



City of Concord
City Council
Meeting Minutes - Draft

Monday, September 11, 2017

7:00 PM

City Council Chambers
37 Green Street
Concord, NH 03301

Non-public session in accordance with RSA 91-A: 3, II (d) to discuss property acquisition followed by a non public session to meet with legal counsel in accordance with RSA 91-A:2, I (b) to be held at 6:00 p.m.

1. Call to Order.

Mayor Bouley called the 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 Linda Kenison, Councilor Jennifer Kretovic, Councilor Keith Nyhan, Councilor Dan St. Hilaire, Councilor Stephen Shurtleff, Councilor Brent Todd, and Councilor Robert Werner

Excused: 2 - Councilor Fred Keach, and Councilor Gail Matson

5. Approval of the Meeting Minutes.

August 14, 2017 City Council Meeting Minutes.

6. Resolution in recognition of the services of Master Police Officer James R. Fallon.

Action: Master Police Officer James Fallon was not present.

7. Resolution in recognition of the services of Master Police Officer Matthew A. Nelson.

Action: Master Police Officer Matthew Nelson was not present.

8. Resolution in honor of the services of retired Paramedic Lieutenant H. Bobby Silvestriadis.

Action: Paramedic Lieutenant H. Bobby Silvestriadis was not present.

9. Resolution in honor of the services of retired Firefighter Paramedic Wellington Bartels.

Action: Firefighter Paramedic Wellington Bartels was not present.

10. Resolution in honor of the services of retired Firefighter James Cournoyer.

Action: Mayor Bouley presented a resolution in honor of the services of retired Firefighter James Cournoyer.

11. Presentation by the Black Ice Hockey Association.

Chris Brown, Black Ice Hockey Association, presented \$22,000 to the City of Concord for the proceeds of this years Black Ice Tournament for the skate house fund. He indicated that, in total, that amount is \$80,000 in the six years that the pond hockey has happened. He announced that the Black Ice Hockey Association has made a formal commitment for an additional \$20,000 after this years tournament for the skate house so, after the 2018 tournament, there will be a total of \$100,000 that would have been donated to the city earmarked for this project. He highlighted and recapped the Black Ice Hockey event.

12. Citizens Bank Presentation.

Katie Graff, Assistant Finance Director, explained that approximately a year ago the Finance Department participated in a commercial card program offered by Citizens Bank allowing the city to pay vendors using a purchasing card rather than the issuance of a physical check. She indicated that the purchasing card is basically a credit card that gives online access to manage all the city accounts. She noted that the commercial card program provides the city with an annual rebate based on the amount spent using the card and is based on a tiered structure. Ms. Graff thanked Doug Ross, Purchasing Manager, and Mike Jache, Treasurer, for implementing the program. She recognized Gretchen Wood, Fiscal Tech, for processing the invoice payments.

Members of Citizens Bank - Glenn Rowley, Director of Government Banking, Chris Therrien, Relationship Manager, and Ryan Cappannari, Corporate Payment Specialist, presented a check in the amount of \$36,036.79 to the city.

13. Merrimack River Greenway Trail project presentation.

Dick Lemieux, President of the Friends of the Merrimack River Greenway Trail,

highlighted the status of the Greenway Trail. He explained that the Merrimack River Greenway Trail can be broken into three major components: a riverside greenway trail that will stretch from the corn fields near Loudon Road down to Pembroke; 6.7 mile rail trail that will stretch from the Boscawen townline to downtown Concord; a signature pedestrian bridge across the Merrimack River. He indicated that this trail will connect with the northern rail trail which currently runs from a corn field in Boscawen to West Lebanon; it would connect to the trail via a one-half mile long rail trail that is yet to be built. They hope that the first phase will be underway next year to build a 100 foot long board walk and 150 foot long trail in Terrill Park. Mr. Lemieux noted that Phase Two will be a continuation of that trail to the south through Terrill Park and Phase Three will be extending the boardwalk and the trail through the corn fields to Loudon Road. A future phase will be four and half miles from Manchester Street to Pembroke; another future phase will go from the Pierce Manse to the corn fields or to the bridge, if there is one.

Mr. Lemieux explained that the main reason that they are present this evening is because of an opportunity - a 6.3 mile long rail corridor that has been officially abandoned by Pan Am Rail and is currently available for purchase; 5.8 miles is in Concord and the other half mile is in Boscawen. He indicated that they started petition when they found out that the corridor was available.

Kelly Ovitt Puc, Secretary and Trustee of the Friends of the Merrimack River Greenway Trail, indicated that this corridor is not on the Department of Transportation's radar or priority list so they got the idea of putting together a petition so that they can demonstrate, in writing, that there was public support for this project. She stated that they received over 600 signatures on the paper petition and on the online petition, they collected over 1,000 signatures. She noted that they are asking the city to join them to help lead that effort and to help push the state on this.

Councilor Shurtleff inquired as to how much Pan Am is asking for the right of way. Mr. Lemieux responded that the State of NH has the right of first refusal on the property and Pan Am will sit back and wait for someone to make an offer. He explained that if someone makes an offer, the state has ninety days to respond to that offer.

Councilor Shurtleff pointed out that the route from Boscawen to West Lebanon has snowmobiles in the winter and inquired whether this would be the same for this

section. Mr. Lemieux replied that it would be up to Council. His advice would be not to allow snowmobiles if it's paved because they may damage pavement if there is not enough snow on the ground. If it's not paved, then he feels that it would be fine. He noted that they are proposing that it be paved because paved trails attract so many more users.

Councilor Todd acknowledged the efforts of the Friends of the Merrimack River Greenway Trail to help to provide what he feels is going to be a terrific amenity to the city. He indicated that the telling for him was the comments shown on the petition and he was surprised to see that many individuals outside the area showed interest in using the trail. He noted that any time you think about how much this could potentially cost in maintenance down the road is obviously offset by the amount of users it would get. He inquired what was anticipated in terms of numbers of daily users of the trail. Mr. Lemieux responded that, based on factors, that it would attract 400 users a day; on weekends they see a usage of 900 to 1,000 people a day on trails.

Mr. Lemieux indicated that what they would like to do is have the city take the next step and underscoring to the state how important this is for the residents of the state.

Councilor Kretovic recently toured the trail and feels that its a very doable project. She noted that this is an incredible asset within the community.

Councilor Nyhan asked if rail owners have ever gifted lines to cities in exchange for something. Mr. Lemieux responded that he has never heard of a case where a railroad has given property to anyone.

Councilor Nyhan noted that he is trying to gauge the urgency compared to other financial needs. Ms. Ovitt Puc indicated that the issue is the danger that the corridor will get broken up into pieces which is what happened to the Concord - Claremont line in which they are now working with approximately 80 different property owners to pull these pieces back together so that they can build a rail trail. She stated that part of the urgency is making sure that it's kept intact for this kind of purpose.

City Manager Tom Aspell stated that when he worked in Londonderry they had a similar situation with B & M Railroad in which B & M decided to abandon the rail line. He explained that the property owners along the rail line started acquiring to

the center line. He noted that they worked as a community to get the state to buy that whole section between Derry and Manchester explaining that once you lose this right of way, you would never be able to get it back or afford to assemble. They worked with the state and got the state to acquire that property from B & M.

Councilor Shurtleff moved that City Administration, with the consultation with the Recreation and Parks Advisory Committee, work with Boscawen in regards to making a presentation to the Department of Transportation for the state's acquisition of this right of way. The motion was duly seconded.

Mayor Bouley wondered if they need to wait for Boscawen because what he is hearing is that the biggest fear is that this gets broken up so time is of the essence.

Councilor St. Hilaire inquired whether they want to wait for another meeting or do they want to have a second alternative if the state continues to be lukewarm. He questioned in regards to conservation funds.

Mayor Bouley indicated that his initial response is to take the first step in talking to the state and see where they are at. He feels that they need time to think about what their other opportunities might be.

Councilor St. Hilaire stated that Pan Am also has property on this side of the river and asked if the city could talk to the state about this as well.

Councilor Shurtleff's motion passed with no dissenting votes.

14. 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 Kretovic moved approval of the consent agenda, as amended, with items 37 and 44 removed to end of the agenda for discussion. The motion was duly seconded. Councilors Herschlag and Todd recused themselves from voting on item 45. Councilor Herschlag's wife is on the board of the Penacook Community Center. Councilor Todd sits on the board of the Penacook Community Center.

The motion to approve, as amended, passed on a voice vote.

Items Tabled for October 10, 2017 Public Hearings

15. Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 15, Licensing and Regulation of Businesses, Trades, and Occupations; together with report from the Deputy City Manager - Development.

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

16. Ordinance amending the Code of Ordinances, Title IV, Zoning Code, Chapter 28-9-4, Decisions by the Planning Board, Site Plan Review, Projects Exempt from Site Plan Review; together with report from the Deputy City Manager - Development.

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

17. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 29.2-1-2 (b)(1) Public Capital Facilities Impact Fee Ordinance, Assessment and Collection, Computation of the Amount of Impact Fees; together with report from the Deputy City Manager - Development.

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

18. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 29.2-1-2 (e) Public Capital Facilities Impact Fee Ordinance, Assessment and Collection, Waivers; together with report from the Deputy City Manager - Development.

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

19. Ordinance amending the Code of Ordinances; Title II, Traffic Code; Chapter 18, Parking; Article 18.1, Stopping, Standing and Parking; relocation of two bus stops from the intersection of Main Street and Pleasant Street to the Pleasant Street crosswalk north of State Street; together with a report from the Traffic Engineer.

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

20. 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, K Street; together with report from the Director of Redevelopment, Downtown Services & Special Projects.

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

21. 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, Public Information Officer; together with report from the Deputy City Manager - Development.

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

22. Resolution appropriating \$60,000 including authorizing the issuance of bonds and notes in the amount of \$60,000 as the local agency match for the replacement of Concord Area Transit Bus Vehicles. (CIP #584); together with report from the City Engineer.

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

23. Resoution authorizing and appropriating the sum of \$300,000 from the Conservation Reserve Purchase of Property fund for the purchase of two parcels totaling 116 acres within the Penacook Lake watershed, located off Lakeview Drive and West Parish Road (FY2017 CIP #352), and approving the acquisition of said open space watershed protection property; together with report from the Assistant Planner on behalf of the Conservation Commission.

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

24. Resolution appropriating the sum of \$660,000 for improvements to the School Street Parking Garage (CIP #433) and authorizing the issuance of bonds and notes in the amount of up to \$660,000; together with report from the Director of Redevelopment, Downtown Services & Special Projects.

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

25. Resolution accepting and appropriating the sum of \$21,618 in unmatched grant funds from the United States Department of Justice, Edward Byrne Memorial Justice Assistance Grant Program, funds designated for law enforcement related programs; together with report from the Police Department.

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

26. Resolution accepting and appropriating the sum of \$62,551 in grant funding from the New Hampshire Department of Safety - Law Enforcement Opioid Abuse Reduction Initiative, funds designated for conducting illegal drug related investigations; together with report from the Police Department.

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

27. Resolution accepting and appropriating the sum of \$749,030.26 in one time Highway Block Grant Funds under SB 38 as a transfer to the Highway Reserve Fund; together with report from the Deputy City Manager - Finance.

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

28. Resolution appropriating the sum of \$62,820 to the Project Inspection, Golf and Sears Block Tax Increment Finance Funds Operating Budgets for Fiscal Year 2017, retroactive to June 30, 2017 which will be fully funded from excess revenues and available fund balances; together with report from Deputy City Manager - Finance.

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

29. Resolution authorizing the City Manager to enter into a purchase and sale/development agreement with Dol-Soul Properties LLC concerning the sale and redevelopment of city owned real estate at 32-34 South Main Street and 33 South State Street known as the former New Hampshire Employment Security Property; together with report from the Director of Redevelopment, Downtown Services and Special Projects.

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

30. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; together with report from the Director of Redevelopment, Downtown Services & Special Projects.

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

31. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 29.2, Public Capital Facilities Impact Fees Ordinance, Article 29.2-1-3, Administration, Section (g) Incentives for Redevelopment of Blighted, Underutilized, Abandoned, or Contaminated Buildings and Table 4 "City Priority Redevelopment Projects"; together with report from the Director of Redevelopment, Downtown Services & Special Projects.

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

32. Resolution adopting an amended and restated Development Program and Financing Plan for the Sears Block Tax Increment Finance District; together with report from the Director of Redevelopment, Downtown Services & Special Projects.

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

33. Resolution appropriating the sum of \$300,000 for the demolition 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 up to \$300,000; together with report from the Director of Redevelopment, Downtown Services & Special Projects.

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

34. Resolution appropriating the sum of \$160,000 for improvements to the Storrs Street Municipal Parking Garage (CIP #529) within the Sears Block Tax Increment Finance District and authorizing the issuance of bonds and notes in the amount of up to \$160,000; together with report from the Director of Redevelopment, Downtown Services & Special Projects.

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

From the City Manager

35. Positive Citizen Comments.

Action: This positive comments was received and filed.

Consent Reports

36. Diminimus gifts and donations report from the Library Director requesting authorization to accept monetary gifts totaling \$2,169.04 as provided for under the pre-authorization granted by City Council.

Action: This consent report was approved.

37. Report from the Deputy City Manager - Finance recommending an adjustment to the Golf Fund General Overhead charges. (Pulled from consent by Councilor Herschlag)

Action: Item removed to end of agenda for discussion.

38. Report from the General Services Director regarding Concord Regional Solid

Waste Resource Recovery Cooperative (CRSWRRC) Reserve Funds.

Action: This consent report was approved.

39. Report from the Parks and Recreation Director regarding the Monument Preservation Team at Old North Cemetery.

Action: This consent report was approved.

40. Report from the Parks and Recreation Director on the Adopt A Grave Program.

Action: This consent report was approved.

41. Report from the Associate Engineer recommending the use of unexpended water project funds to supplement the repair of the roads programed for new water main installation in the FY2017 Water Main Replacement Project.

Action: This consent report was approved.

Consent Resolutions

42. Resolution in recognition of the services of Philip H. Bilodeau, P.E. (For presentation in October)

Action: This consent resolution was approved.

43. Resolution authorizing the City Manager to accept a Conservation Easement at 40 Farmwood Road as a contribution from Public Service of New Hampshire, D/B/A Eversource Energy for conservation purposes; together with report from the City Planner on behalf of the Conservation Commission.

Action: This consent resolution was approved.

44. Resolution authorizing the City Manager to enter into a purchase option agreement amendment with Caleb Development Corporation concerning the sale and redevelopment of city owned property at 35 Canal Street, Penacook; together with report from the Director of Redevelopment, Downtown Services & Special Projects. (Pulled from consent by Councilor Herschlag)

Action: Item removed to end of agenda for discussion.

45. Resolution authorizing the City Manager to renew and extend a purchase and sales agreement with the Penacook Community Center concerning city owned property located on Village Street; together with report from the Director of Redevelopment, Downtown Services & Special Projects.

Action: This consent resolution was approved.

Consent Communications

46. Street closure request for the 66th Annual Concord Christmas Parade to be held on Saturday, November 18th at 9:30 a.m.

Action: This consent communication was approved.

47. Street closure request for the 16th Annual Rock 'N Race to benefit the Payson Center for Cancer Care to be held on Thursday, May 17, 2018.

Action: This consent communication was approved.

Appointments

48. Proposed Appointment of Laura Scott to the Zoning Board of Adjustment.

Action: This appointment was approved.

49. Mayor Bouley's proposed reappointments to the Transportation Policy Advisory Committee. Craig Tufts and Sheila Zakre

Action: This appointment was approved.

End of Consent Agenda

Public Hearings

- 50A. 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 position of Environmental Compliance Manager at the Water Treatment Plant Division; together with 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.

- 50B. Resolution accepting and appropriating the sum of \$852,591.97 in previously collected street damage fees as a transfer to the Highway Reserve Fund retroactive to June 30, 2017; together with report from the Deputy City Manager - Finance.

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.

- 50C. Resolution appropriating the sum of \$120,000 as a transfer to Highway Reserve for the Road Improvement Program, using anticipated revenues from Street Cutting Excavation Fees as the funding source; together with report from the Deputy City Manager - Finance.

Action: City Manager Tom Aspell provided a brief overview.

Mayor Bouley inquired whether the fees are anticipated in the future as well. Mr. Aspell responded that this should take place for the next three to four years based on the work schedule of road cuts and projects that the gas company has planned.

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

- 50D. Resolution de-authorizing the sum of \$34,000 in bond authorizations from the Stormwater Improvements Project (CIP #83), authorizing the issuance of bonds and notes for up to \$34,000 and appropriating said funds for the exit 16/Mountain Road/Shawmut Street Roundabout Project (CIP #24); together with report from the City Engineer. (Revised resolution submitted)

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.

- 50E. Ordinance amending the Code of Ordinances, Title 1, General Code, Chapter 1, Government Organization, Article 1-3, Miscellaneous Regulations, Ward Lines; together with report from the City Solicitor.

Action: City Solicitor Jim Kennedy provided a brief overview explaining that this proposed ordinance moves the Concord Boys and Girls Club, which is currently in Ward Three, to Ward Four and the Green Street Community Center, which is currently in Ward Four, to Ward Five. He noted that this is being done because there is a requirement that polling places are required to be in the ward explaining that, in past elections, the City Clerk has employed another statute which allows the City Clerk to have polling places outside of the ward to the extent that there is no other place that can be found for a suitable polling place.

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

Public Hearing Action

51. 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 position of Environmental Compliance Manager at the Water Treatment Plant Division; together with 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.

52. Resolution accepting and appropriating the sum of \$852,591.97 in previously collected street damage fees as a transfer to the Highway Reserve Fund retroactive to June 30, 2017; together with report from the Deputy City Manager - Finance.

Action: Councilor St. Hilaire moved approval. The motion was duly seconded.

Councilor Herschlag pointed out that this is where having an exceptional Legal Department makes a tremendous amount of difference. He noted that this is a case that was handled in-house by the city's Legal Department over a significant amount of years. It is his understanding that Manchester used outside counsel at a cost of approximately half a million dollars. He recognized the work of the Legal Department.

Mayor Bouley noted that about ten years ago there was a discussion as to whether they should add a Deputy City Solicitor in which they did. He explained that one of the reasons that they sided in doing so was to bring a lot of the work that the city was contracting out in-house. He feels that this is one of many examples to show what a good decision they made to bring this work in-house.

The motion to approve passed with no dissenting votes.

53. Resolution appropriating the sum of \$120,000 as a transfer to Highway Reserve for the Road Improvement Program, using anticipated revenues from Street Cutting Excavation Fees as the funding source; together with report from the Deputy City Manager - Finance.

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

54. Resolution de-authorizing the sum of \$34,000 in bond authorizations from the Stormwater Improvements Project (CIP #83), authorizing the issuance of bonds and notes for up to \$34,000 and appropriating said funds for the exit 16/Mountain Road/Shawmut Street Roundabout Project (CIP #24); together with report from the City Engineer. (Revised resolution submitted)

Action: Councilor St. Hilaire moved approval. The motion was duly seconded.

Mayor Bouley indicated that he travels through the Exit 16 roundabout often and feels that it's a highly functioning roundabout and is what was anticipated when they approved this item.

The motion to approve passed with no dissenting votes.

55. Ordinance amending the Code of Ordinances, Title 1, General Code, Chapter 1, Government Organization, Article 1-3, Miscellaneous Regulations, Ward Lines; together with report from the City Solicitor.

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

Reports

56. Report on the new Recreation Building/Skate House at White Park from the Parks and Recreation Director.

Action: David Gill, Parks and Recreation Director, provided a brief update noting that last year Council approved Option Three and staff has been working with the Turner Group on final design - currently at 25 percent designed. He noted his recommendation is to work with Purchasing to create an RFP to look at hiring a construction manager.

City Manager Tom Aspell indicated that they want to do the same thing that they did with Main Street which is, instead of going to 100 percent design, putting it out to bid, getting the bid and redesigning to get to the price they want; to have HL Turner work with a construction manager moving forward together to make sure they have a properly priced project with the quality that they want. He noted that they would get that together and bring it back to the Council but also, at the same time, work with the Black Ice pond folks to make sure they are okay with it

because they will be raising the other half of the dollars. He would ideally like to begin construction on this project in the spring.

Councilor Herschlag asked what insurances they have that the number they come up with the construction manager won't limit the overage; they've gone over bids and estimates in the past and they have been able to make some reductions but they still wound up over the initial estimates. Mr. Aspell responded that, because they are only at 25 percent design, they don't have an estimate; they have ideas about per square foot costs but something like this is in the details that are going to determine what the overall costs are. He added that they are also looking at other elements of the project such as possibly making improvements to the pond at the same time. He noted that by doing it this way and working with local contractors, they feel that they can come up with a better price that's predictable.

Councilor Herschlag questioned whether the project manager would be brought in much earlier in the process so that they have a much better opportunity that the numbers that they come up with will actually be the numbers that will be the cost of the project. Mr. Aspell responded that he believes those folks would have the best idea in terms of labor and material costs that are currently going on in the market. He noted that, in tying this in with the design engineers, they can make sure that the design and those costs are being worked together at the same time.

Mayor Bouley clarified that Black Ice Hockey Association is going to play an important role but that he also has been working with individuals within the community that are looking to help fundraise for this project. He pointed out that it's a skate house but it is important the way that the memo refers to the new multi-purpose recreation building at White Park. He feels that it's important to recognize this will be a multi-purpose recreational building that can be used, not only during the winter, but during the other seasons as well. He noted that this title sends a stronger message to the community that this is a building for everyone.

Councilor Champlin moved approval. The motion was duly seconded and passed with no dissenting votes.

New Business

57. Discussion on setting a date for a public meeting regarding Keno, to be held on or before October 23, 2017. (Solicitor's report as approved by City Council on August 14, 2017 attached)

Action: In Mayor Bouley's absence, Mayor Pro Tem St. Hilaire presided over this

item.

Councilor Herschlag asked if the Mayor has a conflict on this interest. Mayor Pro Tem St. Hilaire responded that he doesn't know if the Mayor has a conflict on this interest. Councilor Herschlag noted that it's his understanding that their rules require that if there is a conflict, it be identified.

Councilor Herschlag made a motion on 6-B indicating that he believes that Councilor Coen has a conflict on this matter because the Mayor's firm represents Intralot which is a gambling interest and Councilor Coen's daughter works for the Mayor's firm. He pointed out that according to the definition of family, Councilor Coen would have a conflict because of this issue.

Mayor Pro Tem St. Hilaire inquired as to how there could be a conflict when there are no Keno contracts and nothing in existence for Keno at this point.

Councilor Herschlag indicated that they are discussing an issue of whether or not Keno should go forward and how it should go forward.

Mayor Bouley explained that he represents a company known as Intralot explaining that when you purchase a lottery ticket, Intralot is the vendor of the machine in which you buy it from. He indicated that they do not have a state contract for Keno but there is potential in the future that they may have a contract. For purposes of full transparency, he felt that it was best to completely remove himself so that there is no question. He noted that he has no interest in Keno whatsoever and there is no contract right now. He doesn't feel that there is a conflict with himself or Councilor Coen.

Councilor Herschlag's motion failed for lack of a second.

Mayor Pro Tem St. Hilaire indicated that there is not a conflict.

Councilor Herschlag inquired as to why the Mayor is stepping aside if there isn't a conflict. Mayor Pro Tem St. Hilaire responded that it's just in case, sometime in future, it might turn up. He noted that if this were to happen in the future, Councilor Herschlag would take offense to the fact that the Mayor presided over this item.

City Manager Tom Aspell referenced the correspondence from the City Solicitor

regarding the setting of the timeframe as required by the RSA for Keno. He noted that Council needs to determine a date on or before October 23rd.

Mayor Pro Tem St. Hilaire stated that the City Clerk indicated that an option is October 16th because that date is already tentatively scheduled for a recessed Council meeting and doesn't conflict with any other board or committee meetings.

Councilor Nyhan pointed out that there are many public hearings scheduled for the October 10th meeting so he feels that the 16th would work best.

Councilor Nyhan moved to hold the Keno meeting on October 16th. The motion was duly seconded and passed with no dissenting votes.

Unfinished Business

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

Report from the City Solicitor as well as a copy of the current and proposed Rules submitted for the September 11, 2017 Council meeting.

Action: Mayor Bouley returned to preside over the meeting.

Councilor St. Hilaire moved to take this item off the table. The motion was duly seconded and passed with no dissenting votes.

Councilor St. Hilaire, Rules Committee Chair, explained that the Rules Committee met multiple times and what is before the Council is some changes that most members agreed with. He pointed out that the crux of the major issue that they had a disagreement was simply whether a Councilor can go to a meeting or not and speak. He noted that there has been some guidance from the NH Municipal Association on this issue. Many of the members of the Rules Committee felt strongly that just because you are on the City Council doesn't mean that one should give up their first amendment rights to being allowed to show up to a meeting so long as you are speaking on behalf of yourself and not on behalf of the City Council. He noted that he can cite various areas where any one of them may want to show up. He referenced the Arena and RPAC committees who will be forming a joint committee to talk about what to do about the land there but if you're a Councilor who feels strongly about doing something in this area, just because you're a Councilor doesn't mean you should be prohibited from showing

up to the meeting and giving some ideas so long as you are there as an individual.

City Solicitor Jim Kennedy echoes Councilor St. Hilaire's comments stating that the Rules Committee has been working on examining these rules and trying to make every effort to determine what is appropriate for the Council members to abide by serving on this Council and what rights Councilors have as being members of the Council. Referencing the proposed amendments, Mr. Kennedy pointed out that they are all in bold and italics; many of these proposed rules are procedural in nature and really the substance of these proposed rules begin at Section Six. He highlighted and provided an overview of the proposed amendments that the Rules Committee came up with. Referencing section e, Mr. Kennedy noted that the Solicitor's Office added a bit to this section. They want to make certain, to the extent that any Councilors go to a subcommittee board meeting or commission meeting, that there isn't going to be a quorum of the Council there.

Councilor Kenison feels that the issue of Councilors being able to speak as an individual is not a good idea. She wonders if the Mayor or Councilors expressing their opinions about something is going to affect a decision of a board or committee. Her personal feeling is that if a member of Council has something that is of a personal issue such as zoning in their neighborhood that is going to affect their property, then they ought to be able to speak. Other than this, she doesn't feel that it's a good idea.

Councilor Herschlag noted that he strongly agrees with Councilor Kenison's statement.

Councilor St. Hilaire asked the solicitor to chime in on what the NHMA opinion is.

Mr. Kennedy responded that there is a publication that he found from Christine Filmore of NHMA from 2013 explaining that, it was her opinion from NHMA, that "a person does not lose their status as a citizen when they become a local official. A recused official may wish to be heard on the matter just like any other member of the public; if this person feels strongly about the matter they have a right to speak during a time set aside for public testimony. If the recused official does this, they should begin with a statement that they are speaking on their own behalf, as a citizen, and not as a member of the board". Mr. Kennedy indicated that these are important things to think about noting that he is not advocating for these rules; he is the lawyer for the Rules Committee and this body in helping to determine what may be appropriate for City Councilors to do and certainly permissible for Councilors

to attend committee meetings. He pointed out that the primary concern he has would be the quorum issue under the Right to Know Law.

Councilor Coen inquired as to whether anyone knows, historically, why the rules were set the way they are currently about not being able to speak at any board or committee meetings. Mr. Kennedy responded that they have the former Solicitor's memo that references the issue of board members not appearing before certain bodies; in this memo there was a Councilor that attended a Zoning Board of Adjustment meeting and sought to appeal the Zoning Board of Adjustment meeting. In this regard, Mr. Kennedy stated that the Councilor did not have the authority of the City Council to appeal the ZBA's meeting. Councilor Coen asked what year that memo was written. Mr. Kennedy responded that he believes it was 1997.

Councilor Herschlag clarified that the former Solicitor's memo was written in 1992. He noted that he also has the minutes of the Council where they adopted Rule 6-A in November 1992.

Councilor St. Hilaire noted that it's his interpretation is that they were trying to avoid/rectify a situation in which a Councilor threw their weight around as a Councilor and not a private citizen. He indicated that, unfortunately, when they enact a rule or an ordinance it has a sweeping effect on a lot of other things that they don't consider. He understands Councilor Kenison's concerns but the other concern is that none of those issues come to the Council. The question he has is why do they give up these rights to speak their minds just because they are on the City Council so long as you are speaking as an individual and there is no conflict. He feels that this rule, in his opinion, is too over inclusive.

Councilor Coen noted that in an ideal world the Councilor presents oneself in the proper way that's not intimidating but in reality he doesn't feel that this would happen.

Following additional Council discussion, Mr. Kennedy explained that the rule was changed in 1997 from the 1992 version to the 1997 version. He indicated that it's important to note, when looking at the former Solicitor's letter, it referenced a version of the rule that existed at that time: "no Councilor shall appear except on his own behalf before any board or commission." He noted that is what they are returning to, the 1992 version.

Councilor Bouchard, Rules Committee member, indicated that she will be

supporting this explaining that the committee worked very hard on getting clear language, not only for them to understand what's appropriate and expected of them in the Right to Know Law, but also those that may come after them. She feels that everybody's concerns were taken into account when this was drafted.

Councilor Herschlag thanked Rules Committee members for giving him the time necessary to express his opinions and concerns. He also relayed that the discussion that they had was good and everyone's opinion was respected. While he disagrees with his fellow Councilors on section 6D, he feels that overall a lot of progress was made on City Council Rule 6. He will not be supporting the proposed change this evening. He thanked his fellow Councilors for the deliberation put into these and thanked the City Solicitor for the advice that he provided them while going through these changes.

Mayor Bouley thanked the committee for putting a lot of time, effort and thought into this. He feels that the proposed rules are more up to date and reflective of how they function today. With regard to the specific issue of 6A, he wrestles with this himself a bit. What he goes back to is what's important to him, a transparent and open government and what 6D does is really shine that bright transparency light on City Council. He feels that it really goes to the heart of what they are trying to achieve with their rules which is making sure the public has faith and trust in city government and that they are operating in a fair and open fashion. He hopes, with that, that they support the changes and update their rules.

Councilor Kretovic moved approval of the report adopting the proposed amendments to the rules. The motion was duly seconded and passed with one dissenting vote by Councilor Herschlag.

59. Resolution authorizing the City Manager to enter into a license agreement with Associated Enterprises, Inc. to install a balcony and related improvements within the North Main Street rights-of-way; together with report from the Director of Redevelopment, Downtown Services & Special Projects. (Action on this item tabled at the May 8, 2017 Council meeting)

Action: This item remains on the table.

Comments, Requests by Mayor, City Councilors

Councilor Todd announced that he will be holding a Ward One public information meeting on October 5th at 7:00 p.m. at the Penacook Community Center Gymnasium. He indicated that Councilor Shurtleff, also in his capacity as state representative, will be attending. He explained that the reason he is holding this

meeting is because there are a lot of topics on people's minds currently such as the tannery site redevelopment, Exit 17, possible trails creation, taxes and any other topic of interest.

Councilor Todd announced that there will be a gazebo ribbon cutting ceremony on Friday, September 29th at 11:00 a.m. on Village Street in Penacook.

Councilor Kretovic announced that Intown Concord is celebrating their 9th annual upstairs downtown walking tour this Thursday evening at 5:30 p.m. Mayor Bouley clarified that this event is not hosted by the city but is hosted by Intown Concord.

Councilor Champlin commended the Parks and Recreation Department for the work that they have done in Old North Cemetery.

Councilor Bouchard announced that Hazardous Collection Day will be held on Saturday, September 16th at the Everett Arena from 9:00 a.m. to 3:00 p.m.

Councilor Bouchard asked if it was possible for the City Engineer to provide a quick update on Loudon Road and if there was anything that the contractors may have found while doing Loudon Road work that should be addressed now while the road is being constructed.

City Engineer Ed Roberge indicated that roadwork began in August on Loudon Road. He noted that the first paving layers are on; there are some sections of sidewalk that are going to be replaced; they are working on tip downs. He stated that over the next few weeks, they will continue on with the curbing, sidewalk, tip downs, and draining structures bringing them to about the last week of September. Mr. Roberge pointed out that some of the challenge is finding old catch basins that are in tougher shape. He indicated that the road structure itself is in decent shape and noted that they are a few weeks behind due to a combination of extra work and weather.

Referencing the crosswalks, Councilor Bouchard asked if these were the final markings. Mr. Roberge responded that they are not the final markings that are currently there; they will be wide ladder type crosswalks. He indicated that the crosswalks, the signal heads, and wiring will be replaced within the next week and a half.

Comments, Requests by the City Manager

Consideration of items pulled from the consent agenda for discussion.

** Items 37 and 44 have been pulled from the consent agenda for discussion.*

37. Report from the Deputy City Manager - Finance recommending an adjustment to the Golf Fund General Overhead charges. (Pulled from consent by Councilor Herschlag)

Action: Councilor Herschlag wonders how Administration anticipates raising the necessary funds to pay for the anticipated projects such as the continued replacement of the irrigation system, the parking lot and some of the other items outlined in the capital improvements program. Mr. Aspell responded that all the projects that they have talked about in the past are in the budget. He indicated that they would work with the Golf Course Advisory Committee to make a determination of what the priorities are and what could be phased. He noted that you can't look at one year noting that over the next five or six years they are going to have to do the irrigation system, it does make sense to improve and expand the parking lot, and there should be work done to the club house. Mr. Aspell indicated that, inevitably, there is going to be general fund contributions to this. He anticipates a lot of other uses there besides golfing such as the simulators, restaurant use and winter activities.

Councilor Herschlag indicated that he doesn't have a problem generating additional revenue from the anticipated uses. His concern would be that specific costs pertaining to the golf course are not able to meet their expenses.

Mayor Bouley inquired whether Councilor Herschlag has any other ideas of things that could be done there other than golf during the summer. He compared golfing to the ski season noting that its very seasonal. He pointed out that it was very wet this past spring and that it has been an interesting summer in terms of usage.

Councilor Herschlag responded that he was just curious if Administration had any thoughts on going forward. He indicated that he has been an advocate for a significant ski center that would mimic a cross country center.

Councilor Kretovic indicated that the report points out that weather is the biggest impact in this year's golf season. She noted that there is nothing that can be done now but what they can do is try to encourage growth of the game.

Councilor Herschlag moved approval of the report. The motion was duly

seconded and passed with no dissenting votes.

44. Resolution authorizing the City Manager to enter into a purchase option agreement amendment with Caleb Development Corporation concerning the sale and redevelopment of city owned property at 35 Canal Street, Penacook; together with report from the Director of Redevelopment, Downtown Services & Special Projects. (Pulled from consent by Councilor Herschlag)

Action: Councilor Herschlag moved to deny the City Manager the authorization to enter into the agreement. There being no second, the motion failed.

Councilor Kretovic moved approval of the resolution. The motion was duly seconded and passed with one dissenting vote by Councilor Herschlag.

Consideration of Suspense Items

Action: Councilor St. Hilaire moved to consider the suspense items not previously advertised. The motion was duly seconded and passed with no dissenting votes.

- Sus1. Item Tabled for October 10, 2017 Public Hearings

Ordinance amending the Code of Ordinances, Title 1, General Code; Chapter 1, Government Organization; Article 1-6, Code of Ethics; together with report from the City Solicitor.

Action: Councilor Kretovic moved to set this item for an October 10th public hearing. The motion was duly seconded and passed with no dissenting votes.

- Sus2. Report recommending that the City Council grant a license to Liberty Utilities across the City parcels known as Map 45, Block 6, Lot 20 and Map 45, Block 6, Lot 8, for the purpose of providing natural gas service to the New Hampshire Historical Society building at 6 Eagle Square.

Action: City Manager Tom Aspell provided a brief overview.

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

5. August 14, 2017 City Council Meeting Minutes.

Action: Councilor St. Hilaire moved approval. The motion was duly seconded.

Councilor Herschlag noted that there isn't any mention of the Mayor stepping out during item 53 on the agenda in regards to Keno.

Mayor Bouley indicated that the minutes referenced item 53 with the included action "in Mayor Bouley's absence, Mayor Pro Tem St. Hilaire presided over this item".

Councilor Herschlag inquired as to when the minutes were updated with this inclusion. Mayor Bouley responded that it was updated today. Mayor Bouley pointed that item 54 reflects the Mayor's return to the meeting.

Councilor Shurtleff moved approval of the August 14, 2017 City Council meeting minutes. The motion was duly seconded and passed with no dissenting votes.

City Manager Tom Aspell indicated that he was informed last week by the City Solicitor about a decision that came down related to the City of Manchester and their panhandling ordinance which was struck down by the court. He noted that the discussion was how this affects the City of Concord. Based on this and the discussion, he stated that it made sense, until such time they can sort through all the information related to this and being that Manchester's ordinance is close to exact to what the City of Concord had written as has many other communities within the state, not to enforce the city's ordinance at this time until such time they can review it further. He added that the idea would be, as they get more information, bring it forward to the Public Safety Advisory Board to review.

City Solicitor Jim Kennedy reiterated the City Manager's statement. He indicated that he would like the Council to acknowledge that they are not going to enforce that ordinance until further notice. He feels that it may be appropriate to have a motion to this effect and refer this ordinance to the Public Safety Advisory Board.

Councilor Shurtleff moved to ask that the Police Department not enforce ordinance 17-7-3 based on the US District Court's decision and that this ordinance be referred to the Public Safety Advisory Board. The motion was duly seconded and passed with no dissenting votes.

Adjournment

The time being 9:31 p.m., Councilor Kretovic 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*

