

**LEGISLATIVE COUNCIL REGULAR MEETING
COUNCIL CHAMBERS, 3 PRIMROSE STREET, NEWTOWN, CT
WEDNESDAY, JULY 19, 2023**

MINUTES

PRESENT: Jeffery Capeci, Dan Honan, Lisa Kessler, Ryan Knapp, Michelle Embree Ku, Charles Gardner, William DeRosa, Matthew Mihalcik, Tom Long, Chris Gardner

ABSENT: Angela Curi, Phil Carrol

ALSO PRESENT: Finance Director Bob Tait

CALL TO ORDER: Mr. Capeci called the meeting to order with the Pledge of Allegiance at 7:30 pm.

VOTER COMMENT: None

MINUTES: Charles Gardner moved to approve the minutes of the June 21, 2023 meeting. Matt Mihalcik seconded. Tom Long made correction that there is no Treasurer's Report and that section should be stricken from the minutes. All in favor with the correction.

COMMUNICATIONS: Jeff Capeci shared communication with FOI (att.) regarding the wording on the agenda.

COMMITTEE REPORTS: None

FIRST SELECTMAN'S REPORT: None

NEW BUSINESS

Tax Collector Lien sales for Grand List 2021 and prior – Charles Gardner moved to approve the various tax liens as represented in correspondence (att.) Matt Mihalcik seconded. Bob Tait explained that this is an annual item. These items are accounts they can't collect on. It is over \$250,000 and comprises 22 properties. Most of them are 20/21 list but there are some that can go back years most likely because of failed payment plans. All in favor.

Voter Comment – None

Announcements - None

Meeting was adjourned at 7:39pm and the commission entered into a non-public discussion between members of the Legislative Council and Board of Education, Superintendent of Schools and Board of Education Legal counsel pertaining to upcoming administrator contract negotiations as allowed under 1-200 (2).

*Respectfully submitted,
Arlene Miles, Clerk*

Attachment: Correspondence, Lien Sales



Arlene Miles <arlene.miles@newtown-ct.gov>

Correspondence with FOI Commission Staff

1 message

Jeffrey Capeci <Jeff@thecapecis.com>
Reply-To: Jeffrey Capeci <Jeff@thecapecis.com>
To: Arlene Miles <arlene.miles@newtown-ct.gov>

Thu, Jul 20, 2023 at 10:12 AM

Fw: July 19 - non-meeting

VAHOO!/Sent ☆



Jeffrey Capeci <jeff@thecapecis.com>
To: Tom Hennick



Thu, Jul 13 at 12:07 PM ☆

Hi Tom,

I hope all is well. I don't know if you remember me, I'm the chairman of the Newtown Legislative Council (LC). I think we spoke last at the beginning of this term. The election brought many new members to the LC and you came down to Newtown to do an FOI presentation. Thank you! It was very helpful and very well received.

This summer our Board of will begin contract negotiations with the administrator's union. The LC is the Town's fiscal authority and as such, state statutes grant us representation doing the collective bargaining process. The Board of Ed has requested that I hold a non meeting, no agenda - no agenda item - where they can come and speak to use off the record with regard to the negotiations.

In the past, my recollection is that I would put it on the bottom of the agenda and before taking up the item, we'd kick everyone out of the room who do not belong, like entering an executive session. My proposal looks like this:

NEW BUSINESS

- Discussion and Possible Action 1. Tax Collector Lien sales for Grand List 2021 and prior
- Non-Meeting: BOE Presentation on upcoming administrators contract negotiations (For members of Legislative Council and Board of Education, Superintendent of Schools and Board of Ed Legal Council only)

How do you recommend this item be posted on the agenda, if at all?

Thanks,
Jeff

**Hennick, Thomas A** <thomas.hennick@ct.gov>

To: Jeffrey Capeci



Thu, Jul 13 at 12:18 PM ☆

Hello Jeff,

Good to hear from you. While nothing in the FOI Act would require you to put anything on the agenda about the "non-meeting," alerting the public is certainly in keeping with the spirit of the FOI Act. The problem, of course, is the term "non-meeting," which is a widely used term people have adopted that is nowhere to be found in any statute. It does tend to confuse people. If you wanted to word it any differently, I suppose you could say something like "Non-public discussion between members of Legislative Council and Board of Education, Superintendent of Schools and Board of Ed Legal Counsel pertaining to upcoming administrator contract negotiations as allowed under 1-200 (2)." In the end, it's really your call though.

Hope this helps,
Tom

From: Jeffrey Capeci <Jeff@theCapecis.com>

Sent: Thursday, July 13, 2023 12:07 PM

To: Hennick, Thomas A <Thomas.Hennick@ct.gov>

"If we must have an enemy at the head of government, let him be one whom we can oppose, and one for whom we are not responsible, who will not involve our party in the disgrace of his foolish and bad measures."

-Alexander Hamilton

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Erin B. Scott
Tax Collector

TOWN OF NEWTOWN
OFFICE OF THE TAX COLLECTOR

TO: Legislative Council

FROM: Erin B. Scott, Tax Collector

DATE: July 12, 2023

RE: Lien sales for Grand List 2021 and prior

Per Connecticut State Statute, Sec. 12-195h (see attached), this is a request to assign tax lien(s) for various properties located in Newtown to companies (for example, Cheswold LLC, Tower Lien, TLOA, etc.). This is a common practice in the tax office to collect delinquent real estate taxes.

In an ongoing attempt to collect the debt, I first issue a Demand (Connecticut State Statute, Sec. 12-155) for payment. These Demands are mailed both regular and certified and they inform the property owner that failure to pay by specified date may result in the lien(s) being sold to a third party.

Thank you,

Erin B. Scott, CCMC
Tax Collector

Sec. 12-195h. Assignment of liens securing unpaid taxes on real property. Powers and rights of assignee.

Contract to memorialize assignment required. Notice of assignment. Notice prior to commencing an action to foreclose lien. (a) Any municipality, by resolution of its legislative body, as defined in section 1-1, may assign, for consideration, any and all liens filed by the tax collector to secure unpaid taxes on real property as provided under the provisions of this chapter. The consideration received by the municipality shall be negotiated between the municipality and the assignee.

(b) The assignee or assignees of such liens shall have and possess the same powers and rights at law or in equity that such municipality and municipality's tax collector would have had if the lien had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection and of preparing and recording the assignment, except that any such assignee (1) shall not be insulated from liability for its conduct by virtue of the provisions of section 42-110c, and (2) shall be obligated to provide a payoff statement, as defined in section 49-8a, in the same manner as a mortgagee in accordance with the requirements of section 49-10a. The assignee shall have the same rights to enforce such liens as any private party holding a lien on real property including, but not limited to, foreclosure and a suit on the debt.

(c) No such assignment executed on or after July 1, 2022, shall be valid or enforceable unless memorialized in a contract executed by the municipality and the assignee that is in writing and provides: (1) The manner in which the assignee will provide to the owner of the real property that is the subject of the assignment one or more addresses and telephone numbers that may be used for correspondence with the assignee about the debt and payment thereof; (2) the earliest and latest dates by which the assignee shall commence any foreclosure or suit on the debt or the manner for determining such dates, except as may be impacted by any payment arrangement, bankruptcy petition or other circumstance, provided in no event shall the assignee commence a foreclosure suit before one year has elapsed since the assignee's purchase of the lien; (3) the structure and rates of attorney's fees that the assignee may claim against the owner or owners of such real property in any foreclosure, suit on the debt or otherwise, and a prohibition from using as foreclosure counsel any attorney or law office that is owned by, employs or contracts with any person having an interest in such assignee; (4) confirmation that the owner of the real property for which the lien has been filed shall be a third-party beneficiary entitled to enforce the covenants and responsibilities of the assignee as contained in the contract; (5) a prohibition on the assignee assigning the lien without the municipality's prior written consent; (6) the detail and frequency of reports provided to the municipality's tax collector regarding the status of the assigned liens; (7) confirmation that the assignee is not ineligible, pursuant to section 31-57b, to be assigned the lien because of occupational safety and health law violations; (8) disclosure of (A) all resolved and pending arbitrations and litigation matters in which the assignee or any of its principals have been involved within the last ten years, except foreclosure actions involving liens purchased from or assigned by governmental entities, (B) all criminal proceedings that the assignee or any of its principals has ever been the subject, (C) any interest in the subject property held by the assignee or any of its principals, officers or agents, and (D) each instance in which the assignee or any of its principals was found to have violated any state or local ethics law, regulation, ordinance, code, policy or standard, or to have committed any other offense arising out of the submission of proposals or bids or the performance of work on public contract; and (9) such additional terms to which the municipality and the assignee mutually agree, consistent with applicable law.

(d) The assignee, or any subsequent assignee, shall provide written notice of an assignment, not later than sixty days after the date of such assignment, to the owner and any holder of a mortgage, on the real property that is the subject of the assignment, provided such owner or holder is of record as of the date of such assignment. Such notice shall include information sufficient to identify (1) the property that is subject to the lien and in which the holder has an interest, (2) the name and addresses of the assignee, and (3) the amount of unpaid taxes, interest and fees being assigned relative to the subject property as of the date of the assignment.

(e) Not less than sixty days prior to commencing an action to foreclose a lien under this section, the assignee shall provide a written notice, by first-class mail, to the holders of all first or second security interests on the property subject to the lien that were recorded before the date the assessment the lien sought to be enforced became delinquent. Such notice shall set forth: (1) The amount of unpaid debt owed to the assignee as of the date of the notice; (2) the amount of any attorney's fees and costs incurred by the assignee in the enforcement of

the lien as of the date of the notice; (3) a statement of the assignee's intention to foreclose the lien if the amounts set forth pursuant to subdivisions (1) and (2) of this subsection are not paid to the assignee on or before sixty days after the date the notice is provided; (4) the assignee's contact information, including, but not limited to, the assignee's name, mailing address, telephone number and electronic mail address, if any; and (5) instructions concerning the acceptable means of making a payment on the amounts owed to the assignee as set forth pursuant to subdivisions (1) and (2) of this subsection. Any notice required under this subsection shall be effective upon the date such notice is provided.

(f) When providing the written notice required under subsection (e) of this section, the assignee may rely on the last recorded security interest of record in identifying the name and mailing address of the holder of such interest, unless the holder of such interest is the plaintiff in an action pending in Superior Court to enforce such interest, in which case the assignee shall provide the written notice to the attorney appearing on behalf of the plaintiff.

(g) Each aspect of a foreclosure, sale or other disposition under this section, including, but not limited to, the costs, attorney fees, method, advertising, time, date, place and terms, shall be commercially reasonable.

(P.A. 93-434, S. 19, 20; P.A. 13-135, S. 16; 13-276, S. 40; P.A. 21-143, S. 1; P.A. 22-94, S. 19.)

History: P.A. 93-434 effective June 30, 1993; P.A. 13-135 added provisions re notice of assignment; P.A. 13-276 added provision re fees and expenses of preparing and recording the assignment and added provision re foreclosure and a suit on the debt; P.A. 21-143 designated existing provisions re authority of municipality to assign liens filed by the tax collector to secure unpaid property taxes as Subsec. (a), designated existing provisions re the powers and rights of the assignee as Subsec. (b) and amended the same by adding Subdiv. (1) re the assignee's inability to be insulated from liability under Sec. 42-110c and adding Subdiv. (2) re the assignee's obligation to provide payoff statement in the same manner as a mortgagee, added Subsec. (c) requiring assignments executed on or after July 1, 2022, to be memorialized in a contract, designated existing provisions re written notice of assignment as Subsec. (d) and amended the same by changing the deadline for such notice from 30 to 60 days after the date of assignment and by requiring such notice be provided to the owner, added Subsecs. (e) and (f) re notice by the assignee of foreclosure of the lien, added Subsec. (g) requiring commercially reasonable foreclosure, sale or other disposition of the real property, and made technical changes; P.A. 22-94 made a technical change in Subsec. (f).

Change in marital status affecting ownership is not by itself good cause to open foreclosure judgment based on change in circumstances. 52 CA 52. A municipal tax lien is more analogous to a transfer of debt than to a transfer of title and as such is not considered a "conveyance" under Sec. 47-10, and accordingly, more specific statutes, such as this section, governing tax liens, which do not require recordation, should take precedence over more general land transfer statutes, such as Sec. 47-10, which do require recordation, thus an assignee's failure to record the assignment of a tax lien does not deprive such assignee of standing to bring a foreclosure action. 196 CA 279. Amendment in 2013 adding "suit on the debt" does not affect situation where plaintiff or assignee acquired title to property by foreclosure because pursuant to Sec. 12-195 all of its claims, in whatever form those claims might take, were extinguished upon such acquisition. 196 CA 298.

Assignee succeeds only to the assignor municipality's enforcement right empowered by Sec. 12-181, and not to the municipality's other authorized collection methods. 45 CS 435.