- To generate the fee to be charged to non-residents, start with the local fee, or no fee if that is the case. Then document how local taxes are used to subsidize the facility, derive per person costs from that. Consider insurance, parking lot traffic control, etc.

— If the golf authority runs its operation entirely from fees collected, how can out of towners be charged more? By cobbling together and adding up any hidden costs and subsidies paid by the municipality.

— What if early morning tee off times at the municipal golf course are reserved for municipal residents? The relationship of such timing restraints to *Leydon v. Greenwich* remains unclear. In addition, perhaps a golf course will not be determined to be a “traditional public forum” as there is little mixing of persons there.

— What if there are already many person in the water, such that public health and safety is threatened if more bathers arrive? Nothing in the decision prevents the town from enforcing such health and safety laws.

— Can you set a limit on the number of non-resident users for the day? No, first come, first served. How about no fees during the week, but having entry fees on the weekend? Only if you can justify that you have higher costs on the weekend.

— What if a soccer team from another town arrives to use our soccer field? First, the administrative process of signing up in advance to use a field facility remains the unchallenged rule. Second, a soccer field has not been deemed to be a “public forum”, the key issue in the *Leydon* case. In one town the municipal boat launch is not going to be considered to be a “public forum”, open to all.

— What if those headed to the state park are turned away, and bring their grills and tarps to our beach, and we do not allow those items? We are treating all users equally with this rule. Okay.

— What if we do no handle any cash at the beach, and all users obtain a permit at town hall first? We are treating all users equal with this rule. No. *Leydon* was a jogger, denied entry as he was arriving on foot. Turning the person away to an office some miles distant is a problem.

— What about not opening to out of towners a specialized facility with little public mixing that just happens to be in the center of a public park that qualifies as the public forum? Future case law will decide this. The courts will eventually answer all our questions and fill in the blanks. The *Leydon v. Greenwich* decision will definitely lead to additional case law. This will likely include the determination of what is a fair fee for non-residents, and what constitutes a “deterrent” to access.

AGENDA AMENDMENT

On a motion made by Judy Novachek and a second by Robert Gambino, it was voted unanimously to add the topic “testimony to Bureau of Indian Affairs” to the agenda.

TESTIMONY TO BUREAU OF INDIAN AFFAIRS

There was discussion of this issue. Then on a motion made by Mark Boughton and seconded by Rudy Marconi, it was voted unanimously to forward testimony as advised by Perkins Coie to BIA concerning flaws in draft regulations for allowing gaming to occur on off-reservation trust lands. Also, deficiencies documented within the existing regulations for trust land acquisition were submitted. It was also agreed that the advice of Perkins Coie will be followed regarding the format of a separate or joint letter of transmittal with the coastal group.

ADJOURNMENT

Then on a motion duly made and seconded, the meeting was adjourned at 1:45 P.M.