



# City of Concord

## City Council

### Meeting Minutes - Draft

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Monday, February 11, 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: 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 to begin at 5:30 p.m.***

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

Mayor Bouley called the meeting to order at 5:30 p.m.

Councilor Nyhan moved to enter into non-public session in accordance with RSA 91-A:2, I (a) to discuss negotiations with respect to collective bargaining. The motion was duly seconded by Councilor Kretovic and passed unanimously with no dissenting votes.

At 6:30 p.m. following negotiation discussion, Councilor Nyhan made a motion to enter non-public session in accordance with RSA 91-A:3, II (d) to discuss property acquisition. The motion was duly seconded and passed unanimously with no dissenting votes.

At 6:51 p.m., Bouley moved to recess the non-public session continuing discussions following the regular Council meeting. The motion was duly seconded and passed unanimously with no dissenting votes.

1. Call to Order.

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

2. Invocation.
3. Pledge of Allegiance.

## 4. Roll Call.

**Present:** 13 - Councilor Candace Bouchard, Mayor Jim Bouley, Councilor Byron Champlin, 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 Brent Todd, and Councilor Robert Werner

## 5. Approval of the Meeting Minutes.

January 14, 2019 City Council Meeting Minutes.

**Action:** Councilor Nyhan moved approval of the January 14, 2019 meeting minutes. The motion was duly seconded and passed with no dissenting votes.

## 6. Conservation Commission Presentation

Jan McClure, Conservation Commission member, along with other members of the Conservation Commission presented Councilor Coen with a proclamation and gifts for his service.

## 7. Liberty Utilities Presentation.

Nancy Parker, Resilient Buildings Group, Inc., indicated that they work with NH Saves and Liberty Utilities helping people save on their operating expenses and reduce their costs. She noted that when municipalities save, everyone benefits from a healthy more sustainable environment. She stated that new equipment and construction savings are available for municipalities that are building a new facility, undergoing a major renovation or replacing failed equipment. Ms. Parker pointed out the citywide community center; the city has invested in high efficiency water heaters, energy recovery ventilators, etc. for an annual savings of approximately \$8,900 a year with a payback of 2.1 years. She indicated that, because of these measures, they are able to present them with a check of \$36,226.37. She stated that by going this route, they have improved their comfort level and contributed to a cleaner environment.

## 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 Grady Sexton moved approval of the consent agenda with items 18 and 24 removed to the end of the agenda for discussion. Mayor Bouley indicated that he will be taking Rule 6-a on item 26. The motion was duly seconded and passed with no dissenting votes. Mayor Bouley took Rule 6-a on item 26.

**Items Tabled for March 11, 2019 Public Hearings**

9. 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.

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

10. Ordinance amending the Code of Ordinances; Title II, Traffic Code; Chapter 17, Vehicles and Traffic, Article 17-6, Miscellaneous Rules, Operation of Motor Vehicles; Section 17-6-7, Truck Routes in the City of Concord; together with report from the Traffic Engineer.

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

11. Resolution rescinding the bond authorization of \$1,150,000 for the Multi-Purpose Skate House at White Park (CIP #51) and establishing the funding sources for this project as follows: \$575,000 from donations, \$175,000 from Recreation Reserve, and \$400,000 from General Fund Unassigned Fund Balance; and appropriating \$400,000 from General Fund Unassigned Fund Balance to transfer to CIP #51; together with report from the Deputy City Manager - Finance.

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

12. Resolution authorizing and appropriating the sum of \$30,200 as additional funding for the Beaver Meadow Event Tent subproject (CIP #107) and authorizing and appropriating the sum of \$30,200 as a transfer to capital; together with report from the Deputy City Manager - Finance.

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

13. Resolution adopting the All Veteran's Tax Credit for the City of Concord pursuant to the provisions of RSA 72:27-a; together with report from the Director of Real

Estate Assessments.

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

**From the City Manager**

15. Positive Citizen Comments.

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

**Consent Reports**

16. Diminimus gifts and donations report from the Library Director requesting authorization to accept monetary gifts totaling \$1,465.18 as provided for under the pre-authorization granted by City Council.

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

17. 2019 Fiscal Year to Date Financial Statements from the Deputy City Manager - Finance.

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

18. Report from the City Solicitor in response to a City Council referral regarding HB 104, Housing Appeals Board. (Pulled from the consent agenda by Councilor Herschlag)

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

19. Quarterly Current Use Change Tax Report from Director of Real Estate Assessments.

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

20. Quarterly Report from the Police and Fire Chiefs on Drug Overdoses and Other Statistics.

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

21. February 2019 Economic Development Report from the Economic Development Director.

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

22. Report from the Assistant City Planner in response to a City Council referral requesting an amendment to the Code of Ordinances, Title IV, Zoning Code, Article 28-4-5 Development of Attached and Multifamily Dwellings.

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

23. Report from the Assistant City Planner requesting approval to expend up to \$12,000 for the preparation of a Request for Proposal for solar development at three municipal properties, as recommended by the Municipal Property Energy Initiatives Ad hoc Committee.

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

24. Report from the Senior Planner regarding a temporary bicycle demonstration project. (Pulled from the consent agenda by Councilor Herschlag)

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

### **Consent Resolutions**

25. Resolution in honor of the services of retired Captain/Communications Supervisor Ernest Petrin. (For presentation in March)

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

26. Resolution ordering the extinguishment of a City of Concord Department of Human Services Lien on 190 Manchester Street Lot 12 in the City of Concord in the total amount of \$12,126.63; together with report from the Human Services Director.

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

### **Appointments**

27. City Manager's proposed reappointments to the Conservation Commission. Christopher Kane, Frederick Chormann, Katherine Healy and Jan McClure

**Action:** This appointment was approved.

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

### **Public Hearings**

- 28A. Resolution authorizing the Annual Appraisal of Real Estate at Market Value per RSA 75:8-b; together with report from the Director of Real Estate Assessments. (Public hearings to be held in February and March with action taken in April)

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

Mayor Bouley opened the public hearing.

**Public Testimony**

Roy Schweiker, resident, encouraged the City Council to consider what they are voting for noting that his impression is that the city doesn't appraise all real estate at its market value every year and he would like to see this change. He noted his concerns: he doesn't feel that the city considers the condition of properties; he feels that the city assesses commercial property and residential property differently; the value of utility assessments.

There being no further public testimony, the Mayor recessed the public hearing until the March City Council meeting.

- 28B. Resolution approving the granting of a Conservation Easement to Five Rivers Conservation Trust on approximately 30 acres of land located off Fisk Road, and appropriating the sum of \$8,500 from the Conservation Reserve for stewardship fees and operation costs associated with the transaction; together with report from the Assistant City Planner.

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

Mayor Bouley opened the public hearing.

**Public Testimony**

Beth Fenstermacher, Assistant City Planner, indicated that these two properties were acquired last summer to add to the block.

Jim Owers, Conservation Commission, provided a brief history of conservation land within this area noting that when they purchased these two parcels, they approached Five Rivers Trust as to whether they would be interested in taking this over as well to make one integrated block. He stated that the intent is to get one conservation easement to cover all the five properties north of the Winant property. They want approval by the Council for them to have the authority to place the conservation easement on the properties and to spend \$8,500 from the conservation fund for the one time fee to pay in perpetuity to inspect and walk the property on an annual basis.

Roy Schweiker, resident, feels that the process in dealing with these items is unfortunate. He doesn't feel that taxpayers should have to give away an easement

and also pay for them to take it; he feels that since Five Rivers Trust is a charity, they have ways to raise money from donors.

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

- 28C. Resolution accepting and appropriating the sum of \$89,747 for compensation and fringe benefits to be funded by the Federal Emergency Management Agency for the reimbursement of personnel costs related to the deployment of Fire Department personnel to areas impacted by natural disasters; together with report from the Fire Chief.

**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.

- 28D. Resolution appropriating the sum of \$285,200 and authorizing the issuance of bonds and notes in the amount of \$285,200 for the Pump Station #5 Refurbishment and Upgrade (CIP #372); together with report from 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.

- 28E. 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, Arena Supervisor; together with report from 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.

- 28F. Ordinance amending the Code of Ordinances, Title III, Building and Housing Codes; Chapter 26, Building Regulations, and Title IV, Zoning Code, Chapter 28, Zoning Ordinance, pertaining to the Flood Hazard Overlay (FH) District; together with a report from the Planning Board.

**Action:** Carlos Baia, Deputy City Manager-Development, provided a brief overview.

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

### **Public Hearing Action**

29. Resolution authorizing the Annual Appraisal of Real Estate at Market Value per RSA 75:8-b; together with report from the Director of Real Estate Assessments. (Public hearings to be held in February and March with action taken in April)

**Action:** No action taken on this item. Public hearing for this item was recessed until the March City Council meeting.

30. Resolution approving the granting of a Conservation Easement to Five Rivers Conservation Trust on approximately 30 acres of land located off Fisk Road, and appropriating the sum of \$8,500 from the Conservation Reserve for stewardship fees and operation costs associated with the transaction; together with report from the Assistant City Planner.

**Action:** Councilor Nyhan moved approval. The motion was duly seconded and passed with no dissenting votes receiving the necessary two thirds vote.

31. Resolution accepting and appropriating the sum of \$89,747 for compensation and fringe benefits to be funded by the Federal Emergency Management Agency for the reimbursement of personnel costs related to the deployment of Fire Department personnel to areas impacted by natural disasters; together with report from the Fire Chief.

**Action:** Councilor Matson moved approval. The motion was duly seconded and passed with no dissenting votes receiving the necessary two thirds vote.

32. Resolution appropriating the sum of \$285,200 and authorizing the issuance of bonds and notes in the amount of \$285,200 for the Pump Station #5 Refurbishment and Upgrade (CIP #372); together with report from the General Services Director.

**Action:** Councilor Nyhan moved approval. The motion was duly seconded and passed with no dissenting votes receiving the necessary two thirds vote.

33. 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, Arena 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.

34. Ordinance amending the Code of Ordinances, Title III, Building and Housing Codes; Chapter 26, Building Regulations, and Title IV, Zoning Code, Chapter 28, Zoning Ordinance, pertaining to the Flood Hazard Overlay (FH) District; together with a report from the Planning Board.

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

### **Reports**

35. Everett Arena Beer and Wine Service Initiative report from the General Services Director.

**Action:** General Services Director Chip Chesley indicated that the output of the work from the Everett Arena Advisory Committee is to recommend the City Manager to proceed with procuring the necessary licensure from the State Liquor Commission for a beer license for the arena so the arena can remain competitive and more responsive to the marketplace meeting current and future demands. He noted that the committee paid particular attention to the current users to ensure not to upset them; the current users spoke favorably regarding this effort.

Councilor Werner noted that although responses received appear to be favorable, he questioned whether they had received any concerns. Jay Burgess, Public Properties Superintendent, responded that they have not received any negative feedback but they did have one event that would not be interested with this service which the city would intend to respect.

Councilor Coen noted that there may be some shows in which it would not be appropriate to serve alcohol. He questioned how these would be addressed. Mr. Burgess replied that the ability to serve alcohol would be given by the City Manager based upon the recommendation by the Arena Manager. As they look at the current show customers, he noted that most of them would be interested in this service so staff would work with them on this. He stated that the opportunity to have alcohol served would be based upon the policy; City Administration would determine whether this would be available or not. Referencing the gun show, Mr. Burgess indicated that, in his opinion, this would be one show that would not warrant alcohol service - this would be something that would have to be worked through Administration.

Councilor Coen asked if Mr. Burgess could think of another show in which alcohol would not be offered. Mr. Burgess could think of any other shows at this time but stated that the NH Interscholastic Athletic Association (NHIAA) prohibits the sale of any alcohol at their events.

Councilor Champlin inquired whether alcoholic beverages would be allowed to be carried into the stands. Mr. Burgess responded that a lot of the defining points of the license would be determined when going through the licensing process, if that's approved. He noted that their vision is to just have an area and, based upon preliminary conversations with the licensing division of the Liquor Commission, they would have a segregated area. Ideally there would be some separation.

Referencing the gun show, Councilor Kenison wondered if they wouldn't be hard pressed to approve this based on the possibility of discrimination. She noted that she knows this will be well regulated and wonders if a limit of two drinks could be imposed. Mr. Burgess responded that the NH Liquor Commission requires anyone that serves alcohol to go through a training process; not only the service staff but also maintenance and supervisory personnel would go through this training. The thought being that not only the service personnel have the training to be able to identify people that may be becoming intoxicated but also allow this training for other staff working in the vicinity of the arena. His concern with limiting is that someone may come in to the arena already intoxicated and will be allowed the limited amount which may defeat some of the aspects of the training. They need to rely on the training of the staff.

Councilor Herschlag pointed out an increase in revenues but wonders if, because of being able to serve alcohol, it is anticipated there will be additional users for the facility. Mr. Burgess responded that this is the prime motivation here. Pointing out the pro forma, Mr. Burgess indicated that there is not a tremendous amount of money to be made in sales but the main driver for this initiative is to make the rentals more attractive to promoters and vendors.

Councilor Nyhan indicated that the Fiscal Policy Advisory Committee recommended that this come before the Council because it's a great revenue generating opportunity. He noted that the NHIAA doesn't permit the sale of alcohol at high school events but questioned as to what revenue projections is seen associated with the sale of alcohol at youth hockey events. Mr. Burgess replied that it's tough to break out the projections; when they did the projections it was based upon sales as close as they could equate to a peer venue. He noted that

there isn't another municipally owned arena in the state that has a program such as this so its difficult to get an idea as to how much they can sell. Mr. Burgess stated that the focus is to get more of the dry shows in versus the revenue they see from their existing customers.

Mayor Bouley asked whether alcohol would be served at the following: (responses from Mr. Burgess)

high school games - no

NHIAA tournament games - no

public skate and stick and puck - yes

Concord youth hockey games - yes

dry floor shows - yes

rollerskating - yes

Mayor Bouley inquired as to why high school games and NHIAA prohibit alcohol at their games. Mr. Burgess responded that he does not know why.

Mayor Bouley noted that the City Manager currently has the authority to allow for alcohol sales on city property for other entities. He asked why they wouldn't follow the same path that has been established in which the City Manager has the authority to allow this to occur. He asked if staff considered the outside facility and what may be a potential there or is this only included within the inside of the facility. Mr. Chesley responded that he believes the outside was looked at as well; he feels that there is a lot of potential for that piece of real estate to be used in a number of ways. He feels that they looked at how the arena could be a catalyst to bring in other types of programs into the arena as well as into the area. In response to the question as to whether this would be limited just for sales inside the arena, Mr. Chesley responded no, indicating that he sees this as an opportunity to expand beyond that. In response to the City Manager already authorized to allow this, Mr. Chesley indicated that they see this as a step in the same direction with the one difference is this is the city stepping into the business. He feels that if this is going to be done, it should be done right and controlled.

Mayor Bouley indicated that there appears to be two reasons to want to go down this path noting that one is to produce additional revenue for the city and the arena and the second is to provide for another amenity to book shows. He asked whether that is really the motivator in this. Mr. Burgess responded yes stating that their goal is to get more of the arena used by outside vendors.

Councilor Kenison noted that another reason why she wants to take this route is because this is over the long term and not just an event.

Councilor Keach feels that they are already in this business at the golf course and doesn't think the city needs to get into the business of actually selling alcohol. He feels that if they allow it to be sold through a vendor with the city receiving a percentage of these sales, it makes sense. He understands the concern with youth sports and defers any individual renting the space. He feels there is an opportunity here.

Councilor Grady Sexton noted that the last time the city made a policy change relative to the sale of alcohol it went through the Public Safety Advisory Board.

In regards to other events, Councilor Herschlag indicated that it was the vendors responsibility to get a license. He noted that by doing this the way suggested, the city would have to get the license and have control; all the vendor would have to do is show up and not go through the process of paying for a license and paying for their own staffing. He feels this would be more attractive and there would be greater potential to attract more users by the city offering this service/opportunity.

Councilor Coen inquired as to a timeline questioning how this would affect the potential for booking dry shows if it was delayed for any reason. Mr. Burgess responded that the one show promoter that was interested that had not been interested in the past still booked with the city this year understanding that this would be a process that may take a while to get off the ground. He stated that they don't risk losing any business they currently have if this is deferred for a period of time. He indicated that their original goal was to get ready for the Spring which starts in mid to end of March; if its the desire of the Council to put this off for more input, they are not going to see a negative effect on the pro forma this year.

Councilor Kenison feels that this is a good thing for the city; the one caveat is individuals having too many alcoholic beverages. She asked if it would be the city that would be on the hook. Mr. Burgess responded yes. Councilor Kenison indicated that she would like the City Solicitor to look at this.

Mayor Bouley asked if its a good idea to serve alcohol at youth hockey games and public skating. Mr. Burgess responded that there is an interest from the youth hockey community.

Councilor Coen moved to refer this report to the Public Safety Advisory Board. The motion was duly seconded and passed with no dissenting votes.

### **New Business**

36. Request from Councilor Herschlag, that the City Solicitor meet with the City Council for the purpose of consultation with legal counsel to review City Council Rules 6 a, b, c & d and City Ordinance 1-6, Code of Ethics, at our March 11, 2019 City Council meeting.

**Action:** Councilor Kretovic indicated that she had a procedural question; a few months ago she made a motion to review 6d and the motion failed. She inquired whether this takes a motion from the prevailing side. Mayor Bouley responded that this is different.

City Manager Aspell inquired as to where this should appear on the agenda. Mayor Bouley indicated that it should be listed under reports on the March agenda.

### **Unfinished Business**

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

Councilor Bouchard highlighted the Parks and Recreation's new brochure. She added that a brochure for summer camps will be coming out the second week of March and the Summer/Fall brochure will be out the first week of May.

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

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

*\* Items 18 and 24 have been pulled from the consent agenda for discussion.*

18. Report from the City Solicitor in response to a City Council referral regarding HB 104, Housing Appeals Board. (Pulled from the consent agenda by Councilor Herschlag)

**Action:** Councilor Herschlag indicated from time to time he looks at upcoming LSR's, House and Senate bills at the State House. Referencing HB 104, which would allow for a housing appeals board in lieu of going to Superior Court to appeal a land use board determination, he stated that it caught his attention because of the way it was written and was concerned due to the expansiveness of it - not only would it have allowed for an individual, a group or a business to go to this board for Zoning Board and Planning Board determination but also for Heritage, Conservation and other land use boards. He noted that it also appeared a little expansive in that it could have allowed for this new board to make a ruling that

would go beyond what the Superior Court could rule; it wouldn't allow, after going before this board, to go back to Superior Court. There was also some question as to whether or not you would be able to appeal it to the Supreme Court. He indicated that the City Solicitor testified at the committee hearing with many of these concerns. He stated that there is now a senate bill similar to this one that city staff has also voiced concerns about. Councilor Herschlag stated that the reason he brings this up is because its an important bill which could have a big impact on local communities but more importantly, to recognize how much city staff does behind the scenes that they are not aware of. He noted his suggestion of list of staff activities from time to time so that the public is aware of all the things staff does to protect the community.

Mayor Bouley indicated that HB 104 has been killed by the House and Senate Bill 306 had a hearing last week in which the City Solicitor testified on behalf of the city. He noted that the NH Municipal Association's website posts a bulletin each week in regards to municipal activities which should save Administration a little time and energy to having to write about these items when another organization is posting them.

Councilor Herschlag indicated that the reason he brought this forward is to acknowledge city staff work behind the scenes. He feels that it would be nice to recognize their work from time to time.

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

24. Report from the Senior Planner regarding a temporary bicycle demonstration project. (Pulled from the consent agenda by Councilor Herschlag)

**Action:** Councilor Herschlag noted his concern that this came from the Transportation Policy Advisory Committee (TPAC) from a determination from the Bicycle and Pedestrian subcommittee which did not have a quorum when they met. He asked that this item be removed and sent back to TPAC-Bicycle and Pedestrian subcommittee to be considered during a properly noticed meeting with a quorum in which they can send to TPAC and then back to the Council for consideration.

Mayor Bouley inquired which meeting is he referring to in which they made a recommendation.

Councilor Herschlag responded that the Bicycling and Pedestrian subcommittee

meeting did not have quorums on February 4th, January 7th and August 6th; TPAC didn't have a quorum at their November 15th meeting. He indicated that at all these meetings, the recommendation that is before the Council was discussed.

Mayor Bouley questioned whether any votes were taken. Councilor Herschlag was not sure pointing out that what's within the minutes is that a recommendation was made to move it forward while there were no quorums at these meetings.

Mayor Bouley noted that there are often times in which volunteer committees meet that don't have a quorum and questioned whether the members that attend can have a discussion of items as long as they don't vote. City Solicitor Jim Kennedy responded that there would not be a meeting of that committee if there is no quorum. Mayor Bouley asked if a group of members could have a discussion. Mr. Kennedy responded that generally they can but it would not be a meeting; there would be no minutes and no recommendation from any subcommittee if they did not have a quorum to meet.

Mayor Bouley indicated that this item before the Council was written by the Senior Planner on February 11th to the Council regarding a bike demonstration project. He noted that it includes endorsing efforts by the Bicycling and Pedestrian subcommittee and the construction of temporary bicycle demonstration project but is the recommendation by the Transportation Policy Advisory Committee. Mr. Kennedy pointed out that it was a recommendation by TPAC not a subcommittee thereof so if TPAC had a quorum then it's appropriate.

Mayor Bouley pointed out that TPAC had a quorum at its January 24th meeting and item number 10 on their agenda was a discussion from the Bicycle and Pedestrian subcommittee. If he understands correctly, at this meeting is when they endorsed this idea to go along with this demonstration project. He asked if this is a valid report before the Council of TPAC based on the recommendation from the January 24th meeting.

Mayor Bouley asked if TPAC could act on this without the recommendation of a subcommittee. Mr. Kennedy responded yes.

Councilor Herschlag questioned that, if the subcommittee had not brought this up, would TPAC have discussed this anyways. He noted that if they don't know the answer to this, how can Council assume that TPAC would have discussed this and asked to have it placed on the Council agenda.

Mayor Bouley indicated that he has attended previous TPAC meetings and it has been discussed at all the ones he attended. He added that this is a demonstration project that was brought to this Council over a year ago and they were the ones who asked them to look at this again. He clarified that Council did not refer it back to the subcommittee, they referred it back to TPAC.

Following additional Council discussion, Mayor Bouley asked if Councilor Herschlag would be more comfortable with the report if, within background of the report, they struck the line "during the August 6, 2018 TPAC-Bicycle and Pedestrian subcommittee meeting" because that meeting didn't take place due to not having a quorum.

Councilor Herschlag indicated that the issue is that this was brought to TPAC by a committee that didn't have a quorum and they are basing their recommendations on that.

Mayor Bouley stated that this item was brought to TPAC by the Council.

Councilor Herschlag noted that it was sent to TPAC by Council to review and TPAC then sent it to a subcommittee. He stated that its not a matter that he has an issue with the merits of this, he feels that there is a procedural issue that should be addressed. He doesn't feel there is any harm by sending this back to TPAC and asking for a recommendation when there is a full quorum.

Councilor Todd noted that what Councilor Herschlag has done is pointed out an error within the report. He supports the comments with striking the language of the August subcommittee meeting from the report. He noted that TPAC members endorsed the report as presented; there was a motion, a second and a unanimous vote to endorse.

Councilor Bouchard noted that she feels that Council agrees that the subcommittee should not have met but there was a quorum at the TPAC meeting. She doesn't see an issue as to how they got to the vote. She does agree that the report should be corrected as stated.

Mr. Kennedy stated that to the extent that there is a mistake within the report as he stated earlier it should be corrected when referring to any subcommittee recommendation in which no subcommittee met. He noted that this is an error



within the report that can be amended either this evening or by bringing it back next month. He added that they can look at subcommittees to ensure that they know the Right to Know law and quorums.

Mayor Bouley moved to table this item until the March City Council meeting. The motion was duly seconded and passed with no dissenting votes.

### **Consideration of Suspense Items**

**Action:** Councilor Nyhan moved to suspend the rules to consider an item not previously advertised. The motion was duly seconded and passed with no dissenting votes.

### **Referral to General Services**

Sus1 Request from Councilor Herschlag asking staff to report back to City Council on any opportunities for the City to assist residents in replacing a water line that services 64, 65, 67, 69 & 71 River Road.

**Action:** Councilor Kretovic moved to refer this request to General Services. The motion was duly seconded.

Mayor Bouley asked if these are private residences. Mr. Aspell responded he believes they are single family homes.

The motion to refer this request to General Services passed with no dissenting votes.

Mayor Bouley indicated that he has received many complaints from residents surrounding Hoit Marsh in regards to the noise from OHRV's on Hoit Marsh. He indicated that he met with the City Solicitor to find out who's jurisdiction it falls under; bodies of water within the city's property can be regulated by the City of Concord but when it's more than ten acres, it's considered a great pond. He stated that Hoit Marsh is considered a great pond because it is 10.7 acres so the city has no jurisdiction over it. He did meet with Fish and Game and if the cars are parked on the road, the city can deal with that. He has been made aware of many issues such as trash, noise, etc. Mayor Bouley stated that City Solicitor Kennedy has identified the statute which regulates OHRV's and, in 2004 or 2006, there was a similar complaint on Turtle Pond and the legislature at that time set a speed limit on the pond; the people disappeared and shifted over to Hoit Marsh. He asked what Council would like to do stating that their options are limited; their only option is to ask the legislature to entertain a bill that would prohibit OHRV's use on the marsh.

Councilor Coen asked if they go to the legislature and they pass a bill would it then drive the people from the marsh to another location within the city. He inquired that, if they are going to request a bill, could it be where it's the discretion of the city of any large pond regulation - include them all instead of just one.

Councilor Herschlag asked if there is a way that the legislature could pass a law that would allow the city to have control over a pond of a larger size than ten acres.

Councilor Nyhan referenced noise pollution ordinances within the city limits and inquired whether the city could enforce this.

Mayor Bouley pointed out that the challenge is that they would need to place an officer out there to stay throughout the day to measure the decibels. He noted that there is variations of the noise level from these vehicles.

Councilor Champlin questioned, if the legislature passed legislation that prohibited OHRV's in the marsh, would it be Fish and Game who would be enforcing this.

Mayor Bouley stated that no matter what they do its not going to help these residents that have to deal with it this year. The residents can also ask their legislators to help them out on their own but they have contacted the city for help.

Councilor Bouchard stated that she doesn't have an issue with asking their representatives to bring this issue forward because there would be public hearings if a bill did move forward so both sides would be able to be heard. She wonders, if this pond was restricted, whether there is a more isolated place within the city to direct them.

Mayor Bouley doesn't know the answer to this but pointed out that Fish and Game had indicated that many of the people are not from Concord, they come from other areas within NH and outside of NH.

Councilor Herschlag asked if it would make sense to have somebody approach these individuals to advise them of noise levels and to have respect for the neighboring residents near the pond letting them know that if this doesn't occur, the city will go to the legislature and they may potentially lose their opportunity to use the pond. Mayor Bouley stated that this has been done.

Councilor Nyhan inquired whether they can post no trespassing signs. Mr. Kennedy responded that they cannot do this since it is a state owned property. Councilor Nyhan does believe the residents are impacted by this and he would like to see something done.

Councilor Kenison asked if Fish and Game could place a no trespassing sign up. Mayor Bouley noted that the response from the individual he spoke to from Fish and Game indicated that the individuals are doing nothing wrong.

Councilor Herschlag questioned whether they know if there is noise limitations on off road vehicles in general.

Council agreed to forward language to their delegation to consider prohibition of OHRV's on this pond.

### **Adjournment**

The time being 8:47 p.m., Councilor Nyhan moved to re-enter a non-public session in accordance with RSA 91-A:3, II (d) to continue discussing property acquisition. The motion was duly seconded and passed with no dissenting votes.

At 9:44 p.m., Councilor Champlin moved to exit non-public session. The motion was duly seconded and passed with no dissenting votes.

Councilor Bouchard moved to seal the minutes. The motion was duly seconded and passed unanimously with no dissenting votes.

There being no additional business, Councilor Bouchard moved to adjourn the meeting at 9:45 p.m. The motion was duly seconded and passed with no dissenting votes.

*A true copy; I attest:*

*Michelle Mulholland  
Deputy City Clerk*

**Information**

Inf1 January 11, 2018 Tax Exemption Policy Committee Meeting Minutes.

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

Inf2 September 17, 2018 Municipal Properties Energy Initiative Committee Meeting Minutes.

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

Inf3 October 1, 2018 Municipal Properties Energy Initiative Committee Meeting Minutes.

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

Inf4 October 9, 2018 Architectural Design Review Committee Meeting Minutes.

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

Inf5 October 25, 2018 Transportation Policy Advisory Committee Meeting Minutes.

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

Inf6 January 7, 2019 Concord Public Library Board of Trustees Meeting Minutes.

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

Inf7 January 2019 Executive Council Meeting Reports from Executive Councilor Andru Volinsky.

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

Inf8 January 15, 2019 Traffic Operations Committee Meeting Minutes.

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

Inf9 January 17, 2019 Golf Course Advisory Committee Draft Meeting Minutes.

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

Inf10 January 23, 2019 Tax Exemption Policy Committee Draft Meeting Minutes.

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

Inf11 Communications from Comcast Cable.

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

Inf12 Annual Customer Notice from Comcast Cable.

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

Inf13 Winter - Spring 2019 Concord City Auditorium Events Brochure.

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