



**City of Concord**  
**City Council**  
**Meeting Minutes - Draft**

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Monday, August 8, 2016

7:00 PM

City Council Chambers  
37 Green Street  
Concord, NH 03301

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*Non-public sessions in accordance with RSA 91-A: 3, II (d) to discuss property acquisition and contract negotiations and RSA 91-A:2, I to discuss collective bargaining to begin at 6:15 p.m.*

1. Call to Order

**Action:** Mayor Pro Tem St. Hilaire called the meeting to order at 7:00 p.m.

2. Invocation.

**Action:** No clergy was present for invocation.

3. Pledge of Allegiance.

4. Roll Call.

**Present:** 12 - Councilor Candace Bouchard, Councilor Mark Coen, Councilor Amanda Grady Sexton, Councilor Allan Herschlag, Councilor Fred Keach, Councilor Linda Kenison, Councilor Jennifer Kretovic, Councilor Gail Matson, Councilor Keith Nyhan, Councilor Dan St. Hilaire, Councilor Stephen Shurtleff, and Councilor Brent Todd

**Excused:** 3 - Mayor Jim Bouley, Councilor Byron Champlin, and Councilor Robert Werner

5. Approval of the Meeting Minutes.

July 11, 2016 City Council Meeting Minutes.

**Action:** Councilor Grady Sexton moved approval. The motion was duly seconded and passed with no dissenting votes.

6. Resolution in recognition of the services of Lieutenant John F. Brown.

**Action:** Councilor Shurtleff presented a resolution in recognition of the services of Lieutenant John F. Brown.

7. Friends of the City Auditorium Presentation.

**Action:** Betty Hoadley, resident, announced that the Friends of the Auditorium are officially beginning their Audi seat restoration project. She explained that this is going to be fundraising drive that begins today, August 8th. She noted that the goal for the fundraising is \$100,000; the cost per seat is \$104 and there are close to 900 seats.

8. Agenda overview by the Mayor.

**\*\*Consent Agenda Items\*\***

**Note: items listed as pulled from the consent agenda will be discussed at the end of the meeting.**

*Approval of the Consent Agenda*

**Action:** Councilor Bouchard moved approval of the consent agenda, as amended, with items 22, 23, and 25 removed for discussion at the end of the agenda. The motion was duly seconded and passed with no dissenting votes.

**Referral to Engineering, Parks and Recreation and the Parks and Recreation Advisory Committee**

9. Communication from Concord Crush expressing their interest in working with the City to partially fund improvements to Martin Field on Iron Works Road in Concord.

**Action:** referrals received and filed.

**Items Tabled for September 12, 2016 Public Hearings**

10. Ordinance amending the Code of Ordinances; Title II, Traffic Code; Chapter 17, Vehicles and Traffic; Article 17-4, Operation of Motor Vehicles; Section 17-4-1, Stop Required Before Entering a Through Street; Schedule V, Stop Intersections; Concord Street; together with a report from the Traffic Engineer.

**Action:** This ordinance was moved to set for a public hearing.

11. Ordinance amending the Code of Ordinances; Title II, Traffic Code; Chapter 18, Parking, Article 18-1, Stopping, Standing and Parking, Section 18-1-8, Parking Time Limited in Designated Places, Schedule III (1 hour between the hours of 7:00 AM and 6:00 PM, Monday through Friday); together with report from the Director of Redevelopment, Downtown Services, and Special Projects.

**Action:** This ordinance was moved to set for a public hearing.

12. Ordinance amending the Code of Ordinances; Title II, Traffic Code; Chapter 18, Parking, Article 18-1, Stopping, Standing and Parking, Section 18-1-6, Parking Prohibited At All Times In Designated Places, Schedule Ia (No Parking, Stopping, or Standing at All Times) Montgomery Street; together with a report from the Director of Redevelopment, Downtown Services, and Special Projects.

**Action:** This ordinance was moved to set for a public hearing.

13. Ordinance amending the Code of Ordinances; Title II, Traffic Code; Chapter 18, Parking, Article 18-1, Stopping, Standing and Parking, Section 18-1-6, Parking Prohibited At All Times In Designated Places, Schedule Ia (No Parking, Stopping, or Standing at All Times) for sections of South Commercial Street and Constitution Avenue; together with a report from the Director of Redevelopment, Downtown Services, and Special Projects.

**Action:** This ordinance was moved to set for a public hearing.

14. Ordinance amending the Code of Ordinances, Title V, Administrative Code; Chapter 35, Classification and Compensation Plan, Schedule D of Article 35-2, Class Specification Index, Technical Service Manager; together with report from the Director of Human Resources and Labor Relations.

**Action:** This ordinance was moved to set for a public hearing.

15. Resolution accepting and appropriating the sum of \$106,302.16 in private donations from Main Street property owners for the installation of sidewalk snowmelt systems on Main Street in conjunction with the Downtown Complete Streets Improvement Project (CIP #460); together with a report from the City Engineer.

**Action:** This resolution was moved to set for a public hearing.

### **From the City Manager**

16. Positive Citizen Comments.

**Action:** This positive comments was received and filed.

### **Consent Reports**

17. Diminimus gifts and donations report from the Library Director requesting authorization to accept monetary gifts totaling \$1,754.00 as provided for under the pre-authorization granted by City Council.

**Action:** This consent report was approved.

18. Diminimus gifts and donations report from the Human Services Director requesting authorization to accept monetary gifts totaling \$650 as provided for under the pre-authorization granted by City Council.

**Action:** This consent report was approved.

19. 2016-2017 City Council Priorities Report from the City Manager.

**Action:** This consent report was approved.

20. Current Use Change Tax Quarterly Update from the Director of Real Estate Assessments.

**Action:** This consent report was approved.

21. Report from the Fire Chief on the revision of the Hazard Mitigation Plan.

**Action:** This consent report was approved.

22. Report from the Police Chief and the Fire Chief on Drug Overdoses and Other Statistics. (Pulled from consent by Councilor Herschlag)

**Action:** This item removed to the end of the agenda for discussion.

23. Report from the Transportation Policy Advisory Committee on current levels of bicycle and pedestrian usage along Loudon Road. (Pulled from consent by Councilor Bouchard)

**Action:** This item removed to the end of the agenda for discussion.

24. Report from the Traffic Engineer on behalf of the Traffic Operations Committee and the Transportation Policy Advisory Committee in response to a referral from City Council regarding a request from John Cook, Concord resident, asking that consideration be given to the installation of a 4-way STOP at the intersection of Union and Maple Streets.

**Action:** This consent report was approved.

25. Report from the Zoning Administrator in follow-up up to a request from Alicia Mailhot for the restoration of involuntary merged lots pursuant to RSA 674:39-aa. (Pulled from consent by Councilor Coen)

**Action:** This item removed to the end of the agenda for discussion.

### **Consent Resolutions**

26. Resolution authorizing the City Manager to release a turnaround easement on property located at 24 Chennell Drive upon site plan approval from the Planning Board; together with a report from the Deputy City Manager for Development.

**Action:** This consent resolution was approved.

### **Consent Communications**

27. Street closure request for a Girls on the Run New Hampshire 5K Road Race to be held at Memorial Field on November 19, 2016.

**Action:** This consent communication was approved.

28. Street closure request from the Concord Family YMCA for a block party/barbeque to be held on Friday, September 15, 2016 from 3:00 p.m. to 9:00 p.m.

**Action:** This consent communication was approved.

*\*\*End of Consent Agenda\*\**

### **Public Hearings**

- 29A. Ordinance amending the Code of Ordinances, Title V, Administrative Code; Chapter 35, Classification and Compensation Plan, Schedule D of Article 35-2, Class Specification Index, EMS Captain, Fire Alarm and Traffic Superintendent, Fire Marshal, Training Captain, Economic Development Director, Building Systems Supervisor, Custodial Supervisor and Public Properties Supervisor; together with report from the Director of Human Resources and Labor Relations.

**Action:** City Manager Tom Aspell provided a brief overview.

Mayor Pro Tem St. Hilaire opened the public hearing. There being no public testimony, the Mayor Pro Tem closed the hearing.

- 29B. Resolution accepting and appropriating \$193,534 for the purpose of designing the rehabilitation to Taxiway A for Runway 17/35 including \$179,581 in grant funds from the Federal Aviation Administration (FAA), \$9,977 from the State of New Hampshire and \$3,976 from the City of Concord; together with report from the Associate Engineer.

**Action:** City Manager Tom Aspell provided a brief overview.

Mayor Pro Tem St. Hilaire opened the public hearing. There being no public testimony, the Mayor Pro Tem closed the hearing.

- 29C. Resolution appropriating the sum of \$29,000 from the Conservation Trust Purchase of Land Fund as a supplemental appropriation to the City's Conservation Property Fund for the purposes of acquiring a conservation easement, funding for these purposes shall be entirely from Conservation Trust Purchase of Land Fund; for the acquisition of a conservation easement on property owned by The Lorraine V. Pierce Revocable Trust, at 84 Stickney Hill Road; together with report from the Conservation Commission.

**Action:** City Manager Tom Aspell provided an overview.

Mayor Pro Tem St. Hilaire opened the public hearing.

### **Public Testimony**

Roy Schweiker, resident, indicated that there was a similar situation awhile ago regarding land behind the old King Shopping Center and, at that time, it was his impression that it was felt that the land trust should be required to raise some of the money themselves toward the expense. He still feels the same way.

There being no further public testimony, the Mayor Pro Tem closed the hearing.

- 29D. Resolution accepting and appropriating the sum of \$10,000, retroactive to June 30, 2016, from the Trustees of the Protestant Episcopal Church of New Hampshire for the purpose of providing fuel and other assistance; together with report from the City Manager.

**Action:** City Manager Tom Aspell provided a brief overview.

Mayor Pro Tem St. Hilaire opened the public hearing. There being no public testimony, the Mayor Pro Tem closed the hearing.

### **Public Hearing Action**

30. Ordinance amending the Code of Ordinances, Title V, Administrative Code; Chapter 35, Classification and Compensation Plan, Schedule D of Article 35-2, Class Specification Index, EMS Captain, Fire Alarm and Traffic Superintendent, Fire Marshal, Training Captain, Economic Development Director, Building Systems Supervisor, Custodial Supervisor and Public Properties Supervisor; together with report from the Director of Human Resources and Labor Relations.

**Action:** Councilor Nyhan moved approval. The motion was duly seconded and passed with no dissenting votes.

31. Resolution accepting and appropriating \$193,534 for the purpose of designing the rehabilitation to Taxiway A for Runway 17/35 including \$179,581 in grant funds from the Federal Aviation Administration (FAA), \$9,977 from the State of New Hampshire and \$3,976 from the City of Concord; together with report from the Associate Engineer.

**Action:** Councilor Grady Sexton moved approval. The motion was duly seconded and passed with no dissenting votes.

32. Resolution appropriating the sum of \$29,000 from the Conservation Trust Purchase of Land Fund as a supplemental appropriation to the City's Conservation Property Fund for the purposes of acquiring a conservation easement, funding for these purposes shall be entirely from Conservation Trust Purchase of Land Fund; for the acquisition of a conservation easement on property owned by The Lorraine V. Pierce Revocable Trust, at 84 Stickney Hill Road; together with report from the Conservation Commission.

**Action:** Councilor Kenison moved approval. The motion was duly seconded and passed with no dissenting votes.

33. Resolution accepting and appropriating the sum of \$10,000, retroactive to June 30, 2016, from the Trustees of the Protestant Episcopal Church of New Hampshire for the purpose of providing fuel and other assistance; together with report from the City Manager.

**Action:** Councilor Nyhan moved approval. The motion was duly seconded.

Councilor Nyhan indicated the the Episcopal Diocese sends money to the city as a payment in lieu of taxes and the city has always put that money right back into the community. He thanked the diocese for these dollars.

The motion to approve passed with no dissenting votes.

## **Reports**

34. Report recommending the City Manager be authorized to submit an application for Transportation Alternative Program (TAP) funding from the NH Department of Transportation for the purpose of designing and constructing a portion of the Merrimack River Greenway Trail project (CIP #543). (Communication from the Friends of the Merrimack River Greenway Trail submitted).

**Action:** City Manager Tom Aspell provided an overview explaining that this originally started off as simply a request to authorize himself to make application to the Transportation Alternative Program. It has evolved into some other opportunities which he wants to make the Council aware of as to whether or not they want staff to follow up on these. He explained that the focus of the 2016/2017 program being put out by the state is for the design and construction of non-motorized facilities and infrastructure including on road and off road trail facilities for pedestrians, bicyclists and other non-motorized forms of transportation. The applications are due September 2nd which is why it's before the Council this evening. He noted that based on eligible activities of the program, they are recommending that the city participate in the application for the design and construction of a portion of the Merrimack River Greenway Trail; the program's funding is comprised of eighty percent federal funds but requires a twenty percent match. This phase of the project contemplates approximately one quarter mile long boardwalk making the boardwalk at the northern end of Terrill Park to city land south of the Concord Post Office on Loudon Road. The application is part one.

He noted that budgeted out in 2022, within the fiscal year 2017 budget, is a project just like this for the next section. He noted that they would like to demonstrate to the state and federal governments that Concord is behind a project like this to make this connection between Manchester Street and Loudon Road. He noted that the request is whether it is possible to move the project in 2022 up to fiscal year 2018; this wouldn't require any appropriation of funds it would be just moving it from 2022 to 2018. This is part two.

He noted that part three, if Council is willing to do this, is would they be willing to say that when this funding comes up would they be willing to consider that the city be in line for \$100,000 of that cost if the private groups cannot raise the full \$200,000 as a match. The Friends of the Merrimack River Greenway Trail would like to raise the full \$200,000. He noted that he received an email from Amanda Grappone Osmer in support of this project because she feels that it would be attractive to young people and families who are considering calling the Concord area their home. Her brother Greg was in a wheelchair during his last few years of life so she has a strong interest in providing accessible facilities for people that need this. She has agreed to raising between \$50,000 to \$100,000 through her efforts and the Grappone efforts as part of a match to the \$800,000. He feels that there is a demonstration for a lot of support for this project out in the community.

He pointed out the possibility that this has to tie into a much greater project. He



indicated that Pan Am has railways through the state and has sent a notice out that they are going to be disposing the section of railway from Horseshoe Pond up to Boscawen; this would be a good way to make a connection from downtown Concord to Penacook without having to go along Fisherville Road. His fourth ask is if it would be okay for staff to work with the Department of Transportation to work with Pan Am to see if the state, not the city, would acquire that connection. The city then would work in the future to make a rail to trail connection along this route.

Mayor Pro Tem St. Hilaire asked for clarification that staff is asking the Council to amend their 2017 capital budget to reflect that Council would consider doing this project in 2018 - even if they amend this year's budget, the appropriation won't be until staff comes back with next year's budget to discuss again. Mr. Aspell responded that to be correct.

Councilor Kenison noted her support with moving forward with this. She feels that trails are wonderful assets to the city and would like to see them expanded.

Councilor Nyhan feels that this is a great project and commends the trail commission for bringing it forth. He asked if there are any opportunities such as impact fees so that they are not passing general obligation bonds or otherwise raising the tax rates. Mr. Aspell responded that there are other sources of funds - for example, when improvements take place on the east side of the Merrimack River there are two impact fee districts; there are opportunities for those additional funds to be used for alternative transportation modes with the idea of taking people off having to drive. He explained that these funds can be used over many years as they come in to help offset those costs.

Councilor Coen noted that his concern is fundraising and funding. His concern is the city is saying that they will make up the difference for any shortfall through the fundraising process. He doesn't want this to be the fallback for less fundraising because the city will be picking up the difference. He commented that he does feel that this is a great project.

Councilor Kretovic indicated that the Transportation Policy Advisory Committee talked about this project very specifically a few months ago and believes that the city applied for this previously and were denied because they didn't think that the city and Council were in favor of this project. She noted that in their discussions they also covered the fact that the Conservation Commission spoke very specifically

and did a report on this section back in 1990; it was reiterated in a downtown study in 1998, the Concord 2020 vision in 2001, the downtown revitalization plan in 2004 and revisited again with discussions with the Department of Environmental Services in 2011. She believes that the community is behind this project and has gone beyond just the Merrimack River Greenway Trail. She would like to see the Council support this fully knowing that there is a whole committee and several groups behind it to see that the fundraising piece comes together. She feels that the community is looking at something that is long overdue.

Councilor Herschlag thanked Dick Lemieux and the Friends of the Merrimack River Greenway Trail. He feels that this is a fantastic project and will enhance the livability of the city. He does have a concern with the city making a commitment to pick up any shortfall. He is in agreement with Councilor Coen and feels that by having the city guaranteeing that funding, that it may discourage people from contributing. He pointed out in CIP 543 in 2025, the city is making a commitment in the 2017 CIP to fund \$1.1 million for an extension of that project if donations cannot cover the match. He further pointed out that he feels that the city is making a tremendous contribution; when looking at the service impact of this project, it mentions increasing operations and maintenance budget due to resurfacing, sweeping and management of vegetation. He stated that while many of these maintenance costs can be deferred by volunteers, the resurfacing of the asphalt section will fall to the responsibility of the city.

Councilor Todd indicated that he strongly supports this project and is in favor of all four items as laid out by the City Manager. He feels that they need to step up to the plate as a city and take advantage of this project. He doesn't want to commit to what they are going to commit to in 2025 or next year's budget sitting at the table this evening - those budgets will be brought forth in the future. He feels that they have to send a strong signal that the city wants this project to happen.

Councilor Bouchard noted her agreement with moving forward on the four points. She pointed out that the City Manager had indicated that the Council would "consider" funding. She stated that this Council and previous Councils had spoken of opening up this river and getting more access to the river; she feels that they have an opportunity to move forward in that direction. She stated that with the language the Council has to consider, there is no guarantee that the money would be there. She feels that to be able to amend the 2017 budget and move this project up to 2018 and that the city would "consider" \$100,000 is an appropriate move to get things moving forward.

Councilor Shurtleff noted he supports the proposal and asked if it would be better for the Council to divide this and take up each section one at a time.

Mayor Pro Tem St. Hilaire noted that from what he has heard it can be guessed where it is going based upon their opinions so his thought would be to take it all up in one piece.

Councilor Nyhan moved acceptance of the report as presented and address the following pieces: authorize the application to submit the grant; consider, in the future, funding a portion of the match up to \$100,000; work in acquiring that right of way when it becomes available; modify the current capital plans so that they consider doing this project in fiscal year 2018. The motion was duly seconded and passed with one dissenting vote.

35. Report from the City Engineer on the status of the Loudon Road Corridor Safety Improvement Project (CIP19).

**Action:** City Engineer Ed Roberge highlighted discussions from the January Council meeting in which the Council had expressed their concerns about highway capacity. He summarized items within the staff report and noted that the important thing is that this project has been sitting in wait for awhile; final action is required by Council so staff is looking to see a decision based on a presentation by staff and community reaction.

Mayor Pro Tem St. Hilaire asked if staff did a public outreach before they voted on this project. Mr. Roberge responded that they held two well attended sessions in the late part of 2012, just before they came to Council to make a decision.

Councilor Coen noted that when they voted on this a year ago his decision on voting were based upon issues of safety, speed, pedestrians, bicyclists, etc. He inquired as to what has changed, since the Council last voted, on this project or what new information was received that would have staff recommend any change from what this Council voted for a year ago. Mr. Roberge responded that from the operational and safety standpoint there has really been no changes. He noted that looking at the alternatives was a result of the January meeting; City Council asked staff to go back, run the analysis, present this to NHDOT to see what level of funding would be available on other alternatives. This is what this report lays out.

Councilor Coen indicated that he has not heard/seen anything that would make him

want to change his original vote based on all the issues Council had discussed over the last three or four years with this project.

City Manager Tom Aspell explained that because of the delay in the federal government reauthorizing the transportation bill and providing the funds, the project stops. He noted that in January Council asked staff to look at this again to see if there is an alternative where they can keep the four lane cross section, make safety improvements, go to the state to see what they in regards to 1) those safety improvements; 2) would they would be willing to support, through their costs, any of those improvements. He indicated that he met with the state and noted that they have really monetized almost every accident and every different improvement out there - when they put them all together, they end up with \$120,000.

Councilor Bouchard asked whether it would be possible to see crash reports for ten years ago versus what they currently are between Hazen Drive and D'Amante Drive. Mr. Roberge responded that they do have that information and this is something that they can provide.

Councilor Bouchard inquired whether more detail can be provided on the alternative access management four lane plan and what the improvements are. She asked for more details other than repaving and sidewalk improvement. Mr. Roberge explained that because it becomes federalized under the Highway Safety Improvement Program (HSIP), one of the things that the DOT or their federal highway would require is all the sidewalk tip downs be reconstructed, the city would maintain the existing hardware for the existing crosswalk signals, the street would remain in its four lane configuration albeit repaved. Referencing the pedestrian crossings, Councilor Bouchard inquired whether there would be any type of stamped asphalt. Mr. Roberge replied that it was considered and is a detail that can be included as an aesthetic piece; from an HSIP safety standpoint, a crosswalk is a crosswalk to them so there was no advantage of providing any type of change like this because it didn't qualify for the match funding. She indicated that she would argue that, visually, it does add a difference and highlights it to anyone driving on the road. She stated that one of the biggest problems she sees with Loudon Road are all the access points and asked whether they looked at combining driveways. Mr. Roberge responded that that's really included within that alternative - access management. He noted that there are approximately 83 driveways currently on Loudon Road and they looked at modifying, to some extent, 17. When this was presented to NHDOT, they looked at a combination of four driveways that they could potentially close in the corridor. He stated that this

is included within the HSIP scope of work and this is not to say that the city wouldn't do some of those other operational changes because they may feel they have safety benefits.

Councilor Bouchard noted that she has been in favor of the three lane conversion but has heard from many constituents who were not in support of this project. She feels that the lag time opened up an opportunity for people who live around the Loudon Road area to speak up to indicate how uncomfortable they were with the plan and how they didn't quite agree.

Councilor Todd noted that he believes that the design costs are already covered for the three lane conversion configuration but asked whether there would be an additional cost for a new design for the alternate matrix. Mr. Roberge responded that the design is substantially in place now so there would be some minor changes. He noted that because it's still HSIP qualified, they are getting indications that the DOT would support this in terms of qualifying the design cost.

Councilor Herschlag indicated that awhile back they spoke about an alternate design that isn't being presented with a center median and methods to reverse directions. He wondered if this was a proposal that was looked at and brought to the state. Mr. Roberge responded that they didn't advance this only because of the cost of the project. He explained that the right a way alone is estimated somewhere north of \$3 million; this would balloon the project from \$1.6 or \$1.7 million to \$5 million to \$9 million depending on what the solution is. They didn't feel that this was within the scope this intermediate term safety program; that would be more of a long term look at the corridor.

Councilor Herschlag wonders if a two lane option as opposed to a four lane option would work with a center divider and reverse direction. He asked if there was any indication that if they did go with either the two or four lane with the center divider and a way to reverse direction, what the state contribution and the federal contribution would be. Mr. Roberge responded that the two lane option with a center median gives you what the three lane is looking at in terms of lane capacity. They have the ability to look at this and it would eliminate left hand conflicts from a safety perspective but this is not something that they've looked at because the indication that staff received at the January meeting was that nobody was really supportive of that "South Willow Street" solution.

Councilor Kretovic asked if staff had any idea, if they did not move forward with

this, where the \$1.1 million would come from. Mr. Aspell responded that they would probably end up bonding it. Councilor Kretovic noted that the greatest concerns of the constituents that she speaks with is the condition of some of the city's roads. She indicated that some people feel that if they were to do Loudon Road that it would then take away from their neighborhood paving projects which are also funded in part through bonds. This being said, she feels that it's important for community input especially because there has been a lag of time. She feels that the crash data that staff would provide would be extremely important so they can see the types of crashes.

Referencing the three options comparison, Councilor Nyhan feels that no one option is going to fix the operational issues with the road. Logically for him the only option is to go with the three lane design and take the dollars from the federal government to save their own taxpayer dollars. He does feel that the right course of action is to delay a course of action and decision until there is full input.

Councilor Todd agrees that it's important to have another public forum and feels that this is the way to go. He asked whether they still had the capability and would staff consider showing the computer modeling that shows the questions and concerns that people have had in the neighborhood as to how this traffic would flow. Mr. Roberge responded yes.

Mayor Pro Tem St. Hilaire recalled this being shown previously and can't recall whether staff accounted for the fact that the capacity of the vehicles on the one lane being removed would be on that single lane. If not, he asked if they can look at these numbers when they show it again to see that that's accounted for. Mr. Roberge indicated that it's a statistical model but does show when there is a lane drop, going from two to one (the zipper effect). He stated that it does predict this fairly well.

Councilor Bouchard asked if it's just paving and repainting questioning whether there are some raised medians. Mr. Roberge responded that the only things that they raised was at the crosswalks; they created some refuge medians similar to what's on Village Street and Fisherville Road. Councilor Bouchard ask for clarification as to if they did move forward with three lanes it wouldn't be just as easy to reverse it by repainting because there would be some removal of structures as well. Mr. Roberge responded that the structures would require removal.

Mayor Pro Tem St. Hilaire relayed the many resident/constituent concerns that he

has heard over the past few years.

Councilor Nyhan moved acceptance of the report and set this item for a public hearing. The motion was duly seconded.

Council discussion occurred in regards to when to hold a public hearing.

Councilor Nyhan amended his motion to set this item for a September 12th public hearing subject to city staff accomplishing a neighborhood meeting prior to the public hearing. The motion was duly seconded and passed with no dissenting votes.

### **New Business**

### **Unfinished Business**

36. Report from the Rules Committee recommending revisions to the current Rules of the City Council. (Item tabled, no action taken, at the June 8, 2015 City Council meeting).

**Action:** This item remains on the table.

37. Supplemental report from the City Engineer outlining lighting alternatives for the Downtown Complete Streets Improvement Project (CIP460).

**Action:** This item remains on the table.

### **Comments, Requests by Mayor, City Councilors**

Councilor Herschlag announced that there will be a Ward Two meeting at the Newell Post Restaurant on Tuesday, August 23rd at 6:00 p.m. He indicated that Matt Walsh, Director of Redevelopment, Downtown Services and Special Projects will be present to answer questions. All are invited to attend.

Councilor Shurtleff noted the passing of Van McCleod on July 18th. He publicly expressed the city's and Council's sympathy for his family.

Councilor Bouchard announced that there's now arts on the heights; a theater group, Hatbox Theater, has opened up outside the mall.

### **Comments, Requests by the City Manager**

### **Consideration of items pulled from the consent agenda for discussion**

- *Items 22, 23 and 25 have been pulled from the consent agenda for discussion.*

22. Report from the Police Chief and the Fire Chief on Drug Overdoses and Other Statistics. (Pulled from consent by Councilor Herschlag)

**Action:** Councilor Herschlag noted that the overdoses that the Fire Department is responding to appear to be up but the use of Narcan has decreased. He inquired whether this was because of the types of overdoses and questioned as to how these would be identified when responding to a call. Fire Chief Dan Andrus responded that he spoke to the Medical Director today who indicated there has been an increase in methamphetamines and a decrease in opioid use.

Councilor Herschlag asked if there is any indication that an overdose is an opioid overdose when going on a call. Chief Andrus responded that it's not always obvious but there are some diagnostic indicators to lead them to believe that it's an opioid overdose.

Councilor Herschlag asked the Chief if he had any thoughts on whether the city should be looking at a program similar to Gloucester or Manchester or whether there is something else that would better fit the community. Chief Andrus responded that he has skepticism in regards to the safe place program. He stated that they are committed in doing everything they can through the community but believes the best approach is to work through traditional treatment centers and emergency care facilities for acute overdoses. Councilor Herschlag commended the Fire Department.

Councilor Herschlag moved acceptance of the report. The motion was duly seconded and passed with no dissenting votes.

23. Report from the Transportation Policy Advisory Committee on current levels of bicycle and pedestrian usage along Loudon Road. (Pulled from consent by Councilor Bouchard)

**Action:** Councilor Bouchard noted that the report didn't go far enough and feels that there could have been more detail. The report accurately pointed out that there is a high percentage of residents in the Loudon Road corridor that don't have transportation and are low income but it did not go into looking at the Loudon Road corridor and complete streets. She pointed out that what was missed by the counters on those three days were children on bikes, joggers and recreational bicyclists staying within the safety of their connected neighborhoods - from one neighborhood to another. She was disappointed that the report was so narrow and just focusing on Loudon Road. When committees look at the Loudon Road



corridor, she would like to see them mentioning more than just focusing on the low income and look at the entire corridor including the retiree population.

Councilor Kretovic explained that this is a study that they have done since 2013 noting that there are 24 intersections throughout the city that they do counts on. She indicated that this is a follow up so they can get a stream of data. She feels that making a request to the bicycle subcommittee to expand the work that they are doing would be appropriate. She noted that, within the report, they've included specifics to the safety and improvements of Loudon Road but it was never intended for the group to always focus on Loudon Road in that capacity until the highway safety project came forward.

Councilor Bouchard indicated that they were on Loudon Road three times between 4:00 p.m. and 6:00 p.m. She feels that if they are looking into making a bike safety community, it's wise to also look at alternative routes that people may already be using. She stated that she knows that pointing out the low income piece on Loudon Road brings in grants but her hope is that they start seeing reports that point out the positive on this corridor; it's a very diverse corridor that works well where people can work, shop and live.

Councilor Bouchard moved acceptance of the report. The motion was duly seconded and passed with no dissenting votes.

25. Report from the Zoning Administrator in follow-up up to a request from Alicia Mailhot for the restoration of involuntary merged lots pursuant to RSA 674:39-aa. (Pulled from consent by Councilor Coen)

**Action:** Councilor Coen highlighted information in regards to involuntarily merged lots within the report. He referenced attachments indicating that one is an aerial photograph taken in 1948 showing the two lots with buildings on both sides of the lot and a city plot from the 1970's with the two structures but a current attachment showing one of the lots is vacant. He indicated that he was surprised to see an aerial view of this lot taken in the 1940's but not one that is current. From what he understands that if they go back and change them to two single lots, they are not saying they are conforming but it gives the opportunity for the owner to go to the Zoning Board of Adjustment for an appeal. He was not comfortable with the maps and attachments noting that it should have included more current information within it.

Councilor Coen moved to direct staff to prepare and record notes of lot

restoration to the Merrimack County of Deeds and not to accept the report. The motion was duly seconded.

Mayor Pro Tem St. Hilaire asked if someone goes to the city to make this request, who usually deals with this request. Mr. Aspell responded that it would be the Code Administrator who would then work with the Legal Department. He indicated that it's an involuntary lot merger that was put together appropriately but the question is that Council can pull it apart if they choose to then the owners would have to go before the ZBA for a variance.

Mayor Pro Tem St. Hilaire asked if they were to make a decision as a Council on this tonight, what is the owners avenue of appeal. Danielle Pacik, Deputy City Solicitor, responded that if Council were to deny the application then the applicant has the right to go to the Zoning Board of Adjustment and can appeal it there. She continued to explain that if the owner is then not satisfied with that decision, they can then appeal it to the New Hampshire Superior Court and then up to the New Hampshire Supreme Court. Mayor Pro Tem St. Hilaire asked, if an owner comes with evidence, who in the city reviews the evidence and makes a final determination as to what they are going to recommend to the Council. Ms. Pacik responded that the city receives the application explaining that there is a procedure that was adopted by the Council; it gets referred to the Legal Department and the Legal Department takes all the materials sending it to Engineering, Assessing, Code and Planning. All these departments review it, get materials and gives it to the Zoning Administrator who then makes a report and recommendation.

Mayor Pro Tem St. Hilaire inquired whether Council has dealt with an application for this since the new law has been passed. Ms. Pacik responded no indicating that this is the first one.

Councilor Nyhan questioned the purpose of unmerging the property. Ms. Pacik replied that she can't provide information as to why a property owner would want this but stated that it would be one less step because an owner wouldn't have to go to receive subdivision approval.

Councilor Shurtleff indicated that from what Councilor Coen pointed out in 1943, and from what he read, that someone put a garage on the property line that's saying that they are joined together and now that garage is gone. He stated that it's hard to believe that the legislative intent was to say if the property went back to its natural condition then the prohibition by the RSA would still be in effect because it

changes the whole thing. Ms. Pacik responded that the statute does address this specific issue and what it says is, that in order to have your lots unmerged, no owner in the chain of title could have taken measures to voluntarily merge it. She pointed out that they just don't look at the present condition but the chain of title, what the former owners may or may not have done with it. She explained that voluntary merger doesn't just happen by submitting an application but they look at how they treated the property and if they treated it as one lot; in this case, because of the building on the property line, it shows they were treating it as one lot.

Councilor Shurtleff noted that it's a question of fairness in a way; something that was done 75 years ago by an owner and over time was undone by a building being removed and going back to it's original condition. It's still prohibited by something done a long time ago.

Mayor Pro Tem St. Hilaire feels that this is interesting because when someone goes before the Zoning Board, the applicant has an opportunity to speak in front of the board. He feels like their hands are tied tonight by this coming to them as a report and feels that the only option would have been to have it come as a public hearing. He feels that Council should hear both sides of the argument rather just one side on a report that makes a determination. He pointed out that this is their first one and a) it's odd that it comes to the Council first rather than the Zoning Board in which they have a process to appear; and b) Council doesn't have the same opportunity that the Zoning Board has to reflect upon this as they do.

Ms. Pacik indicated that to staff it is clear and the facts are in dispute that there was a garage. Council can disagree with staff and approve this item but will need to be aware how this will impact other applications in the future.

Councilor Herschlag wondered if Council could table this item and ask the owner of the property to go to the Zoning Board to ask for relief and if relief wasn't granted, then it would come back to the Council for a final determination. Ms. Pacik responded that the statute specifically states that the request has to be submitted to the governing body and the process contemplates that it would then be appealed to the Zoning Board of Adjustment.

Mayor Pro Tem St. Hilaire stated that he personally doesn't feel comfortable deciding this tonight especially because he feels that to have a process be meaningful in any other thing they do in the law, the applicant has the opportunity to say something and feels like this is missing here. He prefers that this was a

public hearing and questioned whether this is possible under the law. Ms. Pacik responded yes.

Councilor Coen rescinded his original motion and moved to delay action on this item this evening and set this item for a public hearing in September. The motion was duly seconded.

Brief discussion occurred in regards to the notice on this item. It was determined that the Legal Department would decide who would be notified based upon what is required within the statute.

Mayor Pro Tem St. Hilaire indicated that his hope is, if the motion to hold a hearing is approved, that the Legal Department would educate the Council on the statute as to their responsibilities and what their perimeters are and that the Legal Department present their case as well as the applicant.

Councilor Grady Sexton indicated that she would feel more comfortable if the abutters were notified of a public hearing.

Councilor Matson agreed with Councilor Grady Sexton in regards to the notification to abutters.

Mr. Aspell indicated that they would use the same Zoning Board of Adjustment notification of 300 feet.

The motion to set this item for a September public hearing passed with no dissenting votes.

### **Consideration of Suspense Items**

#### **Adjournment**

The time being 9:08 p.m., Councilor Keach moved to adjourn the meeting. The motion was duly seconded and passed with no dissenting votes.

*A true copy; I attest:*

*Michelle Mulholland  
Deputy City Clerk*