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MINUTES
BOARD OF SELECTMEN REGULAR MEETING
Tuesday, December 16, 2025
5:00 PM
Waterford Town Hall (Auditorium)

(Procedural Action: Check register to be signed by the Board of Selectmen in accordance with CGS 7-83)

1. Call to Order & Roll Call: 5:02 PM

In Attendance: First Selectman, Robert Brule; Selectman, and Rich Muckle
Late: Selectman, Greg Attanasio (5:02 PM)

2. Pledge of Allegiance

3. Public Comment: Joshua Steele Kelly - re: Charter Revision Commission (gave handout); Thomas Schacht – Water Supply Planning (email)

4. Public Works: To consider and act on a request from the Public Works Director, Gary Schneider, for an additional appropriation of \$10,027 to line 10130-51520 (Highway Maintenance) for an employee payout and if approved, forward to the BOF as required.

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

5. Public Works: To consider and act on a request from the Public Works Director, Gary Schneider, for an additional appropriation of \$14,220 to line 10130-51530 (Refuse Collection) for an employee payout and if approved, forward to the BOF as required.

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

6. Public Works: To consider and act on the following request for a FY26 In-Series Transfer from Director of Public Works, Gary Schneider, in the amount of \$4,000 to cover the cost of street tree maintenance due to the tree truck still being out for repair with a new arrival date of mid-January.

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

7. **Public Works:** To consider and act on a recommendation from Purchasing Agent, Shea Davy, on behalf of Director of Public Works, Gary Schneider, for surplus disposal of six (6) – 8 cubic yard meta dumpsters (not listed on the asset listing) and a 2012 Ford F-250, VIN #1FTBF2B68CEA59387, ASSET #101133, FLEET ID H19, as these items have past their service life and been replaced.

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

8. **Utilities Commission:** To consider and act on a recommendation from Shea Davy, Purchasing Agent, on behalf of the Director of Utilities, Jill Stevens, to award the bid to Resilient Land and Water, LLC, to identify the Capital requirements surrounding the potential renewal of the Waterford/New London Interlocal Water Agreement in the amount of \$110,000. Funds will be available in line # 20531-57898 (Engineering Interlocal Water).

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

9. **MOTION** by Muckle and seconded by Brule to move #14, Appointments & Resignations, to #9 VOTING IN FAVOR: 3-0

Appointments & Resignations:

- 9a. To consider and act on an interim, alternate appointment of Anne Darling, (R) to the Zoning Board of Appeals, due to a vacancy until the next town election (11/02/2027).

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

- 9b. Resignation by Debra Walters, (U) Member, from the Historic Properties Commission.

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

10. **Emergency Management – State Homeland Security Grant Program Region 4 Memorandum Agreement:** RESOLVED, that the Board of Selectmen may enter into with and deliver to the **State of Connecticut Department of Emergency Services and Public Protection, Division of Emergency Management and Homeland Security** any and all documents which it deems to be necessary or appropriate; and FURTHER RESOLVED, that Robert J. Brule, as First Selectman of the Town of Waterford, is authorized and directed to execute and deliver any and all documents on behalf of the Town of Waterford and to do and perform all acts and things which he/she deems to be necessary or appropriate to carry out the terms of such documents, including, but not limited to, executing and delivering all agreements and documents contemplated by such documents.

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

- 11. Fire Services:** To consider and act on the following request for a FY26 Out-of-Series Transfer from Director of Fire Services, Chris Haley, in the amount of \$4,019 to cover the cost of W-25 tire replacement, and forward on to the Board of Finance if approved.

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

- 12. Fire Services:** To consider and act on the following request for a FY26 Out-of-Series Transfer from Director of Fire Services, Chris Haley, in the amount of \$6,000 to cover the cost of rear tire replacement on W-41 and W-36, per DOT inspection, and forward on to the Board of Finance if approved.

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

- 13. Fire Services:** To consider and act on a recommendation from Purchasing Agent, Shea Davy, on behalf of Director of Fire Services, Chris Haley, for surplus disposal of a Brush Truck Fire Pump and Tank Skid Unit, as these items have outlived their usefulness to the department.

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

- 14. Fire Services:** To consider and act on a recommendation from Purchasing Agent, Shea Davy, on behalf of Director of Fire Services, Chris Haley, for surplus disposal of several items including self-contained breathing apparatuses, self-contained breathing regulators, rapid intervention pack, submersible pumps, tools, lights, spreader, cutter and a ska-pak cylinder, as these items have outlived their usefulness to the department.

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

- 15. New Business:** Reval & Solar Legislation update from Paige Walton, Assessor; Crystal Mall updates from Rob Brule and Charter Revision discussion from Greg Attanasio

- 16. Old Business: NONE**

- 17. Correspondence:**

17a. The First Selectman has re-appointed Michael Buscetto, (U) to the Economic Development Commission, to fill the term of 9/1/26-8/31/30 as a member.

17b. US Treasury Report – Final Quarterly thru 12.31.25

17c. State of CT Additional Revaluation email from Rob Brule

17d. Council of Government Letters of Support for Changes to Reval
Cycle email from Rob Brule

17e. Solar Legislation Letter – email from Rob Brule

18. Consent Agenda

18a. Tax Refund: To approve and act on repayment of tax refund in the
amount of \$5,207.14

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

18b. Board of Selectmen Regular Meeting Minutes November 18, 2025

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

19. Adjournment: 6:18 PM

MOTION by Muckle, seconded by Attanasio, VOTING IN FAVOR: 3-0 PASSED

Joshua Steele Kelly

6 Marlin Drive
Waterford, CT 06385

Resident
Waterford, CT

E: joshuasteelekelly@gmail.com
P: 860-912-7624

December 2, 2025

Board of Selectmen
Waterford Town Hall
15 Rope Ferry Road
Waterford, CT 06385

Dear Selectmen,

I am writing to request that the Board of Selectmen vote as soon as possible to form a Charter Revision Commission as a means of launching a Charter revision process.

I make this request now because the 2025 municipal election here in Waterford was a stark reminder that elections are decided in a partisan manner, but multiple elected officials in Waterford deliver services on a non-partisan basis. This includes:

- The Town Clerk, who does not decide any facet of Town policy and does not change the manner in which his services are rendered on a partisan basis;
- The Tax Collector, who also does not decide any facet of Town policy and does not change the manner in which taxes are collected on a partisan basis; and
- The Treasurer, who does not decide any facet of Town policy and does not change the manner in which he conducts his work in a partisan manner.

The roles listed above are not partisan in nature; why do we elect them in a partisan manner?

On the contrary, the Town Clerk and Tax Collector are required by State law to hold certifications, and the Town Treasurer is a technically-involved role. Our Town is better served by the technical prowess, skill, and knowledge of the three individuals that currently hold those roles; but the partisan election of someone unqualified for the position could lead to delays, mistakes, and even lawsuits if those mistakes are large enough. For the sake of the Town, these three positions should be hired on a professional basis, not elected on a partisan basis.

The Charter currently identifies these positions as needing to be elected; as such, changing these positions to make them hired rather than elected would require the revision of the Town's Charter. According to Connecticut General Statutes Sec. 7-188, the Board of Selectmen of a town with such a body is required to vote to authorize the creation of a Charter Revision Commission. Thus, I implore you to act accordingly to protect the professional nature of these roles in Waterford for all time.

While the Charter is being revised, there are multiple other prospective changes that I believe the Charter Revision Commission should be empowered to explore and consider. I hope that you will present the Commission with a charge that is broad to allow them maximum flexibility in their considerations and deliberations. I have included a list of possible changes for the Commission to consider as an attachment to this letter (see Appendix A).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Steele Kelly' with a stylized flourish at the end.

Joshua Steele Kelly

Appendix A: Items for Possible Consideration by the 2026 Charter Revision Commission

- 2..1.5: The term "town office" is nebulous at best and should be clarified to say "elected town office," as other parts of the Charter seems to allow vacancies for some appointed positions to be filled by the Representative Town Meeting.
- 2.1.7: Runoff elections are expensive. Other towns use a coin flip to reduce cost. It would be ideal to future-proof this section to allow for ranked-choice voting to allow for instant runoff calculations to occur.
- 3.1.4: We have an overabundance of members on the Representative Town Meeting currently. Devising a way to proportionately assign a set number of officials between the set voting districts may be a way to ensure proportional representation based on population size while avoiding the never-ending growth of the RTM.
- 3.1.5 - 3.1.6: To allow for greater continuity on the Town's legislature, it may be wise to move the election of these individuals to staggered four-year terms.
- 3.1.7: Here and in all other sections where it may occur, "Elector" needs to be clearly defined. Is it a registered voter? If so, that fact must be articulated.
- 3.1.9a: The portion of this section regarding ballot access by petition is contrary to state law; state law only requires 1% of the number of people who voted for a given position in the last election to have to sign a petition to get a person on the ballot for that petition. That number is generally less than 100. As such, this requirement should be struck from the Charter.
- 3.1.9a: The sentence reading "no signature on a petition shall be valid or counted if the signer thereof shall have signed other petitions on file with the town clerk for more than the number of candidates which a political party may nominate under this charter for the district wherein such signer shall reside" is both hard to track and is a limitation of the democratic process; there is no direct benefit or rationale for this provision aside from making it harder for residents to run for office. It should be eliminated.
- 3.1.9b: It is likely that this provision is already required by state law and should be eliminated to avoid redundancy.
- 3.1.9c: This provision is already required by state law and should be eliminated to avoid redundancy.
- 3.1.9g: This provision allows people who may not have the support of a majority of voters to win elections; it would be advisable from a democratic perspective to future-proof this clause to allow for ranked-choice voting in the future.
- 3.1.10: This provision does not successfully account for individuals elected outside of a recognized political party and does not provide any checks and balances between the legislative and executive branches. I would recommend this be amended to state that the three nominations shall be made by the First Selectman and that the nominees must be from the same registered party affiliation (including unaffiliated) as the person who has vacated the seat.

- 3.1.11: All clauses in the Charter should be updated to future-proof the document from changes to state law that would allow notices to be placed online and not strictly in the newspaper.
- 3.1.13: As a means of providing a greater check and balance on the legislature, emergency legislation should only be able to be enacted when a Declaration of Emergency is issued by the Governor or municipal CEO.
- 3.1.14a: 5% of the number of elected voters in town is roughly 700 people; that is too many signatures for anyone to reasonably obtain in such a short time. I recommend this number be reduced to either 3% or 500 people.
- 3.2.1: I believe a three-person Board of Selectmen is simply too small to be effective for anything other than rubber-stamping the will of the First Selectmen. I recommend that the Board of Selectmen be expanded to a seven-person body with staggered elections.
- 3.2.1: In the event changes are made to the CEO position, the last sentence in this section may be changed to include "Chair of the Board of Selectmen."
- 3.2.3: Conversion of the position of Chief Executive Officer from an elected role to a hired role (Town Manager), given that the growing needs of the town and the technical skills required of a municipal Chief Executive continue to rise to a point of requiring a trained professional to manage the role; the hiring of a Chief Executive also helps eliminate politics from the executive office. If this change is made, such Executive Powers would generally lie with the Town Manager, though the First Selectperson would continue to have powers of their own. In order to achieve continuity, I believe the current First Selectperson would be best suited to be automatically appointed as the first Town Manager with the first Town Manager search commencing following that position becoming vacant.
- 3.2.4 - 3.2.5: If the CEO position is amended, these items require refinement.
- 3.2.6b: there is a typo here, the first instance of the word "Board" should be removed.
- 3.3.1 - 3.3.4: I recommend that the Board of Finance be eliminated and that the responsibility of the Board of Finance be transferred to the expanded Board of Selectmen, especially if some of the responsibilities of the First Selectperson are transferred to a Town Manager.
- 3.3.5: This item is not one that needs to be enumerated within a Town's Charter.
- 3.4 - 3.6: Conversion of the positions of Town Clerk, Tax Collector, and Treasurer from elected roles to hired roles, given these positions do not execute their responsibilities in a partisan manner. To ensure continuity with the roles, I believe the current holder of this position would be best suited to be automatically hired to this role with the first search commencing following that position becoming vacant.
- 3.7, 3.9: Are these stipulations relevant given that state law articulates it well?
- 3.10 - 3.11: The Board of Assessment Appeals and the Zoning Board of Appeals are both best handled by qualified individuals; as such, it may be best to convert these from an elected to an appointed position.

- Chapter 4: Would it be better to convert some of these items to ordinance so they are more easily amended as needed?
- 5.3: I know from first-hand experience that the Inland Wetlands & Conservation Commission rarely have time to talk about conservation because they spend so much time talking about Inland Wetlands. I recommend that the Conservation Commission and Inland Wetlands Commission be separated, and that the Conservation Commission then be combined with the Recreation & Parks Commission.
- 5.7 - 5.9: These items should be appointed at the discretion of the municipal CEO and should not strictly be enumerated in the Charter.
- 5.13: Can this Board be combined with the Zoning Board of Appeals or another agency?
- 5.14: Should this provision be listed in the Town Charter?
- 5.19 - 5.20: These items should be appointed at the discretion of the municipal CEO and should not strictly be enumerated in the Charter.
- Additional Item: should the Charter revision process be enumerated in this document, and should Charter revision process be required to occur no less than every 10 years at minimum?

Shannon Withey

From: Thomas Schacht <thomasschacht@hotmail.com>
Sent: Tuesday, December 16, 2025 10:33 AM
To: First Selectman
Cc: Town Clerk
Subject: Public comment for December 16, 2025 Board of Selectmen meeting
Attachments: Waterford Water Supply Planning - public comments to Selectmen .pdf

CAUTION: This email originated from outside of the organization.

Do not click links or open attachments unless you recognize the sender's email address and know the content is safe.

Please accept the attached document as for-the-record public comment on the water supply planning item on the December 16, 2025 Board of Selectmen's agenda.

Thank you.

Thomas Schacht

TO: Waterford Board of Selectmen
By e-mail.

FROM: Thomas Schacht
thomasschacht@hotmail.com
423-742-0305

RE: Public comment - water planning agenda item - December 16, 2025 Board of Selectmen meeting

DATE: December 15, 2025

Please accept this memo as for-the-record public commentary on the pending expiration of the interlocal water agreement and the Town's process of engaging consultants to help plan for the future.

[1] Waterford should stop planning in secret and embrace public transparency.

Utility Commission minutes dated December 12, 2023 show that the Commission on that date authorized establishment of a committee to work on water supply planning. Here is the item from the minutes:

Commissioner Valentini requested that the Commission create a Water Task Force sub-committee to evaluate the Town's water supply, demands and operations for the next 50 years and beyond. Chairman Kirkman tasked Mr. Bartelli to work with Commissioner Valentini to establish members of the proposed Task Force Committee and provide more information for consideration at the next regular meeting.

Subsequent Commission minutes refer to the water planning committee by slightly different names. On January 9, 2024 it was called "Water Task Force Subcommittee." At the next meeting on February 13, 2024 it was called "Ad Hoc Water Committee." The Committee had its first meeting in October 2024.

C.G.S. § 1-200(1) specifically includes committees and subcommittees in the definition of a "public agency" subject to FOIA and C.G.S. § 1-200(2) makes clear that meetings of committees and subcommittees of public agencies are "meetings" subject to FOIA's open-meeting rules.

Pursuant to FOIA, in December 2023 I made a request for agendas and minutes of the water planning committee. The request was denied on the basis of a claim that the committee meetings were not meetings of a public agency under FOIA. Really? Read the statute.

The Town attorney justified the FOIA denial with a citation to a questionably applicable state Supreme Court Case (*Meriden v Freedom of Information Commission*, 2021). That case held meetings of an informal “leadership group” of city officials, not formed pursuant to any official act of the City Council, were not “meetings” under FOIA. In contrast, the Waterford Utility Commission’s water planning committee was not an informal group or routine office staff meeting. The water planning committee was formed pursuant to an official action of the Utility Commission. It was authorized to investigate specific questions of vital importance to the Town and potentially to the region. It is expected to make reports and recommendations and it appears as a routine agenda item for the Utility Commission and is routinely referenced in Commission minutes. Yet - it is claimed - details of the water planning committee’s work are not public information.

Is this the kind of government that the people of Waterford deserve or voted for? Access to a pure and adequate supply of water is everybody’s business. Water is a public trust. The last time Waterford negotiated a water contract with New London, it took eight contentious years. At one point the handling of a water issue prompted an editorial by *The Day* that used the words “nasty,” “pigheaded” and “retaliatory” to describe behavior of officials.¹ If the current water planning situation is being handled in the public interest with appropriate skill and integrity, what is there to hide?

[2] There is an elevated risk of stumbling into another bad deal if the Town does not organize its own house.

The Town has been derelict in its oversight of the current interlocal contract. Uncorrected, this does not bode well for the future. For example:

- The Town has failed to require that New London provide water system financial information as required by the terms of the existing contract. Waterford’s former Utility Commission director told me the Commission has no idea if New London’s rate-setting has complied with the contract formula because the Town doesn’t track that topic.
- Waterford has paid no attention to the fact that for multiple consecutive years, New London’s municipal auditors have reported “material” findings regarding deficiencies in the City’s water department accounting – including findings that the system has been vulnerable to fraud. No regulated private utility could get away with this type of financial mismanagement.
- Waterford did not figure out that New London had for years been diverting water-related revenues to its general fund and elsewhere, contrary to statutory requirements for water

¹ “Stop fighting. Leadership, not acrimony, needed in City-Town dispute.” *The Day*, April 20, 1983, p. 10.

monies to be used for the water system and no other purpose. This diversion occurs at Waterford's expense.

- Waterford didn't bother to obtain a copy of New London's operations and management contract with private vendor Veolia - even though Veolia provides services in Waterford and, per its contract with New London, Veolia is responsible for upholding New London's obligations under the interlocal contract.
- Per Utility Commission minutes of March 17, 2015, the Town's own engineer mis-informed the commission about the status of existing water supply studies, incorrectly reporting that there were no studies on a particular topic when in fact there had been multiple in depth studies, many of which had been funded by the Town.

The proposal before the Board of Selectmen is to hire an engineering firm to assist with planning. Engineers are necessary, but they have limits. In the last contract negotiation, Waterford was out-lawyered, not out-engineered.

[3] The current interlocal contract is economically unjust, inequitable, probably unlawful, and demonstrably vulnerable to corruption. One or both of the following alternatives should be chosen going forward:

- [a] The Town should take control of its retail water utility operation. This involves operating as a self-supplier via purchasing water at wholesale and/or developing Town-owned supplies. As a corollary to controlling its retail utility operation, the Town should control the selection and contracting process if a private company is to operate and manage the Town's water system.**
- [b] The Town should fulfill the unkept promise made 37 years ago in the current water contract and become part of a regional water system.**

Control of Retail Water Utility Operation

Since entering the first interlocal water contract with New London in 1968, Waterford's water system has operated under the weight of unjust and probably unlawful bullying from New London. In the past this was most plainly evident in the multiple occasions in which the City abused its control of water by declaring moratoriums on new water connections in the Town – effectively shutting down new economic development until the City got what it wanted. But moratoriums and other threats do not capture the full extent of New London's economic oppression tactics.

For more than a half-century, the confiscatory terms of the interlocal arrangement have prevented Waterford from generating any meaningful revenue from water utility sales and services. Instead,

the Town has been forced to rely on non-utility sources of money to support the utility, such as general tax revenues.

This is not how municipal utilities are supposed to operate. State law directs that municipal utility services will be funded by user fees. Every time Waterford makes a general fund appropriation for the water utility, the Town unfairly shifts utility costs onto taxpayers who cannot benefit from the water system because their property lies in areas served by wells. Every property in Waterford that is served by a private well pays both for that well and, through general taxes, for a water system that is inaccessible to the property owner. I am a Waterford taxpayer affected by this unfair arrangement. Although the law permits a Town to use its general fund when utility revenues are insufficient, the situation in Waterford turns that extraordinary backup provision into a perpetual state of affairs.

When negotiating the present water contract, New London insisted it deserved a “return on investment” in its water system. That’s reasonable so long as the return is not excessive. Yet, New London has denied Waterford access to the same economic benefit from the Town’s investment of tens of millions of dollars in water infrastructure. By insisting on contract terms that deprive Waterford of the ability to earn revenue from water services in the Town, New London has effectively annexed Waterford’s water infrastructure for the exclusive economic benefit of the City.

All of this would change for the better if the Town adhered to the recommendations of its own water supply planning ordinance number 13.04.020. That ordinance contemplates the Town purchasing water at wholesale to supply its own customers at rates set by the Town. Here is the ordinance text:

Water supply studies to consider 1958 report. Studies concerning supply of water shall consider the several schemes outlined in the water supply survey report by Philip W. Genovese and Associates submitted August 28, 1958, particularly the investigation of subsurface water supply for initial local area systems and the *purchase by the town of metered water* for service to present mains and extensions thereto. (italic emphasis added)

Purchase of metered water means wholesale purchase by the Town’s water utility for resale to the Town’s retail water customers. See: “Waterford’s Water Survey Summarized: Bulk Purchase From City Recommended.” The Day, 10-22-1958, p. 20.

In negotiations for the first interlocal water contract in 1968, New London refused to sell water to the Town at wholesale. Instead, the City insisted that it would only provide water if the City also controlled the retail service delivery in the Town and if the City set water rates in the Town. The City’s demand was unjust, inequitable, and/or unlawful on multiple grounds.

First, in making its demands for total control, New London unjustly exploited the coercive circumstances of a water supply crisis. Waterford was simultaneously growing rapidly and reeling from a multi-year drought that took place in the mid-1960's. Wells had dried up all over the town. Some people were forced to carry water to their homes in buckets filled from distant fire hydrants.

Second, by agreeing to New London's demands for total control, Waterford unlawfully delegated a non-delegable legislative rate-setting duty of its RTM to the New London City Council. The New London City Council is barely accountable to New London voters. It is not accountable at all to Waterford voters.

The RTM's rate-setting duty is set forth at CGS § 7-239(a). This statute, specifically applicable to municipal water utilities, prescribes that:

“(a) The legislative body shall establish ... rates or charges for the use of the waterworks system.”

Because Waterford does not set its own water rates, the Town's water customers have no authority accountable to them capable of assuring that their water service complies with the additional statutory requirements that:

- Rates be “just and equitable”
- Rates be “sufficient in each year for the payment of the expense of operation, repair, replacements and maintenance of such system”
- Rates be “sufficient in each year ... for the payment of the sums in this subsection required to be paid into the sinking fund.”
- “In establishing such rates or charges, the legislative body shall consider measures that promote water conservation and reduce the demand on the state's water and energy resources.”

Third, as a condition of doing business with Waterford, New London also has coercively required that Waterford refrain from independently obtaining water from any other source – including even the Town's own sources should it develop any. The interlocal contract contains a theoretical exception if there is a shortage, but this exception has proven worthless because New London retains exclusive control over the definition of shortage (which is not spelled out in the contract) and because New London has a history of lying to the Town and to State authorities about the adequacy of its water supplies to avoid acknowledging shortage. This is not an exaggeration - New London's history of repeated manipulation of its water supply numbers is a matter of public record and state agencies have in the past confronted the City about its inaccurate numbers. Town historian Robert Bachman recites one notorious episode involving New London's attempt to

leverage its control of water to block construction of the Crystal Mall - see page 92 of the 2000 Bicentennial Town History.

The importance of additional water supply is highlighted by the fact that during the multi-year drought that preceded the 1968 water agreement, New London's reservoir system plummeted to 18% of capacity. This critical low was reached *before* the City took on the burden of supplying an entire additional municipality. The severity of the drought's impact on New London's water supply is recited by the Connecticut Supreme Court in its 1968 decision in *Dimmock v New London* (a case in which the court told New London that it could not steal water from someone else's land but had to pay for it).

At the time of the 1968 contract, New London admitted that serving Waterford safely would require additional supply and the City represented that it would develop that supply. After signing the 1968 contract, the City revived a water plan that had been originally developed in the early 1950's when a steel mill was proposed for Millstone Point. The plan was to construct a huge dam and flood the Hunts Brook valley to create a giant reservoir that would feed into Lake Konomoc. But the City never carried out that plan and under current environmental laws it would be virtually impossible.

At the time of signing the present water supply agreement in 1988, New London had still not added any new sources of supply. Within months of signing the 1988 contract, New London experienced a water supply crisis and announced water use restrictions with violators subject to arrest.

Here we are, now 57 years after the 1968 contract and New London has still not added any additional regular sources of supply. Only under pressure of consent orders from the state has New London tweaked the operational efficiency of its system with a new intake pipe at Lake Konomoc and participation in a regional emergency interconnection. Beyond those measures, which are designated for emergencies - not economic growth - the City has made Waterford an involuntary player in a game of drought roulette, flirting with operation below the DPH recommended margin of safety and failing to fulfill a water system's responsibility to make available an abundant supply of water.

New London has boasted of low water rates and Waterford officials have sometimes rationalized the shortcomings of the interlocal contract on these grounds. Based on what is said, one would think that New London possesses some economic wizardry.

In truth, there is no free lunch. But there is temporary free-riding. The Town has been coasting on the economic coat-tails of the fact that its water infrastructure is comparatively new - much of it built in the 1960's - and has not yet reached the end of its useful service life. However, coasting is unsustainable in the long-term. Future infrastructure replacement and perhaps expansion are inevitable. However, because the current contract imprudently deprives Waterford of any water revenues, the Town has had no money to build a sinking fund for water infrastructure

replacement. Today's water rate arrangement is imprudent and immorally robs our children, who will end up burdened by the shortsightedness of previous generations.

In some respects, New London's low water rates have historically suggested reckless under-investment or plain incompetence. For example, on May 1, 2010 New London signed an amendment to its operations and maintenance contract with Veolia that was made to avoid litigation. In the contract amendment, the City admitted that the water distribution system to be served under the contract was 75% larger than had been stated in the original bid and contract documents. *Seventy-five percent.*

A New London official's public statement that rates are "artificially" low also should make Waterford uneasy.² Artificially low rates have been political candy that has led Waterford to self-destructively surrender to a contract scheme that turns the Town's water system into a New London asset. In 2006 the New London City Council recommended selling the water system. *That was not the first time that idea has been floated. In 2018 a City legislator introduced a bill that would have allowed sale of the New London water system to a private company at full market value, with the price recoverable in water rates. The bill passed out of committee with an overwhelmingly favorable vote. Such a sale could be a huge windfall to New London, substantially paid-for by Waterford rate-payers who would get nothing in return. The City's artificially low rates leave plenty of room for a new operator to increase rates to cover whatever price it paid to the City.*

Under antitrust law, New London's refusal to sell water at wholesale and its insistence on controlling retail service and water rates in the Town constitutes a prohibited tying arrangement. A tying arrangement is a situation in which a seller conditions the sale of one product or service (the tying product) on the buyer's agreement to purchase a second, distinct product or service (the tied product) that the buyer may not want or would prefer to buy elsewhere.

In the case of Waterford and New London, the tying product is water and the tied service is retail operation and maintenance of a water system.

The economic harm to Waterford is obvious and could hardly be more severe. New London's insistence on the tying arrangement is the foundation for New London's free use of Town-owned water infrastructure to provide retail water service. It is absurd that virtually 100% of revenue generated from use of Town water infrastructure goes to the City. It is absurd that Waterford receives zero return on its infrastructure investment - not even a penny for a sinking fund. Had New London paid for its profitable use of the Town's infrastructure, water rates would have been necessarily higher but the Town would not be in its present untenable situation of zero water revenue and no sinking fund for the Town's future.

² See: "NL Plans To Sell Watershed Property" *The Day*, February 7, 2006, p. 11, quoting the City Manager's misleading virtue-signaling claim that the City's water rates are a deliberate "undervaluing of an asset of the City of New London in order to support the region."

It is instructive to compare the present situation to how Waterford an analogous situation in the early 1980's. Without permission or compensation to the Town, New London had appropriated use of Waterford's water infrastructure to sell water to Montville. As a matter of principle, Waterford asserted its property rights and said New London should have Waterford's permission to use Waterford's assets. New London claimed it did not need Waterford's permission. To protect the Town's rights, Waterford took New London to court. The case was settled against New London, with a vindication of the Town's property rights and a payment by New London. The payment was only \$13 - clearly what mattered to the Town were fundamental rights, principles, and self-determination.

If the Town regains sufficient municipal courage to again vigorously defend itself against economic bullying, then it may be useful to remember that New London is not immune from consequences of violating antitrust laws when its water utility operates in other towns that are not part of the City's own state-sanctioned Exclusive Service Area. See: *Millers Pond Company LLC et al. v City of New London et al.*, 273 Conn. 786 (Conn. Supreme Court, 2005).

Control of Operations and Maintenance Contracting

In 1996, over some vigorous objections and without Waterford's permission, New London moved its water system operations and maintenance activities behind a financial curtain. The City unilaterally outsourced these functions to a series of private contractors. Waterford was completely excluded from the decision to privatize and was excluded from the contracting process, which was conducted in secret by the City. The privatization completely upended the rate-setting formula that had been negotiated in the contract signed eight years earlier.

Since 1996, New London has corruptly milked its private utility operations contracts for mandatory kickbacks. The scheme originated behind the curtain of a phony charitable foundation that the New London Water Authority had no power to create. Since 1996, millions of dollars that should have benefitted ratepayers in the form of contract savings have instead been diverted into private New London organizations, to City agencies unrelated to the utility system, and to the City's general fund. This ongoing financial diversion violates statutory requirements that municipal utility-related revenue be used for the utility only and for no other purpose.

Nearly 18 months ago I supplied extensive documentation of this corrupt scheme to the Waterford Utility Commission. To my knowledge, there has been no public discussion since then. The citizens of Waterford are owed an explanation for the silence.

In 2006, for unstated reasons, Waterford and New London amended their water agreement to make the contract assignable to third parties. This is economically risky for the Town. With an assignable contract, and with the existing kickback scheme as a tested model, the City could just function as a utility landlord, leasing its entire system to a private operator, and assigning the contract to that operator in exchange for payments back to the City. The Town would have no say in such a deal, but the Town's water customers would end up paying a big chunk of the rent.

Because municipal utilities are not PARA regulated, the amount of Waterford-subsidized rent that New London could collect from a private water system operator would be limited only by the City's conscience. History does not support confidence in a view of New London as a conscience-driven municipality.

In any new water agreement, Waterford should insist on complete financial transparency. Any new agreement should also prohibit any scheme that diverts utility-related funds to non-utility uses,

If Waterford is going to rely upon private contractors for operations and maintenance services, the Town should contract directly for those services. If there is going to be a joint contract, then the Town should be a full party in negotiating and letting any such contract.

Participation in A Regional System Should Be A Priority

The virtues of a regionalized approach to utility service are indisputable. Regionalization is favored in state water policy. Large scale water utility regionalization has been highly successful in other areas of the state - but not yet in Southeastern Connecticut. When the present Waterford-New London water contract was signed in 1988, statements by officials indicated that it would only be in place for a handful of years, until negotiations for a regional system promised in the contract were consummated.

When Waterford initially proposed a regional system during negotiation of the present interlocal contract, New London categorically rejected the idea. In official policy documents, the City anointed itself "the area's [sole] water entrepreneur." New London policy emphasized that Waterford was not a seller or supplier of water to anybody and affirmed a categorical "no partners" policy with respect to water.

New London has a long and repeated history of not making necessary improvements to its water system until: [a] there is an emergency; [b] it is compelled to do so by state or federal regulatory authorities, and/or [b] the City has found a way to make somebody else pay for whatever needs to be done. For the duration of the interlocal water contracts, Waterford has been the downstream victim of New London water department lassitude. A regional system could go a long way toward preventing this history from continuing to repeat itself.

Case in point: New London failed for more than a decade to comply with state and federal orders to install a water treatment plant because the City's water was determined to contain excessive amounts of chemicals suspected to be cancer-causing. The City denied responsibility for its deliberate failure to build the treatment plant. Instead, New London blamed Waterford for the ongoing exposure of all of its water customers to water deemed substandard by state and federal officials. When authorities finally reached the limit of their patience, and told the City that no more excuses of any kind would be tolerated, New London still didn't build the treatment plant. Instead, New London imposed a draconian

moratorium on all new water connections in the Town, effectively taking control of all new construction and related economic development in the Town. The purpose of the moratorium was simple: to extort the Town into signing an undesirable contract that was economically exploitive of the Town. Ultimately, as a carrot counterbalancing the stick of the moratorium, New London agreed to a contract provision promising to negotiate “in good faith” toward creation of a regional water and/or sewer system.

That carrot was fake. On the topic of a regional water system, New London has shown it does not understand the meaning of “good faith.” In hindsight, the City’s still unkept promise to negotiate in good faith toward a regional water system simply functioned as a bait-and-switch to get Waterford to sign the deal.

In 37 years, New London has not only failed to keep the regionalization promise with respect to water, it has actively and unethically undermined that promise. Two specific examples:

- The City flatly rejected an invitation to put regionalization on the agenda for a water supply meeting because a Waterford RTM official had been invited. I know this because I invited the Waterford official and was told by New London that the meeting would be cancelled if the official attended.
- The City overtly opposed development of a regionally significant water resource by SCWA. That resource and SCWA’s plan for it had been endorsed by the state Department of Public Health and would have been a key step toward keeping the regionalization promise in the interlocal agreement.

Water is a public trust. A municipal water utility is a fiduciary steward of that public trust. Unfortunately, New London’s history shows that the City has self-servingly abused its water stewardship. New London’s official water policy treats water as an opportunity for exploitive entrepreneurship, not trusteeship. Keeping the promise of a regional system would limit or prevent repetition and continuation of the City’s institutional betrayal of the region.