

TOWNSHIP OF UNION BOARD OF EDUCATION
SPECIAL MEETING MINUTES – AUGUST 10, 2017

NOTICE OF MEETING:

TO ALL BOARD MEMBERS:

The special meeting of the Board of Education of the Township of Union was held on Thursday, August 10, 2017 at 8:00 p.m. at the Administration Building, 2369 Morris Avenue, Union, New Jersey. Action was taken.

Mr. McDowell called the meeting to order at 8:00 p.m.

Mr. McDowell stated we have a short agenda tonight. We are here to talk about two resolutions. At the public comment part of the resolutions, they are two to speak about and there will be no public comments at the end.

PRESENT AT ROLL CALL:

Mr. David Arminio, Dr. Guy Francis, Mrs. Nancy Minneci, Mr. Vito Nufrio, Mrs. Nellis Regis-Darby, Mrs. Mary Lynn Williams, Mrs. Nancy Zuena, Mr. Ron McDowell

ABSENT AT ROLL CALL:

Mr. Jeffrey Monge

ADMINISTRATORS PRESENT:

Mr. Gregory Tatum, Mrs. Annie Moses, Mr. Gerry Benaquista (by phone), Mr. Gregory Brennan, Mr. Barry Loessel

ALSO PRESENT:

Paul Griggs, Esq.

Mr. McDowell led the Board and audience members in the Pledge of Allegiance.

Mr. Brennan read the statement required under the “Open Public Meetings Act”, a copy of which is on file in the office of the Board Secretary.

Mr. McDowell read the Mission Statement of the District.

COMMENTS FROM THE PUBLIC ON RESOLUTIONS:

Mr. Arminio stated there are only comments on the resolution. Is there an opportunity for anyone to speak on comments in general at this time instead of waiting until after the two? Mr. Griggs stated there is no second public session. There is only one session. Mr. Arminio asked at this time can someone then speak? Mr. Griggs stated I would say you can yes.

Mr. Arminio stated point of order Mr. President. As a sitting member of the Board I would like to take this opportunity to relinquish my seat temporarily and go to the other side of the table and speak as a private citizen. Mr. McDowell stated yes you may. Mr. Arminio stated

if I may do so, Robert's Rules of Order. Mr. Griggs stated that is correct – just as long as you identify yourself as a private citizen and that is who you are speaking on behalf – if you will. You will be fine. Mr. Arminio stated thank you.

Dave Arminio stated I would like to speak as a private citizen of Union. I have lived here all my life for more years than I can remember – 67 years I have lived in this Town. After 7-1/2 years after retiring as a teacher, I was on this Board of Education. During that 7-1/2 years, the only thing I wanted was what was best for the children of this Town. In the last week or so some things have happened that caused me a lot of heartache. The money from the Jefferson School project and I don't want to go into all the details because if you don't know the details by now, you can sit down and talk for three hours and hear the details. What bothers me is that this money for those years, starting in 2014 or even earlier, that money languishing in the bank and finally through some Board members who fought to get that money out of that and we did it through our counsel who was also the Board Secretary at the time, through our auditor who we no longer have but a different auditor, through our BA at the time guided us and said this is what you must do, this is how you do it. We followed the procedures. We were open and we were honest and we were transparent in everything that we did during that period of time and the money was then finally taken out and put into the fund where it belonged into – Capital Reserve; where it was going to be used for all the children of Union. Following those rules and regulations, and I don't know the details, I guess I live in a bubble and I'm on the outs because I don't know everything that has happened in the last day or two but I heard some rumors that were really hurtful to me that someone would be so self-serving as to file an injunction saying that we were doing something illegal.

At our last meeting, someone insinuated that we were doing something illegal. Didn't use the word criminal although I interpreted it as that but that was how it was used and that is how I interpreted it. It is hurtful to me that we as a Board and I think all of us are on the same page and we are only doing what we think is best for the kids and have no agenda other than that. Anyone who is so self-serving as to try to stop us from using that money to help these kids in the high school with this project that is going on with the lights and the ceilings and if this isn't allowed to go forward, what happens when we can't open the school in September because the project is not finished.

As a private citizen of Union, I think it is imperative that this gets passed and that you go forward as a Board and do what is right for the children of Union.

Mr. Nufrio stated I would also like to speak as a private citizen. I will temporarily step away from my seat as a Board member – so permission to speak. Mr. McDowell stated yes Mr. Nufrio.

Vito Nufrio stated I can't emphasize enough how much I echo Mr. Arminio. I went home last month after having been absent in June for medical reason and I said why did I bother going back to the Board because I sat there and I listened to and the proper phrasing that Mr. Arminio used was self-serving and I think it was more than self-serving. I think it was a platform to initiate a campaign to possibly derail the Board and all of what good direction we have taken in this District, along with the Superintendent and his Assistants. I went home sicker

than I was before and I couldn't understand, but I do understand. Politics has a way of destroying what sometimes is on a great path all because of the self-serving reasons because there was no justification. If you remember, I spoke twice last month when it was presented that we were possibly doing something illegal and it was arguable that is not criminal, I don't know the word illegal to me sure conjures up the word criminal. Perhaps that is not at the level of murder or any capital crime, but crime is a crime.

I was extremely offended and if you remember I said so. The second time I asked to speak again so as the public would understand because someone was taping it that I normally don't react that way at a meeting maybe in private I do. Mr. Tatum and I have had our share. But it was almost because we want to do the right thing for the District and that is how things get done. When you hash things out, you may even argue them, but at the end it should always be what is good for the kids.

I don't see what good this would have served because unlike Mr. Arminio, I was privy to this attempt to get an injunction. An injunction, I guess we are all perhaps doing something illegal because that word injunction surely conjures up legalities. If you want to stop someone from doing something, you must really perceive that the person is doing something so bad, so horrible. Again I'm getting sick over it. I'm sure if I take my blood pressure right now it is going to be at least 170. Having said that, the community of Union has had members like Mr. Arminio and I and I served at least 6+ years and it was never about me, it was never about my family, it was never about an agenda, I always prefaced everything that I have said that this is about the children.

The money that was held hostage for the number of years that it was under the leadership of a former president of the Board who held that position for three consecutive years and a former Board Attorney/Board Secretary had the complete control of what was going on with the project and what subsequently resulted from the surplus. Many times they were asked what to do with this money, whatever that amount was. It was really never determined or specified what the amount was. It was only under the time that Mr. Arminio and I served as presidents that we came to learn it was quite a bit. It was over \$5 million. What was that money doing? Nothing – it was getting a lot of dust and no attention whatsoever. Except for whatever was being drawn or siphoned and I'm not using that word to suggest illegal siphoning, I'm just saying money was being drawn to specifically only do things for Jefferson School but that money should have been resolved.

We were sued by the contractor for lack of payment yet we have \$5 million in the kitty and we had to resolve that situation because I took the bull by the horn and I said let's get this lawsuit resolved so we can free up this money. We can do a punchlist. Nevertheless we go over \$5 million and we have a contractor who sued us because we didn't pay him his final payment because the punchlist had not been completed. Guess what that punchlist consisted us – minor stuff. The actual legal cost of arguing and having an attorney, a law firm, deal with the lawsuit was more costly than what the actual amount was we owed the contractor. I said this has got to stop, this is ridiculous. We keep flushing money down the toilet. It's either the toilet or the law firm - somewhat synonymous.

I don't get what the objective is and I have to say as a resident, there are people in this room right now who really believe that was the right thing to do. I don't see how they can do that. I don't see how you can lay claim that you are about the children – what part of asking for an injunction is about the children – that is what I want to know. Other than complete fabrication and a distortion of what actually occurred and you know yourself as a former Board member Mr. Le that you were on the Fiscal Committee which I appointed you as a Board President, knew exactly was going on.

The other gentleman that was here to present his argument that we may have been doing something illegal, he was the President for three years. What kind of leadership is that? The former Board Attorney is no longer here, yet he was in charge of the whole thing. Did at any time did either of them or even a former Board member say what's going on here? I asked many times – how much was that money? Why aren't we doing something? I asked many times should we be putting that back towards a principal payment of the bond – no, no, no because the bond expenses were already expended – the bond amounts. What about returning it to the taxpayers? I would like to have a nice check. Oh you really want to give back the money to taxpayer? And I stand on that because there was a witness to many times to when I said it, including two Board members sitting right here today. I don't understand which part is about children and which part is about politics and which part is doing what is right for the District. Somebody please help me understand what part of that is about children because I don't get it. Thank you.

Mr. McDowell asked if there are any comments from the public on those two resolutions? No comments from the public.

FISCAL AND PLANNING COMMITTEE RESOLUTIONS:

Moved by Mr. Nufrio, seconded by Dr. Francis that the following resolutions be adopted:

F-1. APPROVE APPROPRIATION TRANSFERS

Approve appropriation transfers in the amount of \$1,982,955 from 2017-2018 Capital Reserve projects to Light Fire Alarm UHS Capital Reserve 2017-2018 Project (Account #12-000-400-450-13-10-1801), in accordance with the information appended to the minutes.

F-2. APPROVE APPROPRIATION TRANSFER

Approve appropriation transfer of \$490,611.00 from Unreserved Capital Reserve to Light Fire Alarm UHS Capital Reserve 2017-2018 Project (Account #12-000-400-450-13-10-1801).

DISCUSSION:

Mrs. Minneci asked the information that we have that was sent to us – the four forms in an email and it had projects from the other schools – is that money being moved to this project at the high school? I didn't know how to read it. Mr. Brennan stated those projects money was allocated in the 17-18 budget, they were estimations, but those projects are not going to be done this year based on our Long Range Facility Plan and dealing with the architects. That money was approved for capital projects - \$5 million was in the budget and approved. We are just reallocating it to the high school. Mrs. Minneci stated so those projects are on hold? Mr. Brennan stated yes.

Mr. Nufrio stated Mr. Brennan, I saw the backup – are we also assuming that we are approving the purchase orders that are reflected in the back up for the projects. Mr. Brennan stated yes. Mr. Nufrio stated all those P.O.'s. Mr. Brennan stated there are two P.O.'s – two checks. Mr. Nufrio stated we are approving the transfer of the funds but I saw a listing of various vendors. Mr. Brennan stated there is a bills list. There are additional bills that don't pertain to the project.

Mr. Arminio asked should this have been done in June/July instead of waiting until August 10th? Mr. Brennan stated yes. Mr. Arminio asked is there a reason why it ended up here in August instead of being done in June or July? Mr. Tatum stated apparently wires got crossed in terms of the approval of the allocations at the last meeting or the meeting prior to and money should not have been transferred even though the dollar amount had been approved. Mr. Brennan stated that is correct. Mr. Tatum stated the issue became was that you guys did indeed already gave approval to it, but the total transfer should have been done prior to the July meeting and then you would have approved it and everything would have been where it should be. The issue we find ourselves facing right now is and the reason for the emergency meeting is at this stage of the game are contractors have not been paid. Even though you approved the project, the approved initial, you approved the list that Mrs. Minneci is referring to, you approved the change order but unfortunately you had approved the actual expenditure but the money was not in the appropriate line. Mr. Arminio stated we are doing the red tape part of it. Mr. Tatum stated exactly and so we could do the honorable thing and pay the bill. Mr. Brennan stated also for auditing purposes, you really want the purchase order to reflect the total amount of the project because we did have \$1.5 in that line and instead of cutting a check from the \$1.5 million, we want to make sure the total amount was there and that should have been done in July.

Mr. Nufrio stated when you say \$1.5 million that was what we had. Mr. Brennan stated that was already allocated. Mr. Tatum stated as you know Mr. Nufrio, we have done this a thousand times and sometimes we project a particular amount of money and as we mentioned before is it kind of on the flexible side and with the Facility Plan, they prioritize and they put that this is one that needed to be done.

AYE: Mr. Arminio, Dr. Francis, Mrs. Minneci, Mr. Nufrio, Mrs. Regis-Darby, Mrs. Williams,
Mrs. Zuena, Mr. McDowell

NAY: None

ABSTAIN: None

MOTION CARRIED

APPROVAL OF BILLS:

Moved by Mr. Nufrio, seconded by Mr. Arminio, that the Board concur with the bills listed in the permanent bound register appended to the minutes and be ordered for payment.

DISCUSSION:

None

AYE: Mr. Arminio, Dr. Francis, Mrs. Minneci, Mr. Nufrio, Mrs. Regis-Darby, Mrs. Williams, Mrs. Zuena, Mr. McDowell

NAY: None

ABSTAIN: None

MOTION CARRIED

Mr. McDowell stated before we adjourn and in light of the actions that have taken place in the last day or so, I would like for Mr. Griggs to bring the rest of the Board members up to speed on what has occurred.

Mr. Griggs stated bear with me I'm losing my voice because I spent the latter part of the morning talking to a judge. What I'm doing is reacting to two things – one to some of the comments made at the last meeting when a member of the public asked a question to the Board and he wanted a response so I'm responding to that and I'm also updating you folks in a brief manner in the lawsuit which was filed against the Board of Education.

At the July 18, 2017 Board meeting, Raymond Perkins alleged that the Board bonded far more money than what was needed when undertaking the Central 5-Jefferson School Capital Project. Mr. Perkins requested any "analysis that was done by the auditor."

The Central 5-Jefferson School Capital Project was funded from three sources: money from the District's capital reserve account; money from a state grant; and money from the sale of bonds. The total project cost was \$18,654,709 leaving approximately \$5,000,000 that was returned to the Board's capital reserve account pursuant to advice from the former auditor, Suplee, Clooney and Company. I believe Suplee, Clooney have been your auditor for a number of years and I think they are also the auditor for the Township. That was changed most recently within this last year. In Suplee's letter dated February 12, 2016, received over one and a half years ago, Suplee set forth "if the project is deemed complete...the remaining balance of \$5,054,202.73 would be transferred back to the capital reserve account". At the December 20, 2016 Board meeting, John Mooney of Nisivoccia, the Board's new auditors, confirmed the same advice given by Suplee that once the project was deemed complete, any funds from capital reserve not used would be returned to original funding source. In its letter to the Board, Nisivoccia specifically set forth: "The unexpended balance of \$5,200,534 should be canceled by resolution of the Board of Education authorizing the cancellation of \$262,995.00 of the SDA Grant and \$165 of unissued bonds and return of \$4,937,374.00 to the District's Capital Reserve account as outlined in the attached excerpt from the New Jersey Department of Education's '2016-2017 Combined School District, Charter School and Renaissance School Audit Program'." Every school auditor in the State of New Jersey follows a play book which is put out by the Commissioner of Education and that is the template from which your audit is developed. They all follow the same thing. I have a page here from that and with regard to unexpended project funds and this is what she is referring to – "Any unexpended transferred capital outlay and/or capital reserve funds remaining after completion of the school facilities project, the Jefferson School was a facilities project, must be returned to the capital reserve account or anticipated as part of the designated general fund balance of the subsequent school year's budget or reserved and designated in the second subsequent year's budget."

The Board returned the remaining unexpended Jefferson School Capital Project capital reserve funds to the District's capital reserve account as recommended by its auditors and as directed by the New Jersey Department of Education.

In good faith reliance upon the advice of its auditors as to the availability of the Jefferson School Capital Project unexpended capital reserve funds, the Board, in its 2017-2018 school budget, included a number of needed and critical capital projects throughout the District including but not limited to:

- Boiler replacement
- Roof replacement and repair
- Ceiling, lighting and fire alarm replacement at UHS
- Asbestos removal
- Bus lift replacement
- Bathroom renovations
- Floor repairs

In an effort to be transparent to the public and directly related to the listed capital projects, the Board at its April 26, 2017 meeting approved a resolution authorizing the withdraw of \$5,000,000 from capital reserve to capital outlay. The Board published to the public that they were moving money in April and they talked about it a long time ago. While a number of projects are ongoing, one project of critical importance involves ceiling, lighting and fire alarm replacement at UHS. Again, in good faith reliance on the recommendations of their auditors, the Board advertised for bids and awarded a contract on June 13, 2017 to GPC Inc. of Millburn, New Jersey for a total cost of \$3.9 million dollars (including two change orders). The project is ongoing and at this time is over 50% complete with an outstanding invoice due the contractor for \$2.1 million dollars. Action to be taken by the Board at the special meeting this evening permits the bill to be paid, and any other bills submitted by the contractor, and the project to be completed. Failure of the Board to pay the bill would place it in breach of its agreement with the contractor with the possibility that the contractor may walk off the project, that the project would not be completed and UHS not open in September.

With regards to the lawsuit that was filed and without getting into all the details of the lawsuit - at 3:00 p.m. yesterday afternoon, for an 11 a.m. hearing this morning, the Board was served with a Complaint filed in Superior Court by Steven Le seeking injunctive relief "voiding actions of UBOE to improperly transfer the remaining funds from the Jefferson School Project from the capital project to the general fund". While the application was denied by the Court, there was the possibility the application could have been granted causing the shutdown of the high school project for failure to pay the outstanding bill and the possibility that UHS could not open in September. It is unclear to me why the lawsuit was filed at this time given that: the Board at its December 20, 2016 meeting discussed with the auditor the remaining capital reserve fund as described herein; and that is where he said you put it back in capital reserve, it goes back to where it came from and you can spend it and the Board took action at its April 26, 2017 meeting. So twice on two occasions the Board did stuff with the money we are talking about so we can go as far back as 2016. And the Board approved a resolution authorizing the withdraw of \$5,000,000 from capital reserve to capital outlay.

I responded to the issue raised by the member of the public. He asked about the Board's authority to show him something from the auditor. We not only have something from that auditor, we have something from your current auditor and the Board relied upon that advice in good faith and I don't think they would do otherwise and I certainly would not have advised them to otherwise if I didn't think they could do it. They had the advice of the auditors and they moved forward and they entered into a contract and this lawsuit put them in the potential two issues. One is breach of contract – the contract is \$3.9 million. The contractor is owed over \$2 million – that is more than half of the project. He has not received a lot of money. The danger of that amount of money is owed and you don't pay the people, while there are certain terms and conditions in this contract, i.e. you have x-amount of days to pay – the fact of the matter is the contractor can slow down the contract, the contractor can walk where the Board has to go to court to get them back in there – so there are all types of things that can happen. As observed by the judge today, we have children that are coming back to school in September and that was the concern. We talked in court about irrefutable harm and I said to the judge – the irrefutable harm is what is going to happen to these kids and the Board if they breach a contract which they entered into in good faith. You would not have done but for that fact. That is pretty much all I have to say; but this is the response to the comment raised by the public. I have some copies of this statement if anyone wants it. Statement appended to the minutes.

Mr. Nufrio stated I would certainly like a copy of that as well. I think that is something the community needs to see over and over again because after all it is all about the children ironically. How much did it cost the Board today – for today and preparation for today? Mr. Griggs stated I haven't billed it obviously yet but between 3 p.m. yesterday – 8 hours yesterday – to about 11 p.m. at night and then five hours today including going to court. So about 13 hours - \$2100. Mr. Nufrio stated it sounds like a small amount. Mr. Griggs stated I don't think that is small, I think that is a lot of money.

Mr. Nufrio stated \$2100 for the day and is this thing finally resolved Mr. Griggs? Or is there still room for more shenanigans. Mr. Griggs stated there is room for more because the essence of the findings today was that the court does not have jurisdiction to hear this matter. The next stop would be the Commissioner of Education. If the plaintiff decides to file an emergent application there, we will have to respond but frankly, the plaintiff alleged a violation of two school laws. When you allege a violation of school laws, the only person in this world that has jurisdiction to hear those matters is the Commissioner of Education. The Superior Court can't get near it if they don't have the jurisdiction so it would be heard by the Commissioner through probably an Administrative Law Judge and even with that Administrative Law Judge does it goes up to the Commissioner to be affirmed, denied or modified.

The basis of the auditor's report is a publication put out by the Commissioner of Education. I don't know where it is going to go but my personal perception is it is a colossal waste of money because the fact of the matter is I'm not even sure what the relief or the damages are.

Mr. Nufrio stated it is not just monetary damages, it is perception as well. The damages are irrefutable of what is being conveyed to the public that we may have done something illegal

and I still take absolute personal offense to that and everyone on this Board should. Having said that it could conceivably cost us more money because after all it is about the children and that is why they are doing it. My final question is at this point I am at the point where I believe this Board needs to at some point in the near future, in executive session, discuss possible retaliation of legal nature, procedurally with regard to whomever initiated or was part of this initiation to request an injunction or pursue it further which will cost this Board and the children and the District additional money.

Mr. Arminio stated just a yes or no – does that statement that you just read go into the minutes? Mr. Griggs stated yes.

Dr. Francis stated Mr. Griggs, this reminds me of the same thing that BGIA pulled off several months ago or maybe over a year ago concerning that they felt we owed them a contract and it wasn't given to them. We spent a lot of money but nothing was ever done with it. I would like to know how much did that cost us? Mr. Griggs stated I will have to get back to you on that question. I would have to check with our bookkeeping department and I will get you an answer on that.

Mr. Nufrio stated since we were pretty much unaware of what was transpiring from yesterday through today until it was finally somewhat resolved in court, the law firm that represented or presented the request for injunction, would that be coincidentally the same law firm that represented BGIA? Mr. Griggs stated correct. Mr. Nufrio stated I want that on the record for sure.

MOTION TO ADJOURN:

There being no further business before the Board, it was moved by Mr. Arminio, seconded by Mr. Nufrio, that the meeting be adjourned at 8:40 p.m.

AYE: Mr. Arminio, Dr. Francis, Mrs. Minneci, Mr. Nufrio, Mrs. Regis-Darby, Mrs. Williams, Mrs. Zuena, Mr. McDowell

NAY: None

ABSTAIN: None

MOTION CARRIED

RESPECTFULLY SUBMITTED,

GREGORY E. BRENNAN
BOARD SECRETARY