



# City of Concord

## City Council

### Meeting Minutes

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Monday, June 10, 2019

7:00 PM

City Council Chambers  
37 Green Street  
Concord, NH 03301

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***Non-public session in accordance with RSA 91-A: 2, I (a) to discuss collective bargaining strategies followed by a non-public session in accordance with RSA 91-A: 3, II (d) to discuss property acquisition to begin at 5:30 p.m.***

Present: Councilor Bouchard, Mayor Bouley, Councilors Champlin, Coen, Grady Sexton, Hatfield, Herschlag, Kenison, Kretovic, Matson, Nyhan, Rice Hawkins, and Werner were present. Councilors Keach and Todd were late.

At 5:30 p.m. Councilor Champlin moved to enter into non-public session in accordance with RSA 91-A: 3, II (d) to discuss property acquisition followed by a non-public session in accordance with RSA 91-A: 2, I (a) to discuss collective bargaining strategies. The motion was duly seconded and passed with no dissenting votes.

At 6:50 p.m. Councilor Bouchard moved to adjourn the non-public session. The motion was duly seconded and passed unanimously with no dissenting votes.

In public session, Councilor Bouchard moved to seal the minutes. The motion was duly seconded and passed unanimously.

There being no additional business, Councilor Bouchard moved to adjourn. The motion was duly seconded and passed.

1. Call to Order.

Mayor Bouley called the regular meeting to order at 7:00 p.m.

2. Invocation by Rabbi Robin Nafshi from the Temple Beth Jacob.

3. Pledge of Allegiance.

4. Roll Call.

**Present:** 15 - Councilor Candace Bouchard, Mayor Jim Bouley, Councilor Byron Champlin, Councilor Mark Coen, Councilor Amanda Grady Sexton, Councilor

Meredith Hatfield, Councilor Allan Herschlag, Councilor Fred Keach, Councilor Linda Kenison, Councilor Jennifer Kretovic, Councilor Gail Matson, Councilor Keith Nyhan, Councilor Zandra Rice Hawkins, Councilor Brent Todd, and Councilor Robert Werner.

5. Approval of the Meeting Minutes.

May 13, 2019 City Council Meeting Minutes.

**Action:** Councilor Grady Sexton moved approval of the May 13, 2019 meeting minutes. The motion was duly seconded and passed with no dissenting votes.

May 20, 2019 City Council Meeting Minutes.

**Action:** Councilor Grady Sexton moved approval of the May 20, 2019 meeting minutes. The motion was duly seconded and passed with no dissenting votes.

6. Canvass of the Votes for the Special Municipal Election held on June 4, 2019.

**Action:** City Clerk Janice Bonenfant provided a canvass of the votes from the June 4, 2019 Special Municipal Election in Ward Four announcing that Meredith Hatfield received the highest number of votes for the vacant Ward Four council seat.

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

7. Ceremonial swearing in of newly elected Ward Four City Councilor.

Mayor Bouley performed the ceremonial swearing in of Meredith Hatfield as the Ward Four City Councilor.

8. City Council action relative to the City Manager's evaluation, in accordance with Section 21(b) of the City Charter.

**Action:** Mayor Bouley explained that Section 21b of the City Charter gives the Council two choices for the City Manager's evaluation: satisfactory or unsatisfactory.

Councilor Bouchard moved that the City Manager's evaluation as satisfactory. The motion was duly seconded and passed with no dissenting votes.

9. Resolution in recognition of the services of retired Fiscal Technician III Loretta E. Emerson.

Loretta Emerson was not present to receive the resolution.

10. Resolution in recognition of the services of Dan St. Hilaire.

Mayor Bouley presented a resolution in recognition of the services of Dan St. Hilaire.

11. Resolution in recognition of the services of Stephen Shurtleff.

Mayor Bouley presented a resolution in recognition of the services of Stephen Shurtleff.

12. Proclamation in recognition of Concord Community TV's 20th Anniversary.

Mayor Bouley presented a proclamation in recognition of Concord Community TV's 20th Anniversary.

13. Agenda overview by the Mayor.

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

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

**Action:** Councilor Grady Sexton moved approval of the consent agenda with item 26 removed for discussion. The motion was duly seconded. Councilor Champlin announced that he will be recusing himself from item 26 since he is on the board for the Capitol Center for the Arts. The consent agenda was approved.

### **Referral to Community Development and the Planning Board**

14. Communication from Gallagher, Callahan & Gartrell, on behalf of their client the ROI Irrevocable Trust, Christine M. Windler, Trustee, requesting consideration be given to rezoning parcels identified as Concord Tax Map 110, Block H3, Lot 3 and Map 110, Block I2, Lot 3, from Open Space Residential District (RO) to Gateway Performance District (GWP).

**Action:** This communication was referred to Community Development and the Planning Board.

### **Referral to the Transportation Policy Advisory Committee and the Traffic Operations Committee**

15. Communication from Kelly LaFave requesting consideration be given to safety improvements at the intersection of Mountain Road, Hoit Road and East Side Drive in Concord.

**Action:** This communication was referred to the Transportation Policy Advisory Committee and the Traffic Operations Committee.

### **Items Tabled for July 8, 2019 Public Hearings**

16. Resolution accepting the terms of the First Responder Comprehensive Addiction and Recovery Act (FR-CARA) Grant and accepting and appropriating the sum of \$136,999 to continue the Mobile Integrated Healthcare (MIH) Program, pending NH Fire Standards and Training & EMS approval and Governor and Council approval; together with report from the Fire Chief.

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

17. Resolution accepting and appropriating the sum of \$130,460 as a supplemental appropriation for the Mobile Integrated Healthcare (MIH) program, pending NH Fire Standards and Training & EMS approval and Governor and Council approval.

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

18. Resolution appropriating the sum of \$1,000,000 in Reserve Funds as a transfer to the Highway Reserve Fund retroactive to June 30, 2019; together with report from the Deputy City Manager - Finance.

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

19. Discretionary Preservation Easement renewal request, per RSA 79-D, for property located at 233 Hopkinton Road owned by the Sally Stouten Hatch Revocable Trust.

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

20. Resolution accepting and appropriating the sum of \$71,874 for residential granite curb cost sharing as part of the annual roadway surface improvements project (CIP #78); together with report from the General Services Director.

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

### **From the City Manager**

21. Positive Citizen Comments

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

### **Consent Reports**

22. Diminimus gifts and donations report from the Library Director requesting

authorization to accept monetary gifts totaling \$1,115.48 as provided for under the pre-authorization granted by City Council.

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

23. Report authorizing the City Manager to enter into a Purchase and Sales Agreement with the New Hampshire Adjutant General's Department to sell +/- 3.5 acres of Airport property located at the northeast corner of Regional Drive and Airport Road identified as 45 Airport Road.

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

24. Report from the Parks and Recreation Director on Perkins Chapel Improvements.

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

25. Skate House Charitable Contribution Agreement, together with report to Council.

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

26. Report from the Deputy City Manager - Development requesting authorization for the City Manager to enter into a License Agreement with CCA North Corp for the Bank of NH Stage marquee sign at 16-18 South Main Street. (Revised license agreement submitted) (Pulled from consent by Councilor Herschlag)

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

### **Consent Resolutions**

27. Resolution in recognition of the services of Master Police Officer William J. Brouillet.

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

28. Resolution authorizing the City Manager or his designee to apply for funding through the New Hampshire Project First Grant Program administered by the New Hampshire Department of Safety; together with report from the Fire Chief.

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

29. Resolution repurposing the sum of \$70,205.00 from the Records Management Microfilm Conversion Project (CIP #490) to the Video System Replacement Project (CIP #607); together with report from the Police Department.

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

### **Consent Communications**

**Appointments**

30. City Manager's proposed re-appointments to the Library Board of Trustees. Lisa Calgaard Sands and Jeremy Clemans

**Action:** This appointment was approved.

**From the Mayor**

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

**Public Hearings**

- 31A. Resolution approving the acquisition of open space watershed protection property (CIP #352) on District 5 Road, authorizing the expenditure of up to \$355,000 from the Conservation Fund, and accepting and appropriating the sum of \$300,000 in grant funds from the State of NH Aquatic Resource Mitigation Fund for this purpose; together with report from the Assistant City Planner on behalf of the Conservation Commission. (Revised resolution and supplemental report submitted) (Public testimony submitted)

**Action:** Councilor Bouchard moved to substitute the revised resolution with the one previously submitted. The motion was duly seconded and passed with no dissenting votes.

Assistant City Planner Beth Fenstermacher provided a brief overview indicating that what is being asked of the Council is to approve the acquisition the acreage of land which was identified in the 2008 open space master plan and 2017 updated open space plan as priority areas for protection; accept and appropriate the ARM grant funds of \$350,000; accept and appropriate \$114,425 from Concord Orthopaedics.

Mayor Bouley opened the public hearing.

**Public Testimony**

Lynn Woodard, 13 Edward Drive, doesn't feel that this should be approved this evening noting that it should be looked at further. He is concerned with safety and pointed out that the public road frontage is very limited. Referencing page three of the supplemental report, he noted that he has concerns with what is stated in regards to the updated survey. He had contention with Holden Engineering conducting the corrected survey stating that they should recuse themselves due to

Peter Holden being a principal in the ownership of Country Hill Estates and having interest in selling this piece of property to the commission.

Mike Schowalter indicated that one of the things that he likes about this particular piece of land is that it abuts the Rossvie property; keeping this property wild and natural will help maintain the quality and features that hikers and trail users love about the trail. He feels that this measure will help to maintain this.

Councilor Kretovic asked where he parked to go to this trail. Mr. Schowalter responded that he either parks at Carter Hill Orchard, Dimond Hill Farm or the Marjory Swope trail.

Matt Bowser, Central NH Chapter of the New England Mountain Bike Association, indicated that they have been actively working with the Conservation Commission and the trails committee in helping to promote and develop sustainable trails in Concord. He expressed his support for this piece of property noting he feels that it's a key connector.

Mark Dube, Bow Pioneer Snowmobile Club trail master, noted that the club is in support of purchasing this land because they have a corridor that passes near here; they've had discussions about making additional trails in the nearby conservation land that the city already has. He stated that if the city had this it would allow them to add more trails to their system.

Kris Tardiff, Conservation Commission Chair, explained that when the commission looks at a parcel of property for conservation purposes, they are not looking at it as a stand alone decision they are looking at how this or whether this parcel fits in to decisions that have been made in the past about conservation. She stated that this 200+ acre parcel checks all the boxes for them.

Jim Owers, Conservation Commission Vice Chair, indicated that there are two abutters opposed to this but the commission objects to this item being tabled. He pointed out that this property has been identified as a priority acquisition since 2008 and this is the first time this property has been available since 1986 - this is the time to purchase it. He explained that Donald Ross, under the terms of his easement, is required to provide six public parking spaces in which he has never done and feels that this is getting mixed up with an idea of a parking lot on this property. He assured the Council that they are not going to be using this property to satisfy the Ross obligation to provide those public parking spaces. He

highlighted concerns of the abutters of this property.

Daniel Geiger, Oak Hill Environmental Services President and certified wetlands scientist, stated that he was retained by the Conservation Commission to perform wetlands and natural resource evaluation to determine the level of significance for the subject land parcel, the qualities it provides, and whether this property is a good candidate for preservation and a candidate for the ARMs fund. He explained, on this funding program, it is required to conduct a wetlands evaluation utilizing the NH method for an evaluation of fresh water wetlands; this method determines the level of individual functions and values that are being performed by individual wetlands and the collective wetlands system that separate out the principal functions that are being provided. He highlighted some of the features of this property.

In closing, Ms. Tardiff added that there has been public testimony in regards to interest of trails on this property explaining that the receipt of the ARM grant does come with a requirement of public access.

Referring to snowmobile trails, Councilor Kretovic asked if this is unlikely to be used on these trails as they are specific to the watershed or that there may be other opportunities down the discontinued portion of District 5 Road. Ms. Tardiff replied that there is an existing snowmobile trail that comes up through this area and they would need to sit down to discuss with the snowmobile club.

Councilor Kretovic asked if the commission has had the conservation with regard to snowmobiles and mountain bikes. Ms. Tardiff responded that they have not had discussions with these groups in regards to this property at this time.

Councilor Herschlag inquired as to what type of access the commission is anticipating for this property. Ms. Tardiff replied that, to start, it would be use of the extension of District 5 Road that has been discontinued.

Councilor Champlin asked what the impact would be of losing the wetlands on this parcel relative to the impact downstream. Mr. Geiger responded that if you disturb the origins or the headwaters, you would be affecting everything downstream. He explained that the headwaters are the most critical part of any wetlands system - to protect it now will ensure that the quality of water will be protected.

Councilor Champlin questioned whether there was a flood control aspect to this.



Mr. Geiger responded yes explaining that flood control is another principle function that a wetland provides.

Rebecca Woodard Ross, District 5 Road, spoke in opposition of the use of the ARM grant for the city to acquire this property at this time because she feels that there is still a lot of information that the community and the city needs to make a responsible decision on this acquisition. She is not opposed to the land being conserved and not opposed to structured recreational use of the land. With regard to the farm shutting down the trail, she pointed out that its within the easement to shut down temporary use of a trail if it's affecting agriculture. She noted that they like the use of the trail but they do need people to respect that there is also farming going on and to respect private land owners. She doesn't believe that the view "they have the money now so they should spend it" is a responsible way to govern. She stated that this land is not at risk of being developed and doesn't feel that this is the best approach of conserving this land. She asked Council to look at the restrictive covenants that are going to be placed in the deed - will it allow snowmobiles, will it allow mountain bikes, what will be the use restriction, will there be a minimum mileage for trails, what will their obligations as land owners be. Without a plan, she feels that its hard for Council to make a decision and hard for the public to know how its going to impact the city.

Councilor Keach asked if Ms. Woodard Ross's family is interested in acquiring the property. Ms. Woodard Ross responded no stating that they would be happy to have any other farmer or steward of the land to be there.

Councilor Nyhan inquired whether the primary objection is to potential trails to the area. Ms. Woodard Ross responded that it's more complicated than this. She feels that some form of limited structured recreation is great but a free for all with jeeps, trucks, etc. is going to be detrimental to the environment and to the resources that they are trying to protect.

Councilor Coen asked as to how does one alleviate this problem. Ms. Woodard Ross responded that the only time they have successfully had law enforcement do something and take action was when the rider had to call 911 on themselves because their truck was on fire. She pointed out that its hard to enforce but feels without a structured plan of what is and what isn't, where the access points will be, and what kind of use they see this as an invitation for increased activity on the proposed parcel as well as their parcel.

Councilor Coen pointed out that his issue is - it's the Ross's parcel that people are abusing.

Councilor Herschlag noted that the Ross's received funding to have their land placed in conservation for controlled public access. If he was to go up District 5 Road, where would he be able to park and how would he access the trails on the Ross's property. Ms. Woodard Ross responded that there is parking on the street as well as the number of access points by other trail systems.

Councilor Herschlag indicated that Mr. Ower pointed out that there is a requirement for them to have six parking spaces within the conservation easement. Ms. Woodard Ross replied that the location that was identified for parking between the state, the city and the landowner, at the time they entered into the easement, now have concerns identified by the Department of Environmental Services in regards to wetlands. There was only one place specifically identified for parking and now that its under new ownership, they can certainly look into pursuing this, however, if that designated spot is unbuildable it's not a requirement to build it anywhere else and give up valuable forest or farmland for that parking.

Robert Knight, Concord Trails Committee Chair, commended the Conservation Commission for putting together this deal to protect this property. He relayed a resolution from the committee in support of the Conservation Commission's efforts to preserve and protect the continuity of the west end farm trail. He noted that this trail is a key part of the city's trail network and this property is a key part of the west end farm trail going north from District 5 Road.

Donald Ross, Rossview Farm, pointed out that the state has lost 50,000 agricultural acres in the past ten years to either development or recreation. With the proposed direction of the ARM grant, he feels that this is going to eliminate agriculture. He stated that, within his conservation easement, there are five proposed entrance and access points to his property and none of them abut the Country Hill Estates land and is well within right to fence off the entire property boundary between Country Hill Estates and Rossview Farm. He doesn't oppose recreation or conservation; he opposes the removal of agricultural land for recreational. He does wish to acquire some of this land if it so happens to work out - he proposed accesses and additional parking in exchange for some of the land with no response. In regards to mountain bike trail connectors, Mr. Ross explained that mountain biking is a public access that is negotiated with a landowner - Rossview Farm did not sell the right for public mountain bike access

therefore mountain biking on Rossview Farm is by written permission only. Regarding the parking issue, he stated that a point was agreed upon as to where the parking lot was going to be and was acknowledged, at the time, that it was right on the edge of a wetland buffer; he was told that rocks and fill could be put in but he is still waiting for the state to work with him for this to happen. He noted that any other spot would've come at a greater price because he would have to give up forest land, a field or a parking lot for his business. He provided the history for the parcel of land being considered indicating that it was farmed until 1986. He is against the path that the city is currently on and feels that there is ample time to redirect another path that could preserve agriculture. He wants Council to table this and look into alternative ways to conserve this land.

Rick Unknown, south end resident, doesn't want to downplay the issues that the residents of District 5 Road but feels that these two parcels of land may be a good opportunity to untangle the agriculture from the recreation; get the recreational users as far enough away so that the issues they see should not be as much as it is today.

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

- 31B. Resolution accepting and appropriating the sum of \$104,081 for the purpose of completing a Terminal Area Study at the Airport (CIP #383), including \$98,603 in Grant Funds from the Federal Aviation Administration and \$5,478 from the State of New Hampshire; together with report from the Associate Engineer.

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

Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

- 31C. Resolution accepting and appropriating the sum of \$19,536.84 generated from the sale of timber from City-owned, non-conservation property and transferring sum of \$19,536.84 to the Community Improvement Trust; together with report from the Deputy City Manager for Development.

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

Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

- 31D. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-2, Zoning Districts and Allowable Uses; Section

28-2-3, The Zoning Map, 15 Frost Road; together with report from the Senior Planner.

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

Mayor Bouley opened the public hearing.

### **Public Testimony**

Kelsey Peterson, requestor, indicated that this is something that would allow a young family to establish their home on family land without having to extend municipal services a distance that would be so cost prohibitive.

There being no additional public testimony, the Mayor closed the hearing.

- 31E. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-2, Zoning Districts and Allowable Uses, Article 28-4, Development Design Standards, Article 28-5, Supplemental Standards and Glossary for the purpose of regulating development of solar collection systems; together with report from the Assistant City Planner. (Revised report submitted)

**Action:** Assistant City Planner Beth Fenstermacher provided an overview via a powerpoint presentation. (powerpoint presentation on file at the City Clerk's Office)

Mayor Bouley opened the public hearing.

### **Public Testimony**

Richard Maher, resident and Energy and Environment Committee member, thanked Planning Department staff for all their help. He highlighted the history and goals of the committee. He stated that the committee supports the proposed zoning revisions being considered this evening. They have one suggested change - they would like to see that maximum solar land coverage limit of twenty five acres removed. He noted that it seems unjust that someone with fifty acres can use half of their land but someone else with 250 acres can only use ten percent of their land for the same thing. He feels that it could lead to an unintended consequence of parcels being subdivided into fifty acre pieces just to get around this maximum coverage limit. With this one exception, the committee is supportive of the compromises that the Planning Division has achieved.

Councilor Todd inquired in regards to open space versus being against the twenty five acre limit. Mr. Maher noted that they feel that open space can include solar panels and maintain it as open space. He stated that open space can be built upon in non-conserved land.

Councilor Todd indicated that there may be people that have a different definition of open space and may not define it as space that has solar panels on it. He inquired as to what CEEC stood for. Mr. Maher responded that it stood for the Concord Energy and Environment Advisory Committee. Councilor Todd pointed out that the committee name is the Energy and Environment Advisory Committee and asked if one name could be used to avoid any public confusion.

Councilor Herschlag, for reference, indicated that the Concord Monitor land is for sale at over 100 acres and is zoned industrial so, if a solar developer came in here, they could cover 85 percent of that lot with solar panels. He asked if there was any way to determine the value of this, how this would impact the taxes, and whether or not this would fit in with the goals of the master plan. Mr. Maher responded that he is unable to appraise the value this but if they were able to put fifty acres of solar it would have to be close enough to the substations or the three phase power for this to be practical but, if it were, he suspects it would be worth a few million dollars.

Councilor Herschlag stated that the Concord Monitor lot is currently assessed a little over \$4 million and is for sale for \$6.5 million. Over 85 acres would be able to be covered in solar panels inquiring whether he is calculating this correctly. Mr. Maher stated that he hasn't walked the lot so he is unfamiliar with this property but noted that in large scale solar, land is leased for a lot of money.

Bob Carey, represented a company that was part of the West Portsmouth Street project, feels that there are two areas within the proposed ordinance that can be improved: lot coverage and lot limitations. He would like to remove the twenty five acre limit in the RO district and make it fifty acres. He pointed out that there are not that many parcels that are available that are of a certain size and near a substation but other solar farm and companies will look to see what Concord does and what example it sets. He noted that with new technology such as solar it can seem intimidating but it is something that a property owner can do to maximize the use of that land.

Councilor Coen asked who Mr. Carey was representing. Mr. Carey replied that he

represents Nexterra who was going to lease the Brochu property.

Councilor Coen inquired as to the difference between a solar farm and a power plant that's using solar panels. Mr. Carey responded that he has never heard of a power plant that uses solar panels. Councilor Coen stated that this is what that is; it's a power plant that's generating electricity.

Councilor Champlin asked how a ten mega-watt solar farm or plant in Concord that exports its energy to Connecticut helps Concord reach its renewable energy goals. Mr. Carey explained that the state has looked at this as a larger perspective in trying to promote renewable energy. He indicated that the electrons move all around which is the reality of renewable energy. He stated that they do want to have a free market; where Concord gets it back is it gets it back in local taxes - that's the benefit.

Rebecca McWilliams, Lewis Farm, feels that this is the future of Concord. She feels that the twenty five acre cap for the rural open district is arbitrary and capricious and incredibly restrictive for their farm and the city. She stated that when it comes to farm finances, it's important to take into account that every dollar really matters; they are not representing a developer, they are representing themselves as potential landlords and potential partners in community solar. She is asking for solar for their farm because they would like to continue contributing to the community in addition to providing fresh produce, they also hope to provide clean green energy for their own grid.

James Meinecke, Lewis Farm, noted that farms have been boxing, barreling and busheling sunlight longer than anybody else pointing out that this is not a power plant, this is open space.

Councilor Herschlag explained that when zoning ordinances are enacted they are within what the state grants them and they are somewhat community based so that the community has the ability to set a range or set a limit. He wonders why, in this case, it's felt that the twenty five acres is arbitrary and capricious. Ms. McWilliams defined that arbitrary and capricious means that it doesn't have the same impact on everyone. Twenty five acres is perfectly fine for someone that has a thirteen acre parcel and decides to do forty percent for commercial solar; they never reach the twenty five threshold therefore never impacted by it. For their experience, their 130 acres, it caps them and they are stuck at twenty five so this is a different impact on them as would be on another landowner.

Paul Morrisette, Oak Hill Road, has extensively looked into solar and explained, in regards to lease holders, that if it's a local project where its being used locally, they receive approximately \$10,000 per acre per year for every megawatt that they can place onto their property. With the new law that appears to be going through, they would be allowed up to five so that would be \$50,000. In the bigger ones that are placed directly onto the grid and shipped out of state and sold wholesale, the property owner gets an average of \$7,000 per year. He stated that these are twenty year contracts and they usually last approximately twenty five years. He is for the proposed ordinance but based upon the research he feels that they need it to be thirty five or forty acres to be fair.

Madeleine Mineau, resident and Clean Energy NH Executive Director, indicated that they recently developed a model solar ordinance which was used by the Energy and Environment Committee originally to develop the basis for the solar zoning ordinance which was then passed on to the planning staff and changed. She explained that a goal of a solar zoning ordinance should be to provide clarity on the process and requirements for approval of solar systems in the community, not to be overly restrictive. She pointed out that state law states that renewable energy development cannot be unreasonably limited by municipal zoning. She has concerns on two specific restrictions on larger solar projects that, in her view, is overly restrictive and would establish a bad example for the capital city to give. She doesn't like the extra setbacks required but feels that they can live with those. The twenty five acre maximum project size and the way that solar land coverage is determined as well as the associated forty percent maximum lot coverage in the RO and RM districts are what she feels are overly restrictive. She stated that they need renewable energy of all sizes; communities need to be able to host renewable energy at scale.

Mayor Bouley noted that its being stated that these need to be located close to three phase power and a substation. He asked how close. Ms. Mineau replied very close approximately 100 yards.

In regards to solar panels being temporary, Councilor Herschlag asked what's going to replace the energy that solar panels are producing. Ms. Mineau responded that they can be replaced with other solar panels since they only last twenty five to thirty years. She noted that by then there may be panels that last longer. She doesn't know how they will generate their electricity in thirty years.

Councilor Herschlag noted that, although the panels themselves can be removed, they would anticipate that the land would continue to be used to produce power. Ms. Mineau responded that it would be up to that landowner.

Councilor Champlin asked Ms. Mineau to expand upon her objection to the way the lot coverage is interpreted within this proposed ordinance. He stated that he happens to be one of the supporters of this concept noting that it's a more truthful way to give abutters an idea of what a development is going to look like. Ms. Mineau responded that currently the solar land coverage just draws a circle around the outside perimeter of the project and counts all the land in it - that includes the space in between the rows of panels. She feels that this is just not correct noting if there were two greenhouses or two houses, you wouldn't count space in between them and say that the lot is covered by the grass in between; that is why the definition of solar land coverage treats solar differently and more restrictive than any other structure in the city.

Councilor Coen questioned if Ms. Mineau's organization is just focused on solar. Ms. Mineau responded that they advocate for all types of renewable energy and energy efficiency work.

Councilor Todd asked if anything can be done in between two solar panels. Ms. Mineau responded that they absolutely can farm under and in between the rows of panels and can create habitat for animals; there is a functioning eco-system in between and under the panels.

Hannah Smith, resident, spoke in support of increasing clean energy development in the city especially community based. She hopes to see that the proposed solar ordinance reflects this.

David Murray, Penacook, noted that with the economic times that they are in, he hopes that the Council is sensitive as they look at open space and farmland in general and look at the needs of every property owner and farmer carefully. He commented that the forty percent is a major step forward and feels that there are also some case by case basis.

Dot Currier, resident, asked that Council consider the urgency of climate change as they consider their process.

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



Councilor Matson left the Council meeting at 9:50 p.m.

- 31F. Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 9, Water, Article 9-6, Sewers and Drains concerning the Utility Appeals Board; together with report from the Deputy City Manager for Development.

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

Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

- 31G. 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, requesting authorization to change a job title from Wastewater Operations Crew Leader to Wastewater Crew Leader; together with report from the General Services Director and the Director of Human Resources and Labor Relations.

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

Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

- 31H. 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, to add the positions of Utility Billing Program Manager and Water Metering Operations Lead; together with a report from the Director of Human Resources and Labor Relations and the General Services Director.

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

Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

### **Public Hearing Action**

32. Resolution approving the acquisition of open space watershed protection property (CIP #352) on District 5 Road, authorizing the expenditure of up to \$355,000 from the Conservation Fund, and accepting and appropriating the sum of \$300,000 in grant funds from the State of NH Aquatic Resource Mitigation Fund for this purpose; together with report from the Assistant City Planner on behalf of the Conservation Commission. (Revised resolution and supplemental report

submitted) (Public testimony submitted)

**Action:** Councilor Coen moved approval of the revised resolution. The motion was duly seconded.

Councilor Nyhan found the testimony from both sides to be very interesting. He noted what it boils down to is what type of recreation would be permitted on the protected space. He indicated, if they are going to vote to accept grant dollars and enter into this easement, at some point they are going to have to discuss what sort of recreation access should be allowed on this space. It sounds to him that they don't want to have motorized access because of pollutants entering into the headwater. He felt that Mr. Ross has compelling testimony. Councilor Nyhan stated that he had heard that the sellers of the property were intending to cut down all the trees prior to selling it. He feels that there is a sense of urgency and that this needs to happen this evening. He is in favor of protecting the space and feels that its good time because money is available but that there are unanswered questions.

Councilor Kretovic agrees with Councilor Nyhan on several points. She met with the abutters and the number one thing that she walked away from the conversation with was that they felt they were not included within the process. She indicated that the Conservation Commission started the process in 2017 with two public hearings held in 2019 - two years afterwards. She stated that the commission noted that this was land they were interested in since 2008. She feels that they make a good point of wanting some organization around what was going to happen with this property. She feels that the overall problem they have is one of time. She explained that before the land was agriculture it was forest as it has currently returned to today; the commission is trying to protect the water and the forest - the natural environment that this land started with. She wishes there were more time but grants come and go and she would hate to lose this opportunity. She supports the motion and agrees that they need to know what the actual land use is going to be along these trails before they do anything harmful to the area.

Councilor Herschlag noted that the Conservation Commission indicated that, if the land was used for agriculture purposes the land, at best, is barely good enough. He stated he was interested to know what was farmed there previously. He heard from people that the land was being overpaid for \$3,000 per acre. He explained that the Rossvie Farm is two parcels totaling 673 acres and believes they received \$2.5 million to \$2.6 million to place the land into conservation which comes out to over \$3,700 per acre. He doesn't find the argument that they've overpaid a compelling argument. The other concern is the idea of putting this into

conservation so there is public access; the Rossvie Farm went into this knowing they would be expected to have public access yet there is not access to the trail to their property. He feels that if they put more land into conservation and work out deals with landowners, that the contract they have signed to open their land to the public is somehow enforceable. He strongly supports this resolution.

Councilor Todd pointed out that this has not been a rubberstamp process and that the Conservation Commission minutes speak to this. He is sensitive to the preservation of farmland but there are no guarantees that the property in question will ever return to farmland. He feels we are faced with the importance of augmenting our watershed protection - to him this is the overriding issue and concern in this matter. He is in support of the motion.

Councilor Rice Hawkins will be supporting the motion as well. She wants to be sensitive to the concerns that Ms. Woodard Ross brought up about people going on to their private property and wants to encourage that the city looks into this and any proposal for what that land use is; that they look at ways to mitigate that concern.

Councilor Nyhan inquired as to who determines what type of recreation use will be available on that parcel. He further inquired whether that will come back to the Council.

Assistant City Planner Beth Fenstermacher explained that this will be city owned land and that no motorized vehicles are allowed on city owned conservation land. She indicated that the Department of Environmental Services hold an executory interest; the city goes through the AG's office and negotiates what is allowed on the property. She pointed out that while public access is required, trails are not necessarily required - they allow for forestry and agriculture. She explained that the Conservation Commission and the trails committee has created trail criteria. They go through each property looking at the protection of the wildlife habitat, wetlands, etc. and determine what type of trails would go out there and the location of the trails. She stated that the main focus is opening the discontinued portion of District 5 Road as the main point of access in the property and if any other trails were to go out there. She pointed out that no mountain biking trails have been discussed.

City Manager Tom Aspell stated that the 85 miles of trails that have been developed throughout the city have gone through a certain process; there is a system of figuring out what trails are to be built and when. They don't come back

before the Council.

Ms. Fenstermacher added that they do have a public hearing that is noticed.

The motion to approve passed with no dissenting votes.

33. Resolution accepting and appropriating the sum of \$104,081 for the purpose of completing a Terminal Area Study at the Airport (CIP #383), including \$98,603 in Grant Funds from the Federal Aviation Administration and \$5,478 from the State of New Hampshire; together with report from the Associate Engineer.

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

34. Resolution accepting and appropriating the sum of \$19,536.84 generated from the sale of timber from City-owned, non-conservation property and transferring sum of \$19,536.84 to the Community Improvement Trust; together with report from the Deputy City Manager for Development.

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

Councilor Hatfield questioned the uses of these funds and why they are going into the Community Improvement Trust and not into a fund specifically for tree planting.

City Manager Tom Aspell responded that they don't have a non-conservation fund specific to tree planting. He explained that, within the budget, this amount is already designated for tree planting.

The motion to approve passed with no dissenting votes receiving the required two-thirds vote.

35. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-2, Zoning Districts and Allowable Uses; Section 28-2-3, The Zoning Map, 15 Frost Road; together with report from the Senior Planner.

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

Councilor Herschlag indicated that his concern in the future he would like to somehow see that all the properties there would have to be served by city water and sewer. He questioned whether this is something that would be required or can

be required to help ensure that it's not further subdivided in the future without a requirement that all properties have water and sewer. Mr. Aspell indicated that anyone can go to the Zoning Board of Adjustment to get a variance. He noted that there isn't a guarantee; it's a case by case basis.

The motion to approve passed with no dissenting votes.

36. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-2, Zoning Districts and Allowable Uses, Article 28-4, Development Design Standards, Article 28-5, Supplemental Standards and Glossary for the purpose of regulating development of solar collection systems; together with report from the Assistant City Planner. (Revised report submitted)

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

Councilor Werner indicated that they heard a lot of compelling testimony on this item and feels that the best course of action at this point is to table this item for further consideration and to work with the Planning Department. Councilor Werner moved to table this item.

The motion to table was duly seconded.

Councilor Herschlag agrees with Councilor Werner and feels that there are a number of issues, some of them impacting zoning. He noted that as they are looking at going to form based coding and changing their zoning, he questioned whether it makes sense to add an agricultural zoning district with separate conditions as opposed to lumping them into rural open space. He pointed out the issue of industrial land for more intensive or higher intensive uses.

Mayor Bouley indicated that this is a big policy decision and is his intention to come back in July or August and not to put it off for months. They have a chance to do this right so he wants to take the time to do that.

The motion to table passed with no dissenting votes.

37. Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 9, Water, Article 9-6, Sewers and Drains concerning the Utility Appeals Board; together with report from the Deputy City Manager for Development.

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

38. 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, requesting authorization to change a job title from Wastewater Operations Crew Leader to Wastewater Crew Leader; together with report from the General Services Director and the Director of Human Resources and Labor Relations.

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

39. 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, to add the positions of Utility Billing Program Manager and Water Metering Operations Lead; together with a report from the Director of Human Resources and Labor Relations and the General Services Director.

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

### **Appointments by the Mayor**

### **Reports**

### **New Business**

### **Unfinished Business**

40. Everett Arena Beer and Wine Service Initiative report from the General Services Director. (Report referred to the Public Safety Advisory Board at the February 2019 Council meeting) (Report from the Public Safety Board submitted)

**Action:** This item remains tabled.

41. 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 I, by amending Schedule I to add / modify parking prohibitions on Nivelles Street; together with report from the Director of Redevelopment, Downtown Services & Special Projects. (Public testimony received) (Action table at the March 11, 2019 City Council meeting)

**Action:** This item remains tabled.

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

Councilor Todd recognized Councilor Champlin's appointment to the NH

Executive Branch Ethics Committee.

Councilor Todd announced that the Penacook Village Association is going to hold a meeting on Tuesday, June 25th at 6:00 p.m. at the Merrimack Valley High School Library with the guest speaker being Matt Walsh, Director of Redevelopment, Downtown Services & Special Projects leading a discussion on TIF districts.

Councilor Champlin announced that there will be a ribbon cutting for the new White Park Skate House on Friday, June 14th from 4:00 p.m. to 5:00 p.m. followed by an open house from 5:00 p.m. to 6:00 p.m.

Councilor Champlin indicated that at a recent conference he spoke to somebody from the community of Waterbury, Vermont who stated that their town is redoing their Main Street and feels that Concord's is Main Street is their gold standard.

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

#### **Consideration of items pulled from the Consent Agenda**

*\* Item 26 was pulled from the consent agenda for discussion.*

26. Report from the Deputy City Manager - Development requesting authorization for the City Manager to enter into a License Agreement with CCA North Corp for the Bank of NH Stage marquee sign at 16-18 South Main Street. (Revised license agreement submitted) (Pulled from consent by Councilor Herschlag)

**Action:** Councilor Champlin recused himself from this item since he is on the board for the Capitol Center for the Arts.

Councilor Herschlag asked if it was customary to enter into an agreement after the structure has been almost completed. Mr. Aspell responded no.

Councilor Herschlag's concern is whether they know that all the components that they were supposed to meet have been met or will be met. He noted that Council has not had any opportunity to look at alternatives or discuss this before it was built; there may have been a way to eliminate or reduce the infringement into the city's right of way. Carlos Baia, Deputy City Manager - Development, doesn't disagree stating that this was something that was discussed by the applicant a year ago when they went through the Zoning Board. He indicated that they did receive their zoning variance and Planning Board approval as well as their sign permit. He assumes that it was an oversight that they went ahead and constructed it without doing it concurrently with all the other approvals. Staff saw the sign and brought it

to their attention and staff is before Council with the license.

Councilor Herschlag would like to have somebody involved with this project to explain to Council as to why they feel like they can encroach on the city's right of way before signing an agreement with the city.

Councilor Keach moved approval of the license. The motion was duly seconded.

Councilor Herschlag stated that they have seen time and again where people who are developing in the city doing construction projects and ignoring their rules. He feels at some point it's a slap in the face to this Council and boards that people they work with extensively feel that they can do what they want when they want. He will not be voting for this license.

Councilor Hatfield inquired whether it's an issue that they are encroaching on the right of way. Mr. Baia responded that the developer's claim is that they are trying to restore a historic marquee that used to be there. Because it's over the city's property, he explained that this does require a license.

Councilor Rice Hawkins questioned whether the city provides a penalty for somebody who overlooks licensing requirements. Mr. Baia responded that if the developer didn't want to pursue the license the city could tell them to take the sign down. If they chose not to, he suspects they would end up in some litigation effort.

Councilor Rice Hawkins asked if there wouldn't be a penalty and approval of the license. Mr. Baia is not aware of any penalty structure for this type of encroachment.

Mayor Bouley cited the Draft sign and the Remi block balconies and inquired whether these entities were fined. Mr. Aspell responded they were not fined but in regards to the balconies, they were asked to modify them.

Councilor Keach sees a distinction between a blatant disregard for the licensing efforts and someone that makes a mistake. He noted that when you see a developer who's taken all the steps and pulled all the other permits, it demonstrates a good faith effort.

Mayor Bouley pointed out that the Planning Board approved the sign.



Councilor Herschlag indicated that there was another issue in which the Planning Board and Zoning Board approved and the Council declined to sign a license for those approvals. He noted his concern with future developers not following the process properly if they vote to approve this tonight.

Councilor Kenison supports granting the license because the marquee is in keeping to what was once there.

Councilor Coen agreed with Councilor Kenison's comment.

Councilor Todd noted his support but indicated that there is an interesting point here. He feels that this is something to think about on a larger scale issue questioning whether they could have a mechanism in which there could be penalties.

The motion to approve the report passed with one dissenting vote from Councilor Herschlag. Councilor Champlin took Rule Six and did not vote on this item.

Councilor Kretovic asked if they could refer the Planning Board or staff to come up with a structure for a potential penalty when developers don't follow the city's guidelines.

City Solicitor Jim Kennedy clarified that this developer did go through the Planning and Zoning Boards on this sign structure. The issue in respect to the license for the overhang of the marquee is that there is a statute RSA 236:15 referring to cornices or parts of buildings that extend into the right of way; because this does that, it needs some type of a license or authorization from the city. He explained that there's a penalty built into the statute itself if somebody fails or constructs into the right of way without some type of authorization. He noted that the penalty would be removal.

### **Consideration of Suspense Items**

**Action:** Councilor Kretovic moved to consider suspense item not previously advertised. The motion was duly seconded and passed with no dissenting votes.

### **Referral to the Police Department**

Sus1 Communication from Kevin Coates, 45 Community Drive, requesting consideration be made to traffic safety improvements, specific to speeding traffic, on both

Community Drive and High Street in Penacook.

**Action:** Councilor Nyhan moved to refer this communication to the Police Department. The motion was duly seconded and passed with no dissenting votes.

City Manager Tom Aspell indicated that there are five additional resolutions to set for a public hearing to held at the July 8, 2019 City Council meeting.

City Clerk Janice Bonenfant read the titles:

Resolution adopting an amended and restated development program and financing plan for the Sears Block Tax Increment Finance District.

Resolution authorizing the City Manager to enter into agreements pertaining to a public private partnership for utility improvements within the Sears Block Tax Increment Finance District.

Resolution appropriating the sum of \$150,000 for utility improvements within the Sears Block Tax Increment Finance District and authorizing the issuance of bonds and notes in the amount of up to \$150,000.

Resolution authorizing the City Manager to enter into a purchase and sale/development agreement with Dol-Soul Properties L.L.C. concerning the sale and redevelopment of city owned real estate located at 32-34 South Main Street and 33 South State Street known as the former New Hampshire Employment Security Property.

Resolution appropriating the sum of \$3,500,000 for the redevelopment of the former New Hampshire Employment Security building (CIP #578) within the Sears Block Tax Increment Finance District and authorizing the issuance of bonds and notes in the amount of \$3,500,000.

Councilor Nyhan moved to set the five additional resolutions for a public hearing to be held at the July 8, 2019 City Council meeting. The motion was duly seconded and passed with no dissenting votes.

### **Adjournment**

The time being 10:58 p.m., Councilor Grady Sexton 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*

**Information**

Inf1. January 9, 2019 Conservation Commission Meeting Minutes.

**Action:** Information item received and filed.

Inf2. February 7, 2019 Heritage Commission Meeting Minutes.

**Action:** Information item received and filed.

Inf3. February 13, 2019 Conservation Commission Meeting Minutes.

**Action:** Information item received and filed.

Inf4. March 7, 2019 Heritage Commission Meeting Minutes.

**Action:** Information item received and filed.

Inf5. March 13, 2019 Conservation Commission Meeting Minutes.

**Action:** Information item received and filed.

Inf6. March 28, 2019 Transportation Policy Advisory Committee Meeting Minutes.

**Action:** Information item received and filed.

Inf7. April 18, 2019 Golf Course Advisory Committee Draft Meeting Minutes.

**Action:** Information item received and filed.

Inf8. May 1, 2019 Executive Council Meeting Report from Executive Councilor Andru Volinsky.

**Action:** Information item received and filed.

Inf9. May 6, 2019 Concord Public Library Board of Trustees Meeting Minutes.

**Action:** Information item received and filed.

Inf10. May 9, 2019 Golf Course Advisory Committee Draft Meeting Minutes.

**Action:** Information item received and filed.

Inf11. Budget Report from Concord TV.

**Action:** Information item received and filed.

Inf12. Communication from Comcast notifying the City of Concord about upcoming

changes in services for Comcast customers.

**Action:** Information item received and filed.

Inf13. Communication from FEMA regarding Field Survey in Support of Floodplain Mapping Updates in the Contoocook Watershed.

**Action:** Information item received and filed.