

**Town of Montville Town Council
Special Meeting Minutes for Wednesday, June 15, 2011
5:00 p.m. – Town Council Chambers – Town Hall**

1. Call to Order

Chairperson Jacobson called the special meeting to order at 5:00 p.m.

2. Pledge of Allegiance followed by a moment of silence in honor and support of our troops.

3. Roll Call

Present were Councilors Beetham (5:05 p.m.), Buebendorf, Caron (5:10 p.m.), Hillman, McFee (5:05 p.m.), Murphy and Jacobson. Also present was Mayor Jaskiewicz and Town Attorney Bruce Chudwick.

4. Remarks from the Public Regarding Items on the Agenda with a three minute limit.

Chairperson Jacobson asked three times if there was anyone present who would like to address the Council.

5. Executive Session – none.

6. Unfinished Business – none.

7. New Business

a. Resolution #2011-066. The Town of Montville hereby resolves to approve the two (2) Memorandums of Understanding (hereafter collectively “MOUs”) with Rand Whitney Containerboard Limited Partnership, the MOUs being entitled (1) Memorandum of Understanding Concerning New Monthly Service Fee and (2) Memorandum of Understanding Concerning Exploration of Treatment Options and in furtherance of this resolution the Mayor is authorized to enter into and sign said MOUs on behalf of the Town of Montville and to provide additional information and execute other documents as may be required with respect to said MOUs.

Motion made by Councilor Buebendorf, seconded by Councilor Murphy, discussion; Attorney Matt Auger, representing the Water Pollution Control Authority suggested the Council take a recess until Councilor Caron arrives so that he may have the benefit of the presentation. Motion made by Councilor Beetham, seconded by Councilor Buebendorf to take a ten minute recess to allow Councilor Caron to hear the presentation in its entirety. 6-0, all in favor, motion carried. Motion made by Councilor Murphy, seconded by Councilor Hillman to reconvene the meeting at 5:12 p.m. Discussion, none, voice vote, 7-0, all in favor, motion carried.

Attorney Auger stated that he has always been taught that before you start talking it is important to know your audience and know what they know, so he is laboring under the impression that all of the Councilors have received the two Memorandums of Understanding that address the monthly service fee as well as the exploration of treatment options. He has been busy the last four business days picking a jury and he received a revised MOU an hour ago that the Town Attorney reviewed and made suggestions. He thinks it is important to agree on what document is being discussed because there is a suggested change in one of the MOU’s, the MOU concerning the exploration of the treatment options in particular numbered paragraph five entitled “best efforts and good faith” in which he is told and lead to believe that there is a suggested change that would apply to best efforts and good faith standard to Rand Whitney and to the WPCA but no to the Town and presently as drafted there are three parties to this agreement and that is the Town, the WPCA and Rand Whitney. When he refers to Rand Whitney, although the agreement says Rand Whitney Containerboard Limited Partnership RWCB, he thinks that Rand Whitney applies to the entity that operates the liner board in the company in the Town of Montville. The significant change in paragraph five titled “best efforts and good faith” is that first sentence, first line, first two words “the parties” are lined out and the parties are defined on page one, first paragraph as the Town, the WPCA and RWCB affectionately referred to as Rand Whitney. The changes that no longer are all three parties included in numbered paragraph five and instead the suggested read is “RWCB and the WPCA agree to cooperate in good faith and use their best efforts to reach an agreement on the selection and implementation of the treatment option during the term and to execute definitive documentation to this effect as soon as it is reasonably practical to do so; provided, nothing in the MOU shall require that the Town approve the treatment option (s) and/or plans for implementation of any treatment options, which approval or rejections will be at the sole discretion of the Town. He stated he is happy to discuss his comments in this forum regarding the suggested change and why he thinks this creates unnecessary risk for two of the three parties, being the WPCA and Rand Whitney. It was the consensus of the Council to continue the discussion in an open public forum. Attorney Auger stated he is confident the discussion will be cordial, civil and

constructive. Attorney Chudwick apologized if his comment is driving this discussion and suggested Mr. Ochsner explain the agreements so that there is an understanding of how they were put together and where they have come to date and he can explain the comments he made and then Attorney Auger can respond and work through the documents. He stated the suggested comment to a document that is now incorporated into an agreement is something that has already been approved by the WPCA and suggested the conversation go directly to how we got to where we are now, and what is in the document and go from there. Attorney Auger stated there are two MOU's, the first one is the commercial rate and monthly service fee, he stated he can state with confidence that everyone within the WPCA with whom he has spoken report whole heartedly an arrangement whereby the WPCA charges Rand Whitney a commercial rate for treating its affluent. Mr. Didato and others within the WPCA did their best to make certain that with the exception of an adjustment factor of point eight five, the rate that Rand Whitney is charged and the methodology utilized to arrive at that rate is the same for every other commercial customer that receives treatment of its effluent by the WPCA. Councilor Beetham asked if Rand Whitney is a commercial business, and stated when the town was putting in the sewage there were three rates for customers, one residential, one commercial and one industrial, and it looks like they do not want to pay the industrial rate because it is solids and want to pay restaurant rates. He asked what they were paying a month prior and what they are going to pay now under the new rate. Attorney Auger turned the microphone over to Attorney Jim Cobery, attorney for Rand Whitney Containerboard. He explained Rand Whitney started paying 1.6 million dollars after the arbitration ruling each year. With the MOU he is talking about changing from the current contract base fee to the commercial rate and this will increase the fees paid by Rand Whitney by two hundred and fifty thousand dollars. This would bring the total paid each year by Rand Whitney to around 1.5 to 1.8 million dollars. Councilor Beetham asked what Rand Whitney wants to do in Montville, stating that in order to want to do this study someone must have an idea that they want to do something different. Attorney Cobery stated they do not want to do anything different, they want to stop spending money on lawyers and he stated the Council is probably wondering why Rand Whitney is volunteering to pay extra for sewer treatment and he stated what they are hoping is that by setting aside all the litigation that they have been going through for fifteen years, they will not longer be spending money on attorneys and the WPCA will no longer have to spend money on attorneys and if this is the case the WPCA budget should decrease. Last year the budget had a line item of \$700,000 for legal fees for litigation and he hopes this line item will decrease substantially and when that line item decreases the commercial rate should correspondently decrease and they will end up better than they currently are, and understand it takes a little bit of time to get there. Councilor Beetham stated when Rand Whitney originally got into the system, the contract for what was in gallons and solids they were going to pay about forty one percent of the operating expenses of the WPCA and as more businesses came on it went down and the percentage of Rand Whitney went down. Attorney Cobery stated they are around thirty percent at this time. He stated the town's base has expanded and this makes the pool bigger and the other thing that has happened is Rand Whitney has learned to do things a little better and they are not sending nearly as strong or as much wastewater as they originally did. Councilor Hillman inquired if the new rate will cover maintenance on the pipeline and Attorney Cobery stated the arrangement is that Rand Whitney has operational and maintenance responsibilities for the pre-treatment facility and the pipeline and have had this arrangement since they started operating and would continue under the new MOU. The existing agreement is not altered by the MOU and this arrangement will continue. Attorney Auger asked Attorney Cobery to address the fact that the commercial rate MOU is nothing more than a substitution for the methodology within the treatment and modification agreement regarding the monthly service fee. Attorney Cobery stated Rand Whitney has been operating in the Town of Montville for fifteen years and have had litigation for most of that time. Last year there was a dispute over the service fee for wastewater treatment and spent a lot of money going through arbitration and spent a lot of time in a conference room with three arbitrators and the net result of it was they ended up exactly in the same place as they were before the entire dispute started except for the fact there was a lot of money spent on lawyers and the WPCA spent a lot of money on lawyers. Last fall Rand Whitney had an epiphany and realized that it is not in anyone's best interest to continue to pay lawyers and discussed ways to restore the relationship and work out a way that is beneficial to the two parties involved. The motivation of Rand Whitney is not to fight any longer and to take all the resources they have and use them productively so that the wastewater gets treated effectively and use the money to further invest in the plant and remain competitive. Attorney Auger discussed the commercial rate MOU, stating the most important section is that which is on page two, there is an earlier reference to an adjustment and various calculations regarding BOD flow and TSS and rates that are utilized and multiplied for flow and for TSS and BOD. These rates that are currently enforced and are the rates that all other commercial rate payers are charged, the only difference between the agreement as it applies to Rand Whitney and any other commercial rate payer is the adjustment factor and that is included because no other commercial rate payer pays as Rand Whitney's records have demonstrated historically upwards of five hundred thousand dollars a year for pre-treatment. So unlike someone like the Mohegan Sun who sends their effluent down a pipeline that the WPCA maintains, owns and is responsible for, Rand Whitney pre-treats its effluent through a pre-treatment facility that the Town owns but Rand Whitney operates through a pipeline that the town owns but for which Rand Whitney is responsible. Those additional responsibilities and costs associated with those responsibilities are what were considered to arrive at the point eight five adjustment factor. He stated he does not know the history of all that went on and was not one of the lawyers that was enriched as he came on the scene in September of 2010, not before that. The industrial aspect of their effluent is one of the reasons why it is in the Town and the Wicca's best interest to enter into the exploration MOU because what the town has is the opportunity, and the Council may say what obligations arise if the Town Council signs through the Mayor on the

dotted line on the exploration MOU, he stated there are no issues of concern with the WPCA on the commercial rate and there may be on the exploration MOU and the purpose of the meeting today is to make certain that whatever decision the Council arrives at is an educated one and is based on all the facts. He is not here to influence what the ultimate decision will be; he is here to make certain it is based on a solid foundation and not on any extraneous issues. Right now the town has the opportunity with the exploration MOU to commit to one thing, no to a pre-determined treatment option because there is no plan, there is no treatment option, there are suggestions that will be explored but how did that exploration occur, under the proposed exploration MOU, Rand Whitney has retained Woodard and Curren and the town has had the opportunity to speak on three occasions with Jim Chaplain of Woodard and Curren and he has addressed in cursory and summary fashion what he hopes to accomplish with the exploration MOU and what he has not done is said there is any pre-defined route he will take, instead what he has done is said that we need to inquire with the WPCA what your needs are, what Rand Whitney's needs are and how we can best mesh the two so that the manner in which the WPCA treats Rand Whitney's effluent is more efficient, increases the capacity of the plant and decreases costs and a necessary bi-product of the joint MOUs is with the commercial rate you are guaranteed a minimum two year term no matter what happens with the exploration MOU, the town is guaranteed two years commercial rate with no legal disputes with Rand Whitney, it is a three year term and there is the option at seven months before the natural expiration of the three year term to extend it, at the natural expiration of the commercial rate MOU it goes back to the status quo of today, and that is cost percentages that have been in effect since 1996. This is not in the best interest of the WPCA or the Town so Rand Whitney agreed that if at seven months they commence negotiations designed to extend the commercial rate arrangement and if thirty days thereafter there is no agreement on the commercial rate, he insisted on behalf of the WPCA a period of six month where either side can retain a rate consultant and perform a cost percentage rate study which is an option that currently exists under the treatment and modification agreement, he hopes that once the commercial rate arrangement proceeds that the parties will realize that life without lawyers is pretty good and Rand Whitney can be on to the business of making a profit producing liner board and the WPCA can get on to the business of treating water at a most cost effective fashion that they have been doing for many years and the legal fee line item will be significantly reduced. On average the WPCA has spent up to seven hundred thousand dollars a year, a waste of taxpayer money. The WPCA budget is 5.7 million dollars and seven hundred thousand dollars is too high to be paying lawyers. Not only does the WPCA realize an immediate cost savings on the order of whatever their line item is. He stated Rand Whitney was so impressed with Dr. Keiser's creativity that they may hire him to work in tandem with Woodard and Curren and they are of the belief that you can realize through an anaerobic digester process, which the town would purchase in part through State funds, the five million dollar grant that Senator Stillman has kept on the books and remains available if the bond commission approves it, that the town utilizes the five million dollar grant to the extent that it covers the cost of the anaerobic digester process or other treatment options the town can realize a savings or reduction of BOD of up to eighty five percent. He asked what the town can do to save the rate payers money and to save the tax payers and constituents money and stated if you look at the URS Facilities Plan it includes two SBR's and one of the primary benefits of an SBR is treatment of biological oxygen demand and they are rated at four thousand pounds per day. If through a potential technological implementation the WPCA can lower by eighty five percent the BOD content they receive from Rand Whitney, on the BOD issue alone it would save the cost of two SBR's. A program that reduces by eighty five percent BOD and saves the town the cost of two SBR's and utilizing the expertise of Woodard and Curren as well as the WPCA's own engineers in a collaborative effort the town has the opportunity to realize a substantial cost savings at a benefit to the rate payers. There is forty three years left on the water treatment agreement there is a potential of saving seven hundred thousand dollars a year for thirty million dollars over the course of the water treatment agreement. The town and Rand Whitney are a married couple that can not be separated until the year 2054 and although the Council members may not be sitting on the Council then and they are committing to an agreement to work in good faith with Rand Whitney and the WPCA to determine whether there is a better way to treat the effluent, nothing more. If during the course of the agreement the parties conclude in good faith that it will not work than either side has the option to shorten the commercial rate agreement from three years to two years and if in the spirit of full disclosure one side thinks the other is not acting in good faith although it would jeopardize the cost savings, you have the opportunity to discontinue the agreement. Attorney Auger stated he has done his best in a summary fashion to explain why he thinks it is in the WPCA and the town's best interest to enter into an agreement with Rand Whitney relative to the two MOU's. He does not want the Council to vote on the approval of the MOU's until each Councilor is satisfied they have the information they need to make an intelligent decision on behalf of the town. Councilor Hillman asked Attorney Auger to explain why the rate study that is in the process of going on can not be continued. Attorney Auger stated one of the reasons the current rate study is ongoing is authorized under the treatment modification agreement and as a result of the August 10, 2010 arbitration decision, the town had no alternative but to conduct another cost percentage study, that is the aspect of the study that applies to Rand Whitney, when the town uses a rate study it doesn't apply to Rand Whitney directly, it is for residential and commercial, but when the town talks cost allocation of the study, this is what is addressed with respect to Rand Whitney under the treatment and modification agreement. Councilor Hillman stated in all fairness to the WPCA and Connecticut State law has to do cost allocation and rate, she stated she wants to make that clear. Attorney Auger stated under Connecticut Law there has to be an equitable distribution of the rate amongst all the rate payers. The current cost study will be stopped because it results in part from the litigation and when you operate a business, sometimes you make a decision based on short term consequences and long term consequences and Montville is a business that can not fail, there are people that

rely on the Town for services and there are many towns in this country that are suffering financially so a short term fix is not a real fix if it creates long term problems. If the town can not get a divorce from Rand Whitney and can not come to an agreement the town will spend a lot of money fighting each other for the rest of the marriage and this does not benefit any member of this town, so what both sides are trying to do is reach a compromise, walk away with an agreement and allow the WPCA to develop a budget and not have to worry about litigation costs, and use the money that is otherwise budgeted for lawyers and instead utilize it to fix the grit chamber or any other aspect of the WPCA infrastructure that has not received the attention that it should over the years because the money has been diverted to litigation. The Town has to deal with Rand Whitney for forty three more years and this is a first step in bringing harmony to the relationship, it is a step on the commercial rate side that has the full support of the WPCA staff and on the operations side he does not see a down side, the Council is committing to nothing other than working together to try to make the plant a more efficient plant that can treat the Rand Whitney effluent with less expense and derive a benefit and cost savings with sludge, BOD reduction and maybe modify the twenty year plan so that the money can be devoted to more needy areas. He asked if the Councilors had any additional questions. Councilor McFee asked how far along the WPCA is on the current rate study and Administrator Lynch stated he does not know, he receives emails periodically and he emails back with a cc to Rand Whitney so there is transparency. The cost for the study is fifty six thousand dollars. Councilor McFee asked if there will be a rebate of some of the money if the study is not completed, and Administrator Lynch stated he does not know where they are in the rate study, it could be presented tomorrow, he is not sure. Councilor McFee asked if the town could use the rate study two years down the road and Administrator Lynch stated he could use the study. A discussion was held regarding using the rate study in the future and Chairman of the WPCA, Tim May stated the rate study should be almost complete, stating they had given a completion date of July 1, 2011, and he does not anticipate any rebate of money at this point if the rate study is terminated as most of the work is already completed. He stated he is not sure if the rate study will be valid in two years and he has not seen the report. Councilor Hillman stated she is glad the rate study will be done because she stated if she was in a divorce she would want a private investigator looking for hidden money and bank accounts and she would want them to finish even if she reconciled, she is glad the study is being done. Attorney Auger stated under the MOU, if the Council signs both MOU's the rate study must stop because it shows good faith and it shows the town's intent upon entering into this agreement is to work forward to work together in the future. He stated the rate study is not a total loss and is an investment worth taking and if it encouraged one party to compromise on the MOU to their benefit, it is still a good investment. Administrator Lynch stated the rates have not gone up for Rand Whitney since 2008 and once the MOU's are signed the WPCA will realize additional income right away, the way it is structured now, if either side decides to bring the contract back to arbitration the town could be in a position of another two or three years with no increase at all, and this is a good alternative or stay at the same rate for the next six or seven years. Chairperson Jacobson asked why commercial rates were chosen as opposed to industrial rates and what is the rate differential between the commercial and industrial rates. Superintendent Didato stated the industrial rate currently is structured would result in approximately one point five million dollars a year as compared to the commercial rate of one point eight million dollars per year. Chairperson Jacobson asked what the criteria from shifting from an industrial to a commercial rate or visa versa. Administrator Didato stated the current industrial rate is somewhat convoluted and it is contingent upon many factors, the commercial rate is very limited, for every thousand gallons it is so many dollars and for every pound of BOD it is so many cents and for every pound of TSS it is so much, it is very linear and straight forward as compared to the original agreement and contractual obligation the town currently has, there are factors involved, percentages and he would not be able to do justice to try to articulate how the industrial rate structure is, but he can say the difference monetarily is about three hundred thousand dollars per year and the town has been spending upward of five hundred thousand dollars per year on arbitration and attorneys. Attorney Auger stated it is important to note the term "residential rate" has a generic meaning that applies to many rate payers and the term "commercial rate" has a generic meaning that applies to many rate payers and what she should do with respect to Rand Whitney is to call it industrial if you wish, but their rate is defined by the treatment and modification agreements which are very complex and which require many pages of decisions. The issue is that there is no generic industrial rate, there is the Rand Whitney rate as defined in the treatment and modification agreements and he has a sense that Superintendent Didato would like to simplify the formula that creates certainty, because unlike the linear commercial rate which really results in no confusion as to how it is calculated, the methodology for determining Rand Whitney's rate is above his pay grade and can not answer the question. Chairperson Jacobson stated her concern regarding the commercial vs. the industrial rate is if it affects other businesses in town. Chairman May of the WPCA stated there is no commercial rate in the Town of Montville and for clarification Rand Whitney is a factored rate plan that has a lot of intricate baggage in it that can be interpreted differently and that is the reason why the town is in litigation, the commercial is very linear and straight forward fee and the MOU is a plan that the WPCA can live with and meets its needs, if the WPCA goes with the factored rate plan or study, it is a crap shoot and the WPCA does not know what way it will go, and any one of the factored rates in the study can be objected to in a contractual court of law, these are real issues that have to be dealt with on a daily basis. By going with the commercial rate will alleviate this. Chairperson Jacobson stated the WPCA is going the simpler route by extracting the information. She discussed the exploration MOU and discussed the treatment options and stated the entire Council did not receive Exhibit A and there is a reference to something called "the Plan". Attorney Auger stated the Plan does not exist yet, the plan will be the culmination of the efforts of Woodard & Curren, Dr. Keiser, and input from the WPCA and once Woodard & Curren creates the plan, they then provide a copy of that plan to the WPCA

who will have retained its own engineer to review the plan. The plan will address not just technical changes, but the financial consequences of technical changes so that the WPCA will not only know how if at all the plant has changed relative to treatment of Rand Whitney effluent, but equally as important you will know the projected costs to implement the plan, any increased cost that could result from implementation of the plan and any decreased costs. Chairperson Jacobson referenced the five million dollar grant, asking if it could be above and beyond that amount of money and how it would be paid for and how it is addressed in the plan. Attorney Auger stated it is addressed under the MOU not by the WPCA. The obligation of the WPCA is to secure the grant through the town. If the parties agree on a treatment option and the cost of the options are less than the five million dollars then the WPCA allocates the balance as it deems appropriate. Chairperson Jacobson read about a company out of Singapore called NewWater Company that does bio filtration system through anaerobic filtration which then utilizes methane and asked if this was going to be used. Attorney Auger stated the methane is a by product of the anaerobic digestion treatment process and the methane is a gas that could be utilized if this plan comes to fruition. If the plan includes anaerobic digestion than a necessary bi-product is methane and Rand Whitney is ideally suited to utilize the methane for power generation for their steam process and this is all part of the question how does this potential arrangement benefit the town and the WPCA, how does it benefit Rand Whitney. Mayor Jaskiewicz stated the town could benefit from the sludge, saving seven hundred thousand dollars. Chairperson Jacobson stated that using this type of process there would be a transportation from the WPCA plant to Rand Whitney, clean water would be sent back which could then be utilized or filtered and the water can be re-processed again back to Rand Whitney. The town would be saving money on the sludge removal that the town is currently paying. Attorney Auger stated this is all preliminary and if the process of anaerobic digestion is implemented, the type of effluent that the town currently receives from Rand Whitney will be significantly altered such that it resembles more of a commercial or residential nature vs. the unique strength that the town currently receives and treats. There are valid concerns of the WPCA that presently the town has a unique situation, Rand Whitney's effluent assists the plant, stating it is a mixture. Superintendent Didato stated that currently there is a homogenous mix of domestic wastewater and Rand Whitney wastewater that lend itself to a perfect mixture that is not too rich in nitrogen and if he exceeds his nitrogen in the outfall the WPCA has to pay fees to the state, however he has been fortunate to remain below the limit and receive credits between fifteen and twenty thousand dollars per year. With the new plan the characteristics will change and therefore part of the plan will have to include making provisions for this at the facility and find a way to decrease the nitrogen and treat it. It is early to really try to assume what the plan might be because it has not been developed yet, he did give a presentation to the Town Council regarding some of his concerns and Woodard & Curren were in attendance and they recognize the concerns. Councilor Jacobson stated from the technical merits perspective the WPCA is looking at a three year MOU on the rates and it seems it moves rapidly from the aspect of seventy five days and if this is signed the WPCA is in motion to start looking at treatment options quickly. Attorney Auger stated that Wooden & Curren has forty five days to come up with a plan, the WPCA selects its engineer and that engineer has thirty days to review the plan and then the parties determine whether or not they can reach an agreement. That is not what is going to take a long time, the DEP discussions, securing bond money and if everything goes well and everyone can reach an agreement that DEP approves and the bond commission comes through with the authorization then and only then does the shovel hit the dirt and this could take a long time. It is clearly going to take more than the seventy five days. Chairperson Jacobson stated that in beginning the treatment option for this and there is one that is found that is feasible that will work for everyone's benefit, and it looks like that is the goal for the entirety, what then happens to the MOU regarding the monthly service fee? Will it be altered based on a new treatment facility or treatment option? Attorney Auger stated presently the parties agree to a maximum of three years for a commercial rate, Attorney Cobery has mention that it gives the parties a chance to put their foot in the water and get to know each other better. He can not believe that if time unfolds and the commercial rate is working and the parties are working in a collaborative way to make the WPCA more efficient and to the extent that anyone interprets the potential plan as there is something wrong with the plant, divorce your mind of that thought, this is one of the best running plants in the State and Administrator Michael Didato as its operator has received accolades from DEP but there is nothing wrong with recognizing that you can always improve and that is what this represents, a recognition of the unique relationship between Rand Whitney and the WPCA and a desire to have both parties benefit from that relationship in a positive way rather than in a destructive one. Chairperson Jacobson stated she does not think that anyone has indicated that there are problems with the running of the plant, she is simply trying to grasp the concepts that he is discussing. Attorney Auger stated he gets the sense that there are some people that are interested in what is being discussed and they might be ready to publish this to the readers of the various newspapers and he wants to make certain that they understand that the negotiations and this potential plan is not a reflection that there is anything wrong with the WPCA, it is an understanding that the WPCA is exercising foresight in wanting to improve their facility so that they can reduce the cost to run the operation so the rate payers can receive a reduction in their monthly bill and that is progress. Councilor Murphy stated Attorney Auger is a fabulous attorney and is glad he is on the town's side, and sitting in negotiations during the lawsuit, he thinks the general feeling from most residents is that Rand Whitney is not a good neighbor, he feels that way and to ask the Council to make these agreements puts a lot of pressure on the Council members, even though this is a small step which could lead to something big, it is a small step and people are going to say why is the town making another agreement with Rand Whitney? He is apprehensive about the whole deal and he has a lot of respect for Attorney Auger and he is going to go with this because he feels the attorneys are on the ball. He knows that everyone on the WPCA has done a great job and Attorney Ochsner is a good man, this could potentially save the town money, but he feels the majority of the

Montville citizens do not agree with the way Rand Whitney has treated the town throughout the years. Councilor Beetham stated this is a win win situation but is not sure who gets the win win. He asked when the rate study was challenged; Rand Whitney was not paying the new rate but was not paying it starting in August of 2008. For three years they did not pay, and now with this new deal Rand Whitney saves some money, everyone is going to be friends and good neighbors, and he asked if Rand Whitney would be paying retroactive for the money they did not pay for the three years. Administrator Lynch stated the arbitrators in the award stated there is no retroactive, the WPCA had to conduct a rate study and after the rate study was done they had to follow the procedures in the agreement that each side has the option to go to arbitration. It clearly states there is no retroactive, Rand Whitney gets billed as soon as there is an agreement on a new rate, if there is no agreement, the rates stay at the 2008 rate unless there is a new cost percentage study but the pitfalls and perils of that are what happened in the past, there is a thirty day period in which to negotiate the suggested cost percentages. He stated it is a win win for Rand Whitney and a win win for the WPCA as well, because in 2008 the WPCA lost and there is no certainty that the WPCA will prevail in the next one but there is a certainty that the WPCA will be in litigation again. He stated the WPCA will take in the revenue and look at alternatives that will potentially enhance the plant and they win on gas generated, but the WPCA's ability to get sludge there instead of sending it to MDC and to trucking it is a win for both sides of the table. He understands there is apprehension to enter into this agreement with Rand Whitney but he can say that the town is not winning at the structure they are at right now, and both sides will be able to submit a budget that will have a trickle down effect that will give stability and help everyone in town, not just the WPCA but the commercial customers as well. Councilor Beetham stated he has reservations about letting Rand Whitney walk away saving seven hundred and fifty thousand dollars and he will have trouble voting for anything that will save Rand Whitney that much money. Administrator Lynch stated he could do a rate study that tells him he has to lower Rand Whitney's costs then the town will lose money. The rate study could just as easily come back to say to lower Rand Whitney's costs and then he would have to adjust other customers costs. He knows he can benefit with additional revenues for a certain amount of time with a very good chance of entering into a longer term. He stated Councilor Beetham is not looking at the back side and that is that the rate study could come back to say the WPCA is over charging Rand Whitney and their costs need to be lowered. Then they not only save the seven hundred and fifty thousand dollars but the additional savings from lowering their rates as well. In this case everyone will lose. Councilor Hillman disagreed with Administrator Lynch, stating the WPCA just had a rate study done by a reputable company, URS, and she stated Administrator Lynch stands by those numbers. Administrator Lynch stated he does stand by the numbers and stated he negotiated hard that the numbers he is going to use in this commercial rate stay the same, but if another company comes in and does a rate study there is a chance that it does not come out the same. Rand Whitney has agreed to the numbers in the rate study. Councilor Hillman asked why the Council was not given Exhibit A and Administrator Lynch stated that he had emailed the document to Councilor Hillman as the liaison between the Town Council and the WPCA and he assumed she would distribute the document to the rest of the Council. Attorney Auger stated the plan is not Exhibit A, and Councilor Hillman stated the second to the last line states "wastewater discharge to the treatment facility, Chaplick/Kieser Plan hereafter, the plan" and it says "the plan" in parenthesis through the contract. Attorney Auger stated the plan may or may not incorporate as a potential treatment option that which is contained in Exhibit A, but Exhibit A is separately referenced because it is a document that was already created and so provided for input, but by signing the MOU on exploration of treatment options the Council is in no way committing to going forward with Exhibit A. Councilor Hillman asked Attorney Auger to explain how the five million dollars got put into the bond money, and Attorney Auger stated it was an attempt to utilize both the Town, WPCA and Rand Whitney connections to secure funding from the State to upgrade as in indicated in the legislation the infrastructure and treatment operations at the WPCA and within the scope of the latter being the treatment options that necessarily includes the pre-treatment facility which the WPCA owns but is presently operated by Rand Whitney and so if Woodard & Curren and the WPCA engineer conclude that an aerobic digester process is the best method by which to treat the Rand Whitney effluent, the arrangement would be no different that the current pre-treatment facilities that the town owns and the WPCA operates and it would be within the proper scope of the five million dollar authorization. Attorney Cobery stated after the water supply litigation ended in 2005 he had extended discussions about how to settle the dispute without going all the way through the process of getting a final judgment, and the DEP offered up the possibility of both parties to improve the pre-treatment system and the treatment works on Pink Row to make it in more capacity and a better, more cost effective solution, that is how the bonding originally came about. It was an incentive the DEP was providing both parties to try to work through the water supply differences. Councilor Hillman asked if the original money that the State put aside received from Rand Whitney for fines at Rand Whitney paid by the DEP and Attorney Cobery said no. He stated Rand Whitney convinced DEP to allow them to contribute one hundred and fifty thousand dollars to be used by the Town of Montville WPCA to be used for improvements to the treatment works. Councilor Beetham requested Administrator Lynch to get a copy of this document for him to review. Attorney Cobery stated he listened to Councilor Murphy's statements and understands his sentiments and hopes that he can understand that on Rand Whitney's side of the equation there are many people who have similar, although opposite sentiments. He stated the two parties are now looking at a choice, you can look at the words of the MOU's and you can look at what exploration means but at its core he is looking at a choice, for fifteen years Rand Whitney has been on one path with the Town of Montville, fighting with each other and the two parties keep finding new reasons to fight, and there has been nothing done over the past fifteen years that benefits anyone except the lawyers involved. He suggested that Rand Whitney and the Town of Montville stop fighting and take a different path, he is hopeful that it will be

productive and helpful and worth looking into and if it does work there will be a simpler relationship with respect to the treatment fee, there will be a better treatment process so the WPCA can run and operate and treat wastewater and will be able to do so without the help of outside lawyers and that is what he is asking the Council to support. He wants to move forward and stop fighting and hopefully this will be a long term and positive relationship. If for some reason it does not work out then both parties revert back to where they were and if it does work everyone is a hero. Councilor Beetham stated he was ready to vote yes until he thought about the arrears that Rand Whitney does not have to pay to the town. He asked if Attorney Cobery would talk to the Kraft family and ask them to pay the arrears in the amount of seven hundred and fifty thousand dollars and make a contribution to the Town of Montville. Attorney Cobery stated the money Councilor Beetham is talking about is not arrears, he spent a lot of time with the arbitrators and they ruled that it was improperly assessed and Rand Whitney does not own money for this, if it was done improperly they would have paid it. It was not done properly and all three arbitrators made that determination and as a result the money is not owed, it was improperly charged to Rand Whitney. He is suggesting that each person could bring up a list of slights real or imagined that they have perceived over the past fifteen years and they would be fascinating stories, but they would accomplish nothing at all, he wants everyone to look forward and put the past behind them, reset the relationship and give it a chance. He is not sure the treatment option will work but is willing to take the chance and if it does work everyone is better off and if it doesn't work no one is worse off. Councilor Hillman asked Attorney Cobery to separate the two MOU's because she believes the Council will agree on the commercial rate, but she thinks the exploration of treatment ties the town into something they don't want to be tied to. Attorney Cobery stated he can not separate them, because in his mind this is a complete re-set of the relationship, there is an opportunity to have a new treatment process that will benefit Rand Whitney in the sense that the wastewater will be treated in a more cost effective manner, it will benefit the Town of Montville because it has the distinct possibility to take the sludge that the town is spending six or seven hundred dollars on annually and having it treated and disposed of for almost nothing, in his mind the two separate documents are linked and should be linked and he can not support the idea of doing one without the other in either way and he encouraged Councilor Hillman to view them this way, it is a reset of the relationship, it is a chance, nothing more than a chance, if it works everyone is in good shape and if it doesn't no one is worse off. It requires the Council to be brave, be leaders, and take a chance; Rand Whitney is doing the same thing. Chairperson Jacobson stated she would like to discuss the alterations proposed by Attorney Chudwick, stating it is important at this juncture to look at them. Attorney Auger discussed the change to numbered paragraph five, page four, exploration of treatment options. This is the one that addresses best efforts and good faith. The best way to describe what he thinks is that this change creates unnecessary language. The Woodard & Currin engineering firm starts its plan of development, it works in conjunction with Dr. Keiser and receives input from the WPCA and potentially its engineer. They develop a plan that requires input from the Connecticut DEP, they contact the DEP and communicate with the Governor and the Governor's bonding commission. They grease all the appropriate skids so that they have in place a plan that requires only one last step to implement and that is the Council's approval and paragraph number five as amended suggests that the Council's approval or rejection will be at the sole discretion of the town, so the WPCA, Rand Whitney, the DEP and the bond commission and Governor have all worked to attempt to develop a plan that they conclude is in the best interest of the town, the WPCA and Rand Whitney and the Town Council for any reason it deems appropriate can say no. The amendment is asking the WPCA to risk too much, to spend too much time, too much money, too much effort and not know that for a reason potentially unrelated to the technical merits of the plan, this body can say no and he can not recommend to his clients that they engage in a very time consuming and costly effort that could be defeated at the sole discretion of the Town Council, this has to be a partnership between the Town, the WPCA and Rand Whitney working together with the Connecticut DEP, the Governor and the Bond Commission, it is an investment that can not risk failure because one of the parties can do whatever it wants for whatever reason and that is how he interprets at the sole discretion of the Town Council and he can not and will not recommend to his client that they partake that long road only to be subjected to the sole discretion of the Town Council, it makes no sense whatsoever. Attorney Chudwick stated he respectfully disagrees, stating he has no idea what will be in the plan, the plan could require an appropriation or some other issue that the town has to address, he stated the Chairwoman made a good point, what if the plan comes up with a program for a ten million dollar fix, five million dollars which will be funded by the grant and the other five million will come from a three way split between the entities and the town has to come up with an additional one point five million dollars, and everyone has to sign off of that. Attorney Auger stated this is not a concern of the Town Council and the finances dictate to the contrary, it is a legitimate concern and it is a good faith legitimate reason to say no but if you insert language that says your sole discretion, that is not a reason that you can rely, you can say that you don't trust Rand Whitney and do not want to do it even if the plan looks good and the financing looks good and it will save the town one hundred million dollars, the Council can say no with no good reason whatsoever other than its desire to say no if your decision is at your sole discretion and he can not support this. He can support a legitimate financial concern that the town can not afford, that is good faith. Councilor Beetham stated Attorney Auger does not live in Montville and does not hear what the residents have to say and when it comes out that Rand Whitney will be saving about seven hundred and fifty thousand dollars if the Council signs off of the MOU the Councilors will end up answering the questions and he stated he can not in good conscience do it. Attorney Auger stated Councilor Beetham has the town's financial interest at heart one hundred percent, and this is a legitimate responsibility that all Councilors have, the arrearage that he seeks was the subject of the arbitration and a decision was made, he asked Councilor Beetham if he was willing to risk a potential savings on one hundred million dollars for seven hundred and fifty thousand

dollars because that is what a no vote based on that reason would do. If he looks at the long term relationship and the potential savings he asked if he was willing to invest seven hundred and fifty thousand dollars to get one hundred million dollars over forty three years. This is a good investment and he stated Councilor Beetham has legitimate concerns and the question should only be answered after he has all the information he needs to answer the question. Councilor Hillman stated the money saved is an arbitrary number, when the discharge water is changed there is no saying what will happen at the plant, it will increase nitrates but do not know if it will increase the foamer, phosphorous, what new chemical processes may be needed, how they will filter out the water that is now made up of more commercial waste and there is a lot of unexpected in the future because we don't know. Attorney Auger stated he hopes Councilor Hillman uses her inquisitive nature to participate affirmatively in this process, because by signing the MOU you don't agree to any change by signing it, you agree only to exploring potential changes, and if you conclude that the WPCA through their engineers conclude that this proposal creates too much uncertainty or risk and the engineer can document the potential risk that would be a good faith reason on which to say no, but he stated she is articulating concerns that assume your obligating yourself to an unknown plan and the MOU does not do that, it obligates the town to explore a potential plan that can be rejected if the parties believe it is in the town's best interest to do so, either in the Town Council capacity or in the capacity of the WPCA, he stated she is not committing to potential risks by saying yes. Councilor Buebendorf stated she is not an expert regarding WPCA matters, but she stated it seems there is the potential if there is a good plan for change to make things more efficient and it could benefit the town in a big way for future economic development, not just for what the town has but for any additional economic development, it is an unknown, but it seems this is a clear implication that has not been mentioned yet. Attorney Auger stated this is going to be a necessary ingredient for what ever plan is produced by Wooden & Currin. They will not just deal with the technical side, they are dealing with the financial side as well, if a process is developed that will reduce the BOD received by Rand Whitney by eighty five percent this allows for increased expansion of an economic nature because now the town can receive more effluent and treat more BOD and could potentially have a twenty year facility plan of thirty one million dollars and maybe save some money. Councilor Buebendorf addressed Councilor Murphy's concerns, stating that she hears the residents speaking around town, but it speaks volumes that Rand Whitney has sent their representative to represent Rand Whitney, it is the first time in her six years on the Council that she has seen someone present to represent Rand Whitney and she thanked Mr. Cobery for coming to the meeting, stating that it shows a good faith effort on the part of Rand Whitney. She stated that the suggested amendments requested by Attorney Chudwick undermine the entire purpose of working in good faith, of making this attempt to play nice with each other, and as it has been pointed out the Council is not obligated to approve a plan, and if there are really good compelling reasons to reject a proposed plan, there is the option to do so and she hopes the Council approves both of the MOU's as presented originally to the Council. Councilor Caron asked how much the first litigation for the rate study cost, and Administrator Lynch stated it cost approximately eight hundred and fifty thousand dollars. Councilor Caron stated that now the WPCA is entering into another rate study that could potentially end up in litigation again with a total injustice to the taxpayers and ratepayers. There is a chance here to move forward with the MOU, it may not be perfect on both ends, but there is a chance to move forward, stating litigation is not good for the taxpayers, especially now to get into another litigation, there are people losing their houses and having problems paying their taxes, and he understands the MOU's are not perfect, but it is something the Council needs to move forward with, everyone has been through all of the law suits and next year there will be a big impact to start paying for one of them, and the town needs to move forward in good faith on both sides. He understands Councilor Beetham's concerns because they speak numbers all the time and talk about this constantly but the bottom line is that the town must move forward because the tax payers and the rate payers can not absorb the costs any more, bottom line. Councilor McFee quoted from his favorite movie, the Godfather after Santino was killed, and he stated "this war stops now". Attorney Ron Ochsner stated he has been involved in this process for quite some time and back in 1992 and 1993 he was working with the Town Attorney at the time, Mr. Devine, and they reviewed the contracts long and hard and it was unbalanced, but over the last fifteen years the town has seen the result of that imbalance. In reading the MOU's he thinks they are balanced from the standpoint that number one, it puts Rand Whitney on a commercial basis, not a formula basis and secondly it affords the town and the WPCA the opportunity to enter into a treatment review which does provide a treatment system that will not only benefit Rand Whitney with the cost that they incur it will benefit the town in savings that they will realize. The proposal is a good process, an economical process that meets the requirements and if adopted there could be cost savings to the town. If the agreement turns out to be not to the advantage of the town there is an opportunity to amend the agreement and with the analysis of the agreement it can put the town and the WPCA's relationship with Rand Whitney at a more productive and less competitive course and it is important to take this into account. He stated that the town did arrive at a land swap agreement earlier this week so the costs to buy additional land for the SBR's will not be required. Councilor Hillman asked Attorney Ochsner if there has ever been an issue with the treatment side of the initial contract. Attorney Ochsner stated there were in the very beginning significant odor issues. Councilor Hillman asked if the treatment side is working why it is being changed. Attorney Ochsner stated it is not being changed, it is making it better. Councilor Hillman stated it is being changed because there is talk of building an anaerobic digester to change the composites of the water. Attorney Ochsner stated that is true but the change in the composition will improve the flow of the plant, it will make it more like domestic waste than commercial waste and that does in fact help the plant. He thinks the process that is being proposed will be a satisfactory process that will not only benefit Rand Whitney but also benefit the WPCA and Town by providing additional facility for future expansion. Councilor Beetham stated the Town of Montville would have been so much

better off if they had listened to Mr. Devine, if Rand Whitney was not here the Town would have the old Robertson Paper Box with two hundred and fifty employees which is far more than is there now, there was a small paper mill down there that made superior quality board for folding cartons and there were no problems, no sewage, no sludge, no smell and now all of a sudden all of those people lost their jobs and the town said lets be a good neighbor and lets forget about the seven hundred and fifty thousand dollars that Rand Whitney should have paid over time, he stated he can not sell the Town of Montville down and he can not sell those people who lost their jobs when Rand Whitney didn't keep their word. He was at the Senior Citizens Center when they stood up and said, this is the only way that we can make things work, a bigger paper mill, keep the people employed, etc etc. He stated he has a good memory and it would have been so much better if they had listened to Mr. Devine, Attorney Devine. Councilor Murphy asked the Chair to move the question. Councilor Beetham made a motion to table these two items and if Rand Whitney wants to come back and make an offer on the arrears then they can do that. There was no second to the motion.

Roll call vote on the resolution as it stands; 5-2, voting in favor were Councilors Buebendorf, Caron, McFee, Murphy and Jacobson, voting in opposition were Councilors Beetham and Hillman, resolution adopted.

9. Remarks from the Councilors

Councilor Buebendorf thanked everyone for the discussion, it was very enlightening and she is very hopeful that the town can move forward in a productive way, she believes that if you do things in the same way you get the same result and this represents doing things in a different way with a more positive result.

Councilor McFee stated he understands both Councilor Beetham and Murphy's bitterness, they went through more of the litigation with Rand Whitney in the past, but it is time to put this issue to bed, stating it is a three year deal and if things start to fall apart there is not a lot at risk and he believes both Attorneys Auger and Ochsner would not lead the town down a bad road and he has confidence it will work and the people of Montville will question the Council for making a deal with Rand Whitney but also pat them on the back for putting this to bed once and for all with no more litigation, and if the deal falls apart it can be ended.

Councilor Beetham did not have anything to comment.

Councilor Hillman agreed it is time to put this behind the town and move on, but she thinks this could have been done with the commercial rate and thinks there was no need for an MOU to discover a plan and she thinks the Council sold the taxpayers and the ratepayers out.

Councilor Murphy hopes that this works and would really like to see the legal fees go way down and thinks this will help to do so. He stated he works for the State of Connecticut and is the brunt of a lot of jokes about State employees and how bad State employees are but the joke at his work is that Montville is the discussion about how much they spend in lawyers and how many lawsuits are ongoing and there isn't a week that goes by where someone at work won't say to him, just sue Montville, they will give you the money, they have it, or Montville is being sued again. Montville is known as the sued town, and expending an absorb anent amount of money on lawyers fees and this may help to get away from some of that. He advised the Council that the Oakdale Fire Department received a grant today of two hundred and sixty one thousand dollars for firefighter recruitment, retention, education, equipment and it is a five year investment. They received one five years ago and the money was used to put guys through school and one person got his doctorate in engineering through this plan. This puts the Oakdale Fire Department at seven hundred and fifty four thousand dollars received in Federal money since 911.

Councilor Caron congratulated Councilor Murphy on the grants, he thanked Attorney Auger for his efforts, the WPCA and the Mayor, and stated this will move a step forward and the Town can stop wasting the taxpayer's money on litigation and lawyers. He hates to see the litigation prices go up and he wants all of this put behind him so the tax payers stop getting the brunt of this.

Councilor Jacobson stated Attorney Auger made an interesting statement in his explanation to the Council and that was this is a leap of faith for the town and it is an apt statement and in voting for the two MOU's it is a leap. There has been years and years of contentious battle between Rand Whitney and the town and these MOU's were endorsed and voted on by the WPCA as well as the WPCA administration. As far as the last two hours, she believes all of the questions have been answered in a candid manner and she appreciates that from all parties involved. While she does have some apprehension in this newly forged relationship with Rand Whitney she believes it will have a definite impact on the future and she looks forward to continuing without rose colored glasses, however, Attorney Cobery, it would be her hope that you will pass on to the owners of Rand Whitney our extension from the Council to have equitable conversations in the future and also reinvestment into the Town of Montville which is always needed.

10. Remarks from the Mayor

Mayor Jaskiewicz stated the speech given by Chairperson Jacobson was a good one and a tough one to follow. He congratulated the Council stating it was a tough decision, there were many good questions and a good job on everyone's part and the Council made the right decision. He has been involved with this process all along and is seeing the difference. It was a tough job but he stated the Council made the right decision.

11. Adjournment

Motion made by Councilor Murphy, seconded by Councilor Hillman to adjourn the meeting at 7:09 p.m.
Discussion, none, voice vote, 7-0, all in favor, motion carried.

Respectfully Submitted by:

Audrey Ulmer, Recording Secretary for the Town of Montville